

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.26/2016**

% **5th September, 2016**

UNION OF INDIA & ORS. Appellants
Through: Mr. Prasanta Verma, Senior Central
Government Counsel.

versus

SHRI ISHWAR SINGH Respondent
Through: Mr. H.S. Dahiya, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. In this Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC), on 6.5.2016, the following substantial questions of law were framed:-

"i. Whether the Courts below ought to have directed for a fresh inquiry if the Trial Court had found, in the first instance, that principles of natural justice were not followed.

ii. Whether the courts had the jurisdiction to try the suit in as much as the respondent/plaintiff hailed from Haryana, the occurrence had taken place at Bhopal and the Appellate Authority sits at Bombay.

iii. Whether the judgments of the court below are against the weight of overwhelming evidence against the respondent/plaintiff and therefore perverse.

iv. Whether any prejudice has been caused to the respondent/plaintiff or it is only a technical infringement of the principles of the natural justice.”

2. In addition to the above substantial questions of law, in my opinion, an additional substantial question of law is required to be framed as stated hereunder for the disposal of the present Regular Second Appeal:-

“Whether the suit filed by the respondent-plaintiff is at all maintainable in the civil court because such a suit would be in fact barred by application of general principles of *res judicata* inasmuch as orders passed by statutory authorities under the Central Industrial Security Force Act, 1968 and which are challenged in the suit could only have been challenged by means of proceedings in a writ petition under Articles 227 and/or 226 of the Constitution of India in this Court?”

3. Learned counsel for the appellants relies upon a recent judgment of this Court in the case of ***Ex. Const. Krishan Kumar Vs. Union of India & Ors., RSA No.254/2014*** decided on 1.9.2016 which holds that a civil suit does not lie for challenging the orders which are passed by the statutory authorities under Section 8 and sub-Sections (1) to (3) of Section 9 of the Central Industrial Security Force Act, 1968 (hereinafter referred to as “the CISF Act”). Section 8 of the CISF Act provides for orders to be passed by the Disciplinary Authority. Section 9(1) provides for the orders to be passed by the Appellate Authority. Section 9(2A) and (2B) provides for passing of the orders by the Revisional Authority. Section 9(3) provides for exercise of *suo moto* powers by the Central

Government against the orders of the aforementioned statutory authorities. It is argued that though this issue was not raised before the courts below, since the issue is purely a legal issue and which hits at the very jurisdiction of the court to try the suit, this Court should consider the same.

4. In the case of *Ex. Const. Krishan Kumar (supra)* by placing reliance on the judgment of the Supreme Court in the case of *Ghulam Abbas and Others Vs. State of Uttar Pradesh and Others (1982) 1 SCC 71*, I have held that once orders are passed by the statutory authorities in exercise of statutory powers, against such decisions of the statutory authorities, only a writ petition will lie either under Article 227 and/or under Article 226 of the Constitution of India and a suit if filed to challenge the orders of the statutory authorities will be barred by the application of the general principles of *res judicata*.

5. The relevant paragraphs of the judgment in the case of *Ex. Const. Krishan Kumar (supra)* are paragraphs no. 3 to 7 and these paragraphs read as under:-

“3. At the outset, let me reproduce Sections 8 and 9 of the Central Industrial Security Force Act, 1968 (hereinafter referred to as ‘the CISF Act’), and which provisions provides for the orders to be passed by the Disciplinary Authority, Appellate Authority, Revisional Authority and the Central Government, and which provisions read as under:-

8. Dismissal, removal etc.of enrolled members of the Force:- Subject to the provisions of article 311 of the Constitution and to such rules as

the Central Government may make under this Act supervisory officer may –

(i) dismiss, remove, order of compulsory retirement or reduce in rank any enrolled member of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely :-

(a) fine to any amount not exceeding seven days pay or reduction in pay scale;

(b) drill, extra guard, fatigue or other duty.

(c) removal from any office of distinction or deprivation of any special emolument.

(d) withholding of increment of pay with or without cumulative effect.

(e) withholding of promotion.

(f) Censure.

9. Appeal and revision:- (1) Any "enrolled" member of the Force aggrieved by an order made under section 8 may within thirty days from the date on which the order is communicated to him prefer an appeal against the order to such authority as may be prescribed, and subject to the provisions of sub section (2A), sub section (2B) and subsection (3), the decision of the said authority thereon shall be final:

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.

2) In disposing of an appeal the prescribed authority shall follow such procedure as may be prescribed.

(2A) Any enrolled members of the Force aggrieved by an order passed in appeal under sub-section (1) may, within a period of six months from the date on which the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedure as may be prescribed.

(2B) The authority, as may be prescribed for the purpose of this sub-section, on a revision petition preferred by an aggrieved enrolled member of the Force or suo-moto, may call for, within a prescribed period, the records of any proceeding under section 8 of sub-section(2) or sub-section (2A) and such authority may, after making inquiry in the prescribed manner, and subject to the provisions of this Act, pass such order thereon as it thinks fit."

(3) The Central Government may call for an examine the record of any proceeding under section 8 or under sub-section (2), sub section (2A) or sub section (2B) of this section and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act, may pass such order thereon as it thinks fit;

Provided that no order imposing an enhanced penalty under sub-section (2) or sub-section (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.”

4. A reading of the aforesaid provisions shows that the orders passed by the departmental authorities in the present case, whether by the Disciplinary Authority (under Section 8 of the CISF Act) or the Appellate Authority (under Section 9 sub-Section 1 of the CISF Act) or the Revisional Authority (under Section 9 sub-Sections 2A and 2B of the CISF Act) or the order of the Central Government (under Section 9 sub-Section 3 of the CISF Act), are statutory orders, i.e, these orders are passed not because of any internal service rules of an organization but of the authorities exercising powers under statutory provisions. Once statutory authorities exercise their powers, such orders passed by the statutory authorities achieve finality unless they are appropriately challenged. Putting it in other words, an order of the Revisional Authority under sub-Sections 2A and 2B of Section 9 or of the Central Government under sub-Section 3 of Section 9 of the CISF Act can only be challenged by a challenge to a higher court/forum and which would be proceedings under Articles 226 and/or 227 of the Constitution of India. Assuming that there exists an Order of the Central Government dated 30.2.2003, and even assuming that it does not because there does exist the Order of the Revisional Authority dated 20.4.1999, these orders being passed under statutory provisions would achieve finality unless and until such orders are questioned before this Court, or an appropriate High Court, under Articles 226 and/or 227 of the Constitution of India. If that is not done, orders of the statutory authorities passed under Sections 8 and 9 of the CISF Act will achieve finality and will operate as *res judicata* for any suit which may be filed challenging the orders of the statutory authorities. The principles of *res judicata* are not confined or derive their entire existence only from Section 11 CPC. The doctrine of *res judicata* is of general application and is based on public policy that litigation must achieve finality and individuals should not be vexed twice for the same kind of litigation. Section 11 CPC is only one pointer to the existence of the doctrine of *res judicata*, but doctrine of *res judicata* is one of general application not restricted to decision passed by civil courts only. This has been so held by the Supreme Court in the judgment in the case of ***Gulam Abbas and Others Vs. State of Uttar Pradesh and Others (1982) 1 SCC 71***. Paragraph 14 of this judgment is relevant and the same is reproduced hereinunder:-

“14. Counsel for respondents 5 and 6 next contended that the decision in this litigation (Suit No. 232 of 1934) would not operate *res judicata* against them or the Sunni community of Mohalla Doshipura inasmuch as

Munsif's Court at Banaras did not have either pecuniary or subject-wise jurisdiction to grant the reliefs claimed in the instant writ petition; in other words that Court was not competent to decide the present subject-matter and such the bar of res judicata under Section 11 of the Civil Procedure Code, 1908 was not attracted, and it would be open to the respondents 5 and 6 and the members of the Sunni community to agitate question of title either to the plots or to the structures thereon or even the Shias' entitlement to their customary rights over them. In support of this contention counsel relied on two decisions namely, *Rajah Run Bahadoor Singh v. Lachoo Koer* and *Gulab Bai v. Manphool Bai*. It is not possible to accept this contention for the reasons which we shall presently indicate. It is well settled that Section 11 of the CPC is not exhaustive of the general doctrine of res judicata and though the rule of res judicata as enacted in Section 11 has some technical aspects the general doctrine is founded on considerations of high public policy to achieve two objectives, namely, that there must be a finality to litigation and that individuals should not be harassed twice over with the same kind of litigation. In *Daryao v. State of U. P.* this Court at SCR p. 582 has observed thus:

“Now the rule of res judicata as indicated in Section 11 of the CPC has no doubt some technical aspects, for instance, the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that finality should attach to the binding decisions pronounced by Courts of competent Jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.”

Reference in this connection was made by the Court to the famous decision in the leading *Duchess of Kingston Case*, *Halsbury's Laws of England and Corpus Juris*. In *Gulab Chand Chhotalal Parikh v. State of Bombay (now Gujarat)* the question was whether after the dismissal of a writ petition on merits after full contest by the High Court under Article 226 of the Constitution a subsequent suit raising the same plea claiming discharge from the liability on the same ground was entertainable or not and this Court held that on general principles of res judicata the decision of the High Court on the writ petition operated as res judicata barring the subsequent suit between the same parties with respect to the same matter. On a review of entire case law on the subject, including Privy Council decisions, this Court at SCR p.574 observed thus:

“As a result of the above discussion, we are of opinion that the provisions of Section 11, CPC are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter

in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. The nature of the former proceeding is immaterial.

We do not see any good reason to preclude such decisions on matters in controversy in writ proceeding under Article 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest.” (emphasis supplied)

The above observations were approved by this Court in a subsequent decision in the case of *Union of India v. Nanak Singh*. It is thus clear that technical aspects of Section 11 of CPC, as for instance, pecuniary or subject-wise competence of the earlier forum to adjudicate the subject-matter or grant reliefs sought in the subsequent litigation would be immaterial when the general doctrine of res judicata is to be invoked. The two decisions relied upon by counsel for the respondents 5 and 6 were directly under Section 11 of CPC. Even under Section 11 the position has been clarified by inserting a new Explanation VIII in 1976. It was not disputed that the Munsiff's Court at Banaras was competent to decide the issues that arose for determination before it in earlier litigation and, therefore, the decision of such competent Court on the concerned issues must operate as a bar to any subsequent agitation of the same issues between the same parties on general principles of res judicata. The contention raised by counsel for respondents 5 and 6 in this behalf, therefore, has to be rejected. It was then faintly urged by counsel for respondents 5 and 6 that the dismissal of plaintiffs' suit (No. 232 of 1934) would not confer any rights on the Shia community who were party defendants to the suit. The contention is merely required to be stated to be rejected. Not only were the Sunnis' customary rights (specified in para 4 of the plaint) over the plots and structures in question put in issue during the trial but the customary rights to perform their religious ceremonies and functions on the plots and structures thereon claimed by the Shias were also directly and substantially put in issue inasmuch as the plaintiffs (Sunni Muslims) had sought an injunction restraining the Shias from exercising their customary rights. therefore, the decision in this litigation which bore a representative character not merely negated the Sunnis' customary rights claimed by them over the plots and structures but adjudicated, determined and declared the Shias entitlement to their customary rights to perform their religious ceremonies and functions on the plots and structures thereon in question and this decision is binding on both the communities of Mohalla Doshipura. There is no question of there being any gap or inadequacy of the material on record in the matter

of proof of Shias' entitlement to customary rights over the plots and structures in question, whatever be the position as regards their title to the plots or structures. We have already indicated that this decision even upholds their title to two main structures, Zanana Imambara and Mardana Imambara (Baradari). In our view, therefore, this is a clear case of an existing or established entitlement to the customary rights in favour of the Shias' community to perform their religious ceremonies and functions over the plots and structures in question under the decree of competent civil Court for the enforcement of which the instant Writ Petition has been filed.”
(emphasis is mine)

5. A reading of the aforesaid paragraph 14 of the judgment in the case of **Gulam Abbas (supra)** leaves no manner of doubt that principles of *res judicata* are of general application and are not confined only to proceedings of suits and applications under Section 11 CPC.

6. Since the undisputed position which emerges on record is that the appellant/plaintiff did not file any writ petition in this Court under Articles 226 and/or 227 of the Constitution of India challenging the orders of the statutory authorities being the Revisional Authority Order dated 20.4.1999, and assumed/imaginary Order of the Central Government dated 30.2.2003, the present suit filed by the appellant/plaintiff, would in fact be barred by application of the general principles of *res judicata*. I may note that though this aspect was not argued before the courts below but, since this is a purely legal issue arising on admitted facts, I have taken this into consideration for decision in view of the recent judgement of the Supreme Court in the case of **Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782** and in which judgment the Supreme Court says that once the record of the trial court is complete, the appellate courts should not remand matters but should decide the cases themselves on the basis of record. Remand is to be resorted to only if the suit is decided on a preliminary issue or if additional evidence has to be led before the trial court. The relevant paras of the judgment in the case of **Lisamma Antony (supra)** are reproduced herein under:-

“14. Rule 23 of Order 41 of Code of Civil Procedure, 1908, (for short "the Code") provides that where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject all just exceptions, be evidence during the trial after remand.

15. Rule 23A of Order 41 of the Code provides that where the court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the appellate court shall have the same powers as it has under Rule 23.

16. Rule 24 of Order 41 of the Code further provides that where evidence on record is sufficient, appellate court may determine case finally, instead of remanding the same to the lower court.

17. Needless to say, in the present case, the suit was not disposed of on any preliminary issue by the trial court. The second appellate court should have restrained itself from remanding a case to the trial court. Remanding a case for re-appreciation of evidence and fresh decision in the matter like the present one is nothing but harassment of the litigant. The unnecessary delay in final disposal of a lis, shakes the faith of litigants in the court.”

7. I therefore hold that the subject suit filed by the appellant/plaintiff is barred by the doctrine of *res judicata*. For the completion of narration, I must note that the only other method of challenging the final judgment, either by statutory authority or a civil court, would be by alleging fraud as per Section 44 of the Indian Evidence Act, 1872, and admittedly, there is no cause of action laid out in the present plaint with respect to the suit plaint being found on the cause of action of fraud as per Section 44 of the Indian Evidence Act.”

6. I would also like to note at this stage that in the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (hereinafter referred to as the DPCR Act) there are similar provisions for passing of orders by the Managing Officers at the original stage, and thereafter in appeal before the Appellate Authority as per Section 22 of the DPCR Act, and further in revision by the Chief Settlement Commissioner under Section 24 of the DPCR Act and finally the power of the Central Government for *suo motu* review being provided under Section 33 of the DPCR Act Against the orders of the Revisional Authority passed under Section 24 of the DPCR Act or of the Central Government in review under Section 33 only writ proceedings will have to be filed either under

Articles 227 and/or 226 of the Constitution of India and such orders of the statutory authorities under the DPCR Act cannot be challenged in a civil court by filing a civil suit.

7. There are again similar provisions under the Delhi Land Reforms Act, 1954, and the Schedule to this Act provides for how the Revenue Officer at the initial stages has to decide different proceedings which are provided in the Schedule. After this Original Authority decides the proceedings as provided in Column 7 of the Schedule of the Delhi Land Reforms Act, thereafter a first appeal lies to the authority as provided under Column 8, and then the second appeal thereafter lies before the authority provided under Column 9 of the Schedule. This is so stated in Section 185 of the Delhi Land Reforms Act, 1954, which reads as under:-

“185. Cognizance of suits, etc, under this Act. – (1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

(3) An appeal shall lie from the final order passed by a Court mentioned in column 3 to the Court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.”

8. Against the orders of the statutory authorities passed under the Delhi Land Reforms Act, when challenge is laid, the same is laid to this Court

under Articles 227 and/or 226 of the Constitution of India. If the challenge is not laid to this Court against the orders of these statutory authorities, the orders of the statutory authorities operate to finally bind the parties on the general principles of *res judicata* as per the ratio of ***Gulam Abbas's*** case (**supra**).

9. In my opinion Rule 57 of the CISF Rules, and which rule comes after the rules providing for orders of the Disciplinary Authority; Appellate Authority and Revisional Authority, bars filing of a suit. Though the rule is not very happily worded, however, the first part of Rule 57 of the CISF Rules will bar filing of a suit, with the second part of Rule 57 pertaining only to petitions which are the subject matter of Rule 56. Rules 56 and 57 of the CISF Rules read as under:-

“56. Petitions - (1) Any enrolled member of the Force may submit a petition in respect of any matter connected with his official position in which his personal interests are involved other than a matter covered by the rule relating to appeals and revision.

(2) Each such enrolled member of the Force shall submit a petition solely relating to his individual case.

(3) Joint petitions of any kind whatsoever shall not be taken notice of and submission of such petitions shall be deemed to be an act of indiscipline.

(4) Such petition shall be in proper form and not couched in improper language and be submitted to the immediate superior even if the petitioner be on leave at the time. A petition submitted in contravention of this rule shall be summarily rejected.

(5) Such immediate superior shall submit it through his immediate superior to the authority competent to dispose it of. An officer superior to him may withhold any such petition if it is couched in intemperate language or is otherwise improperly written, in which case he shall inform the petitioner in writing that his petition has been withheld.

(6) In any subsequent petition to the competent authority, the petitioner shall also attach to his petition a copy of the order on his previous petition as communicated to him by his immediate superior officer.

57. Other methods forbidden - The supervisory officers and enrolled members of the Force are forbidden from resorting to any method other than that prescribed in these rules for pressing their claims or for obtaining redress of alleged grievances or reversal, any such attempt on their part shall be deemed to be an act of indiscipline.”

10. Learned counsel for the respondent has placed reliance upon a judgment of a learned Single Judge of this Court dated 5.11.2015 in RSA No.27/2015 titled *Anand Narayan Vs. Union of India and Others* to argue that the suit is maintainable even though the orders are passed by the statutory authorities as specified under Sections 8 and 9 of the CISF Act. This judgment of the learned Single Judge dated 5.11.2015 is reproduced as under:

“1. Admit.

2. The following substantial question of law arises for consideration in the present appeal:

“Whether the finding returned by the First Appellate Court that suit of the appellant/ plaintiff was barred and the appellant should have challenged the final order of the reviewing authority in writ proceedings, is not perverse?”

3. I have heard learned counsel for the parties and proceed to dispose of the matter.

4. The present second appeal, which is directed against the judgment dated 17.09.2014 passed by the learned District & Sessions Judge (South-East), Saket Courts, New Delhi in RCA No.3/2014 raised the aforesaid issue in the background that the appellant had filed the suit for declaration in respect of the punishment inflicted upon him vide order dated 08.03.2008. The appellant had also assailed the order dated 22.05.2008 passed by the appellate authority and the order dated 22.06.2009 passed by the revisional/ reviewing authority.

5. The appellant, who was serving as a Sub-Inspector in the Central Industrial Security Force (CISF), was removed from service after being found guilty of misconduct in a disciplinary proceeding. The Trial Court vide judgment dated 30.07.2013 had decreed the appellant’s suit and held the aforesaid orders to be illegal, null & void. The Trial Court had directed that

the appellant/ plaintiff be treated as continuing in service w.e.f. 08.03.2008 with all consequential service and monetary benefits.

6. The respondents then preferred the aforesaid first appeal being RCA No.3/2014, which has been allowed by the First Appellate Court. The only premise on which the said appeal has been allowed is that the proper recourse for challenging the final order of the revisional/ reviewing authority was to challenge the same before the High Court in writ proceedings. It was held that the declaration or a parallel inquiry or appraisal of evidence by a Civil Court is not an order. It was further held that judicial review of such an order should normally be not entertained even by the superior Courts in view of the decision of the Supreme Court in *B.C. Chaturvedi Vs. Union of India & Others*, (1996) 1 SC Service Law Judgments 9.

7. The submission of learned counsel for the appellant is that admittedly there is no statutory bar to the maintainability or the filing of the suit for declaration. The appellant, being an employee of the CISF, could neither have moved the Central Administrative Tribunal (CAT), as the CISF is not a notified organisation to be covered within the jurisdiction of the CAT, nor the Armed Forces Tribunal. The only remedy available to the appellant was either to file a civil suit for declaration, or to file a writ proceeding. Learned counsel submits that the right to file the civil suit cannot be denied and the principle, which is applicable to maintainability of writ proceedings, namely whether the petitioner has an alternative efficacious remedy, did not apply in respect of a civil suit, which can be maintained as a matter of right.

8. Learned counsel for the respondent really has no submission to advance as the aforesaid submission of the appellant reflects the correct legal position.

9. A perusal of the impugned judgment shows that the First Appellate Court is clearly reeling under a misimpression. Merely because a writ proceeding is maintainable, and is the generally preferred remedy to assail orders passed in disciplinary proceedings - in cases where such proceedings are maintainable, it does not mean that it is not open to an aggrieved employee to file a civil suit for the same relief. Under section 9 CPC, a civil suit can be filed, and the civil court has jurisdiction, to try all suits of a civil nature, excepting suits of which cognizance is either expressly or impliedly barred. Admittedly, there is neither an express, nor an implied bar in law to the maintainability of the suit in the present case. The scope of judicial interference would remain the same whether the proceedings are by way of a civil suit, or by way of a writ proceeding under Article 226 of the Constitution of India. Merely because the aggrieved employee prefers a civil suit, it does not mean that the scope of interference of the orders passed in disciplinary proceedings would get enlarged.

10. Accordingly, the impugned judgment is set aside and the appeal is remanded back to the First Appellate Court for hearing on merits.

11. The parties shall appear before the First Appellate Court on

07.12.2015.

12. The Trial Court Record be sent back to the First Appellate Court.

13. The appeal stands disposed of in the aforesaid terms.”

11. With utmost humility, I would like to note that the Judgment of the learned Single Judge dated 5.11.2015 in *Anand Narayan’s* case (*supra*) talks of suit not being barred because of Section 9 CPC and under which provision a suit lies unless the suit is barred, however, the issue is not whether the suit is barred under Section 9 CPC but that when the suit is filed because the same is not barred under Section 9 CPC, the suit filed is however to be dismissed by application of the general principles of *res judicata* as per the judgment of the Supreme Court in the case of *Ghulam Abbas* (*supra*). Also, attention of the learned Single Judge deciding *Anand Narayan’s* case (*supra*) was not drawn to Rule 57 of the CISF Rules which in its first part bars the filing of a suit and as already discussed above.

12. Accordingly, since the Judgment of the learned Single Judge dated 5.11.2015 does not consider the binding precedent of the Supreme Court in *Ghulam Abbas’s* case as also Rule 57 of the CISF Rules, and this Court being bound by the judgment of the Supreme Court in *Ghulam Abbas’s* case, therefore in my opinion it has to be held that a suit cannot be filed against the orders which are passed by the statutory authorities under different Statutes, and that if orders of the statutory authorities passed under respective Statutes have to

be challenged, then they can be only challenged by means of proceedings in a writ petition under Articles 227 and/or 226 of the Constitution of India and not by way of the suit. I would also note that in suits which are filed challenging the orders of the statutory authorities under the CISF Act a wrong practice has developed of evidence being led after framing of issues although evidence qua the charges/issues is already recorded before the departmental authorities and thus no evidence can thereafter be led again.

13. I would like to finally note that with respect to filing of a writ petition the Limitation Act, 1963 strictly does not apply. Therefore even today respondent/plaintiff can challenge the orders passed by the statutory authorities in a writ petition. The delay in approaching the writ court can be explained by seeking exclusion of the period of proceedings of the present suit and the appeal on the principle contained in Section 14 of the Limitation Act.

14. In view of the aforesaid discussion, the substantial question of law framed today is answered in favour of the appellant and against the respondent holding that the civil suit filed by the respondent/plaintiff challenging the orders passed by the statutory authorities under Section 8 and sub-Sections (1) to (3) of Section 9 of the CISF Act would be barred by the general principles of *res judicata* inasmuch as respondent/plaintiff has not challenged the orders of the statutory authorities by filing a writ petition in this Court under Articles 227 and/or 226 of the Constitution of India and which orders have thus become final and binding.

15. The Regular Second Appeal is allowed and the suit filed by the respondent/plaintiff would stand dismissed.

SEPTEMBER 05, 2016
SV

VALMIKI J. MEHTA, J

