

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD
SECOND APPEAL NO. 477 of 2012

1. Shaikh Abdul Razak Yaseen Patel,
Age: 64 years, Occ: service.
2. Shaikh Mohammed Shahabuddin,
Age: 67 years, Occ: service.
3. Shaikh Fakirmohammed Chand,
Age: 65 years, Occ: service.
4. Sayyed Shakeel Meer Mohammed,
Age: 60 years, Occ: service.

All R/o Bagroza Hudco, Ahmednagar,
District Ahmednagar.

Appellants
(Orig. Applicants)

Versus

1. Sayyad Murad Syed Irfan Ali,
(deceased), through his L.Rs.:
- 1a. Smt. Sharifabi w/o Murad Sayed,
Age: 70 years, Occ: Household,
- 1b. Fakira Mohammed Murad Sayed,
Age: 58 years, Occ: Business/Agri,
- 1c. Abdul Raheman s/o Murad Sayed,
Age: 40 years, Occ: Business/Agri

All R/o Near Kedgaon Ves, Kedgaon,
Tal. & District Ahmednagar.

2. The Charity Commissioner,
Maharashtra State, Dharmadaya
Ayukta Building, 3rd Floor, 83,
Anne Besant Road, Mumbai-28.

Respondents
(Ori. Opponents)

...
Mr.A.S.Bajaj, advocate for the appellants.
Mr.N.C.Garud, advocate for Respondents No.(1a) to 1(c).
...

CORAM : AVINASH G. GHAROTE, J.

Reserved on : 30th September, 2019

Pronounced on : 9th October, 2019.

ORAL JUDGMENT:

1. For the sake of convenience, the parties are being referred to as they were before the Trial Court.

2. The appellants, are the original applicants in Scheme Application No.17 of 1987 before the learned Assistant Charity Commissioner, Ahmednagar, for framing up a scheme of the Trust for removal of the predecessors – present respondents and for appointment of new trustees for better administration, management and maintenance of the trust, "Hazrat Sayyad Dalal @ Shaikh Kamal Haq @ Darvesh and Balgorkhana Bagroja, Ahmednagar" registered as PTR No.3/2148/52 (Old PTR No.B-18) in the year 1952. The Assistant Charity Commissioner, by an order dated 31.05.1995 allowed the Scheme Application No.17 of 1987 and provided the Model Scheme for management and

development of the public trust, being aggrieved by which an application under Section 72(2) of the then Bombay Public Trusts Act, came to be filed before the District Judge-7, Ahmednagar, being Trust Application No.03 of 2003. The District Judge-7, Ahmednagar, vide his judgment dated 16.01.2012, set aside the order dated 31.05.1995 of the Assistant Charity Commissioner and remanded the matter back for consideration of the right of the legal heirs of the deceased trustees for considering his appointment on the post of Chairman and Managing Trustee on the board of Trustees and their hereditary claim for appointment of trustee by succession and to modify the scheme wherever it was necessary by amendment before conformation of the scheme.

3. The appellants, in this Second Appeal, take exception to this judgment of the District Judge-7, Ahmednagar, dated 16.01.2012, on the ground, that the provisions of Section 72 (2) of the Bombay Public Trusts Act (hereinafter referred to as "B.P.T. Act"), do not confer a power upon the District Court to remand the matter. This is the only question addressed by the learned Counsel for the parties in this Second Appeal, and they refrain from addressing arguments on merit on the ground, that the answer to the above question would, if given in the positive,

would entail a direction to the District Judge, to decide the matter on merits and if given in the negative, would result in the Assistant Charity Commissioner rehearing the matter.

4. Thus, the only question involved in this Second Appeal, is :

“Whether the District Court exercising powers under Section 72(2) of the B.P.T. Act, has powers to remand the application?”

5. It would be material to state here that Section 72 of the Bombay Public Trusts Act stands deleted by virtue of Section 24 of Mah. 55 of 2017 dated 01.09.2017, w.e.f. 10.10.2017, however since the impugned judgment u/s 72(2) of the B.P.T. Act, is dated 16.01.2012, the learned Counsel for the Appellants submits that the consideration of the issue will survive the deletion of the provision from the Statute Book, as the right conferred by way of Sec.72(2) of the B.P.T. Act, was a substantial right and would continue to govern all matters filed before the deletion, and the deletion would not have a retrospective operation. Mr. N. C. Garud, learned Counsel for the respondent, opposes this submission, contenting that the deletion of Sec.72(2) from the Statute Book, would only amount to a change in the procedure and thus there is no substantive right surviving

and therefore submits that the issue need not be considered at all.

6. Shri Bajaj, learned Counsel for the appellants, then invited my attention to the provisions of deleted Section 72(2) of the Bombay Public Trusts Act and strenuously urged that the language used therein does not permit the remand of an application, as filed under Section 72(1) of the Bombay Public Trusts Act. He further argued that the power of remand, is not an inherent power but has to be expressly conferred by statute. He further argued, that the learned District Judge, lost sight of the scope and ambit of his powers under Section 72 (2) while directing remand of the matter. He further contended that since the learned District Judge-7, Ahmednagar, had exceeded his jurisdiction, the impugned judgment, was liable to be set aside. In support of his submissions, he placed reliance upon **Vasantrao Vishwanathrao Mane Vs. Apparao Baibanna Sidore 2008 (2) ALL MR 95**, which has been followed in **Gaffar Sattarkhan Pathan Vs. Marutrao Tatyaba Sarpate, 2012 (3) ALL MR 365**, in which this very provision has been considered and the absence of powers to the District Court under Section 72(2) of the B.P.T Act in respect of remand have been upheld.

7. Per Contra, Mr. N.C.Garud, learned Counsel for the respondents, however, has vehemently opposed the above submissions and has contended that the provisions of Section 72(2), confer a power of remand upon the District Court entertaining an application under Section 72(1) of the B.P.T. Act. He further placed reliance upon Section 76 of the B.P.T. Act to contend that the Code of Civil Procedure applies to proceedings before Court under the B.P.T. Act and, therefore, in this view of the matter also, the provisions of Order 41 Rule 23 of the Code of Civil Procedure were applicable to a proceeding under Section 72(1) of the B.P.T. Act as a result of which, the District Court, exercising jurisdiction, had power to remand the matter. He relied upon the judgment of the Full Bench in the case of **Prabhakar Sambhu Choudhary Vs. Laxman Baban Mali & others, 2016 (3) Mh L J 202**, and specifically to paras 17, 18, 19, 31, 41 and 42 to contend that even the Full Bench had held that the power of remand was conferred upon the District Court. He further placed reliance upon **Ramchandra Govardhan Pandit Vs. Charity Commissioner, AIR 1987 SC 1598**, in which the Hon'ble Apex Court has held that proceedings before the District Court under Section 72(1) are in the nature of an appeal and the District Court exercises appellate jurisdiction while disposing of a matter under Section 72(1) of the B.P.T. Act. He further relied

upon **Subhash Trimbakrao Inamdar Vs. Pandurang Tansing Savne**, 2003 (3) MhLJ 131, para 17 to contend that the Court had a power to direct the Assistant Charity Commissioner to re-examine the scheme which would mean existence of a jurisdiction of a remand. He further relied upon **Anil Motiram Kalyankar Vs. Shree Jogeshwar Mahadeo Mandir Trust**, 2015 (2) Mh L J 221, para 7, to contend that remand ordered in that case was upheld by the Court, which supported his contention that the power of remand existed. He further relied upon **James Joseph Vs. State of Kerala**, (2010) 9 SCC 642, para 19, and contended that the matter was covered by clause 4 and later part of clause 5 and thus a power to remand would be inherent and existed in the District Court while considering an application under Section 72(1) of the B.P.T. Act.

8. In so far as the question raised in light of deletion of Section 72 of the B.P.T. Act from the Statute Book w.e.f. 10.10.2017 is concerned, it goes without saying that the right to approach the District Court under Section 72 (2) was the substantive right, and though under Section 72 (1) the same could be done by way of an application, the right has been held to be in the nature of an appeal in the case of **Prabhakar Sambhu Choudhary Vs Laxman Baban Mali** (2016) 3 Mh L J 202. The

Hon'ble Apex Court while dealing with an issue of impairment of the right of appeal, by putting a new restriction, has in **State of Bombay Vs. Supreme General Films Exchange Ltd., AIR 1960 SC 860** held 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”.

Relying upon which the Hon'ble Apex Court in the case of **K. Raveendranathan Nair Vs. CIT, 2017 (9) SCC 355**, has held thus :

“17. We may mention at the outset that after referring to the judgments noted above, even the High Court in the impugned judgment has accepted that right of appeal is not a matter of procedure and that it is a substantive right. It is also recognised that this right gets vested in the litigants at the commencement of the lis and, therefore, such a vested right cannot be taken away or cannot be impaired or imperilled or made more stringent or onerous by any subsequent legislation unless the subsequent legislation said so either expressly or by necessary intendment. An intention to interfere with

or impair or imperil a vested right cannot be presumed unless such intention be clearly manifested by express words or by necessary implication”.

Thus, the right of appeal being a substantive right, the right as available under Section 72 (1) of the B.P.T. Act would survive the deletion of Section 72 of the B.P.T. Act w.e.f. 10.10.2017, and in all cases which were instituted before the deletion, the same would be available. In light of the above, the contrary contention of learned Counsel Mr. N.C. Garud cannot be upheld.

9. Since the language of Section 72 (2) and its effect and import arises for consideration, it would be material to quote it alongwith Section 72 (1) as under :

72(1) Any person aggrieved by the decision of the Charity Commissioner under section 40, 41 (41C and 43 (2) (a) and (c) (50A) (70 or 70 A) or on the questions (whether a trust exists and whether such trust is a public a trust) or whether any property is the property of such trust may, within sixty days from the date of the decision , apply to the court to set aside the said decision.

72(2) The court after taking (evidence if any) may confirm, revoke or modify the decision or remit the amount of the surcharge and make such orders as to costs as it thinks proper in the circumstances.

10. It is a settled position of law, that jurisdiction is the power or authority of the Court, to entertain and decide a case/lis. Jurisdiction has to be necessarily conferred upon the Court, unless it is inherent by the very nature of its establishment. The nature, parameters, ambit and scope of jurisdiction of the Court, would be determined by the language used in the provision conferring such jurisdiction. To cite an example, Section 96 of the Code of Civil Procedure confers right of appeal, which is unfettered by any restrictions as against which the right of second appeal as conferred by Section 100 CP.C. is restricted by the statute, to be exercised only in case where the Court finds a substantial question of law arises. This is plain from the language of Section 96 and Section 100 of C.P.C. Similar is the position, in all statutes, in respect of the provision therein contained, conferring jurisdiction and the wordings of the Section in that regard, control, restrict and govern the power of the Court to entertain and try a lis. This being the position, the language used in the Section conferring the jurisdiction assumes immense importance, in the matter of determining the nature, scope, ambit and parameters of the jurisdiction conferred. This is so reflected from the decision in the case of **C.I.T. Vs. Pearl Mech. Engg. and Foundry Works (P) Ltd., (2004) 4 SCC 597**, where it is explained in para 6 in the following words :

"The word "jurisdiction" implies the court or tribunal with judicial power to hear and determine a cause, and such tribunal cannot exist except by authority of law. Jurisdiction always emanates directly and immediately from the law; it is a power which nobody on whom the law has not conferred it can exercise. In other words, "jurisdiction" has reference to the power of the court or tribunal over the subject-matter, over the res or property in contest, and to the authority of the court to render the judgment or decree it assumes to make".

And in the case of **Harpal Singh Vs. State of Punjab, 2007 (13) SCC 387** in para 10 in the following words :

"10. At this stage it will be useful to refer to the dictionary meaning of the word "jurisdiction":

Black's Law Dictionary:

"A court's power to decide a case or issue a decree."

Words and Phrases — Legally defined, Third Edition (p. 497):

"By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by similar means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction extends."

Law Lexicon by P. Ramanatha Aiyar, 2nd Edn.,
Reprint 2000:

“An authority or power, which a man hath to do justice in causes of complaint brought before him. (*Tomlin's Law Dictionary*) The power to hear and determine the particular case involved; the power of a court or a Judge to entertain an action, petition, or other proceeding; the legal power of hearing and determining controversies. As applied to a particular claim or controversy, jurisdiction is the power to hear and determine that controversy.”

Jurisdiction, therefore, means the authority or power to entertain, hear and decide a case and to do justice in the case and determine the controversy. In absence of jurisdiction the court has no power to hear and decide the matter and the order passed by it would be a nullity”.

11. Thus, in light of the above position of law, the language of Section 72 (2) of the B.P.T. Act has to be tested. The words used are “the Court after taking evidence if any, may **confirm, revoke or modify** the decision or remit the amount of the surcharge and make such orders as to cost as it thinks proper in the circumstances”. The words “**confirm, revoke or modify**”, in their ordinary grammatical sense, have been defined as under :

Dictionary Name	Confirm	Modify	Revoke
Black's Law Dictionary	To give formal approval to, to verify or corroborate, to make firm or certain.	A change to something, an alteration.	An annulment; cancellation; or reversal;
Stroud's General Dictionary	To verify, approve	Includes amend or repeal.	Calling back of a thing,

Websters	To make firm; to strengthen; to settle or establish; to make certain; to put past doubt; to assure;	To partially change external qualities; to alter in some respect; to moderate; to qualify;	To take back; to make void; to cancel;
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12. The position of law in interpreting a Statute is very succinctly stated by the Hon'ble Apex Court in **Kanai Lal Sur Vs. Paramnidhi Sadhu Khan, 1958 SCR 360** in para 6 in the following words :

"it must always be borne in mind that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to

adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct”.

which has been relied upon in **Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar, 2018 (9) SCC 1**, wherein it has been held as under :

“21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature”.

13. In so far as the words ‘confirm’ and ‘revoke’ are concerned as used in Section 72 (2) of the B.P.T. Act, their plain meaning would not include the remand of a matter, which leaves us with the word “modify”.

14. The word modify indicates a power to change, or vary, to qualify or reduce, to alter without radical transformation, to limit, restrain, to assuage to make less severe. The constitution Bench of the Hon’ble Apex Court in the case of **M/s**

Burrakar Coal Co. Ltd. Vs Union of India, 1962 (1) SCR 44, had an occasion to consider the word 'modify', which has been held in para 22 thereof to mean as under :

"The meaning of the word "modify" fell to be considered, *In re the Delhi Laws Act, 1912* [(1951) SCR 793-4] . As pointed out in the opinion of Kania, C.J., the word "modify" means, according to *Oxford Dictionary*, "to limit, restrain, to assuage, to make less severe, rigorous, or decisive; to tone down". It also means "to make partial changes in; to alter without radical transformation". In Rowland Burrows' *Words and Phrases*, the word "modify" has, however, been defined as meaning "vary, extend or enlarge, limit or restrict". According to the learned Chief Justice "It has been held that modification implies an alteration. It may narrow or enlarge the provisions of the former Act".

15. Thus considering its plain grammatical meaning the word 'modify', would indicate the narrowing down or enlarging the power, vis-a-vis the authority to deal with the order impugned under Section 76 (1) of the B.P.T. Act. This, however, would not include a power to remand and redirect the lower Court, to rehear and determine the matter. This being the case in my humble opinion, since the language of Section 72 (2) of the B.P.T. Act does not confer the power to remand a matter back to

the lower Court upon the District Court, such a course of action would be impermissible to him within the scope, ambit and parameter of Section 72 (2) of the Bombay Public Trust Act. The District Court in an application under Section 72 (1) while exercising jurisdiction, does so within the parameters as defined in Section 72 (2), as that is the only provision conferring jurisdiction upon District Court, to entertain and decide an application filed under Section 72 (1). Since the expressions "confirm, revoke, modify" as used in Section 72 (2) of the B.P.T. Act, do not include the remand of a matter, the same cannot be done by the District Court in exercise of the jurisdiction under Section 72 (2).

16. The above view taken by me, is supported by the judgments in the case of **Vasantrao Mane Vs Apparao 2008 (2) ALL MR 95**, wherein Section 72 (2) of the B.P.T. Act came up for consideration before the learned Single Judge, who categorically held, that

"the District Court can, therefore confirm, revoke, modify the decision of the Charity Commissioner. The District Court will have power to take evidence, if any, as it may be found necessary. There appears no express power to order remand. It is well settled that the authorities must act in the manner provided

by the Statute and in conformity with the provisions and not in any other manner. The specific power available to the Court in sub-clause (2) of Section 72 is inclusive of power to take evidence, if any. Therefore, it is implicit that no special case is required to be made out as per provisions of Order 41, Rule 27 of the Civil Procedure Code in order to adduce additional evidence. This specific inclusion of the power to take evidence in separate proceedings will show that intention of the Legislature is to avoid remands. In other words, shuttling of the matter from one Court to another Court is to be avoided”.

17. The above judgment is relied upon by the learned Single Judge of this Court in the case of **Gaffar Sattar Khan Pathan Vs. Marutrao Sarpate, 2012 (3) ALL MR 365.**

18. Mr. N.C. Garud, the learned Counsel for the respondent has relied upon the judgment in the case of **Prabhakar Sambhu Choudhary Vs. Laxman Baban Mali, (supra)**, which is a judgment by the Full Bench of this Court to contend that in this case, the Hon’ble Full Bench has elucidated upon the issue and has held that power to remand exists under Section 72 (2) of the B.P.T. Act. He invited my attention to paras 17, 18, 19, 31, 41 and 42 of the judgment to support his plea. I am afraid, the argument advanced is misconceived. The issues for

consideration before the Full Bench in **Prabhakar Sambhu Choudhary (supra)** were :

- (1) Whether the second appeal filed under the provisions of Section 72 (4) of the Bombay Public Trusts Act, 1950, can be heard and considered only if it involves a substantial question of law?
- (2) If so, whether the Memorandum of appeal shall have to state the substantial question of law involved in the appeal and whether the High Court is bound to formulate the substantial question /s of law while admitting the appeal or before posting the appeal for hearing.

which are not extant in the present matter.

19. It would however be material to note that while considering and answering the above issues, in light of the word "application", as used in Section 72 (1) of the B.P.T. Act, the learned Full Bench, in the background of the law as laid down in **M/s Sri Raja Laxmi Dyeing Works and others Vs. Rangaswami Chettiar, AIR 1980 SC 1253**, held in Para 31 that:

"The judgments of the Supreme Court, referred to above, by analogy lead to irresistible conclusion that the superior forum i.e. District Court, while exercising jurisdiction has powers, to reverse, confirm, annul or modify the order of the forum appealed against and in the event of remand the, the lower forum shall have to re-hear the matter and comply with such direction as may accompany the order of remand. The superior forum i.e. District Court has power to issue corrective directions, binding on the lower forum".

20. It is a settled position of law that the binding nature of a precedent has to be determined from the ratio decidendi. What the ratio decidendi, is, has been enunciated by the Constitutional Bench of the Hon'ble Apex Court in the case of **Natural Resources Allocation, *in re*** 2012 (10) SCC 1, in the following words :

"69. Article 141 of the Constitution lays down that the "law declared" by the Supreme Court is binding upon all the courts within the territory of India. The "law declared" has to be construed as a principle of law that emanates from a judgment, or an interpretation of a law or judgment by the Supreme Court, upon which, the case is decided. (See *Fida Hussain v. Moradabad Development Authority* [(2011) 12 SCC 615 : (2012) 2 SCC (Civ) 762] .) Hence, it flows from the above that the "law declared" is the principle culled out on the reading of a judgment as a whole in light of the questions raised, upon which the case is decided. [Also see *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213] and *CIT v. Sun Engg. Works (P) Ltd.* [(1992) 4 SCC 363]] In other words, the "law declared" in a judgment, which is binding upon courts, is the ratio decidendi of the judgment. It is the essence of a decision and the principle upon which the case is decided which has to be ascertained in relation to the subject-matter of the decision.

70. Each case entails a different set of facts and a decision is a precedent on its own facts; not everything said by a Judge while giving a judgment can be ascribed precedential value. The essence of a decision that binds the parties to the case is the principle upon which the case is decided and for this reason, it is important to analyse a decision and cull out from it the ratio decidendi. In the matter of applying precedents, the erudite Justice Benjamin Cardozo in *The Nature of the Judicial Process*, had said that “if the Judge is to pronounce it wisely, some principles of selection there must be to guide him among all the potential judgments that compete for recognition” and “almost invariably his first step is to examine and compare them;” “it is a process of search, comparison and little more” and ought not to be akin to matching “the colors of the case at hand against the colors of many sample cases” because in that case “the man who had the best card index of the cases would also be the wisest Judge”. Warning against comparing precedents with matching colours of one case with another, he summarised the process, in case the colours do not match, in the following wise words:

“It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the Judge begins. He must then fashion law for the litigants before him. In fashioning it for them, he will be fashioning it for others. The classic statement is Bacon's: ‘For many times, the things deduced to

judgment may be meum and tuum, when the reason and consequence thereof may trench to point of estate. The sentence of today will make the right and wrong of tomorrow.’”

71. With reference to the precedential value of decisions, in *State of Orissa v. Mohd. Illiyas* [(2006) 1 SCC 275 : 2006 SCC (L&S) 122] this Court observed: (SCC p. 282, para 12)

“12. ... According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment.”

72. Recently, in *Union of India v. Amrit Lal Manchanda* [(2004) 3 SCC 75 : 2004 SCC (Cri) 662] this Court has observed as follows: (SCC p. 83, para 15)

“15. ... Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may

become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.”

73. It is also important to read a judgment as a whole keeping in mind that it is not an abstract academic discourse with universal applicability, but heavily grounded in the facts and circumstances of the case. Every part of a judgment is intricately linked to others constituting a larger whole and thus, must be read keeping the logical thread intact. In this regard, in *Islamic Academy of Education v. State of Karnataka* [(2003) 6 SCC 697] , this Court made the following observations: (SCC p. 719, para 2)

“2. ... The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment.”

The above judgment, has been relied upon in the case of **State of Gujrat Vs. Utility User’s Welfare Association**, 2018 (6) SCC 21.

21. In light of the above enunciation of law, it is only the reasoning and decision of the Court upon the question referred to the Court for decision, which is the ratio decidendi. It would thus be necessary to consider the question which was referred to the learned Full—Bench in **Prabhakar Sambhu Choudhary's** case (*supra*), what was decided therein, and what is being required to be decided in the instant matter.

22. The observations **in para 31 of** the learned Full Bench in the case of **Prabhakar Sambhu Choudhary (supra)** **are non specific to the issue in hand in the present matter** and are based upon the law as prevailing and enunciated by the Hon'ble Apex Court in the case of **Sri Raja Laxmi Dyeing Works (supra)**. It would be material to keep in mind that the learned Full Bench was not called upon to embark upon an exercise of deciding the scope, parameters and ambit of the jurisdiction of the District Court under Section 72 (2), in light of the language as used therein. What the learned Full Bench in **Prabhakar Sambhu Choudhary (supra)** was considering and has decided, is whether the District Court while exercising jurisdiction under Section 72 (4) does exercise the powers and deals with the matter as an appellate Forum in view of which, an appeal to the High Court against an appellate order on an application presented to the

District Court is an appeal but is not labeled as a second appeal. The learned Full Bench in **Prabhakar Sambhu Choudhary (supra)** thereafter in paras 41 and 42 of the report, relying upon the judgment of the Hon'ble Apex Court in the case of **James Joseph Vs. State of Kerala, 2010 (9) SCC 642** went upon to hold that :

"Para 41- In the instant matter, determination by the Court i.e. District Court, as provided under the Act of 1950, is on consideration of application under Section 72 of the Act and has been accorded the status of decree for the purposes of maintaining an appeal to the High Court under sub-section (4). The application, within contemplation of Section 72, cannot be equated with the suit for the purposes of holding that the order passed on an application under Section 72 in the stricto sensu is a decree within the meaning of expression of sub-section (2) of Section 72. Appeal provided to the High Court in order in exercise of appellate powers, cannot be equated with the Second Appeal subject to the restrictions imposed by Section 100 of the Code of Civil Procedure.

Para - 42 - In view of the distinctive features specified above, it is clear that the Legislature did not intend to limit appellate jurisdiction provided under sub-section (4) of Section 72. Had there been any such intention, it would have expressly or impliedly incorporated the provisions of Section 100 of the Code of Civil Procedure into the relevant provision of the Act"

23. In fact, the judgment of the Hon'ble Full Bench refers to the judgment of the Hon'ble Apex Court, in the case of **Sri Raja Laxmi Dyeing Works (supra)**, wherein in para 2 it has been held

that :

“The question of the extent of appellate or revisional jurisdiction has to be considered in each case with reference to the language employed by the Statute”.

which enunciation is squarely attracted in the present case for construing the scope, ambit and parameters of the District Court under Section 72 (2) of the B.P.T. Act. It would thus be apparent that the Hon’ble Full Bench in the case of **Prabhakar Sambhu Choudhary (supra)**, was not considering the issue as to the scope, ambit and parameters of the jurisdiction as conferred upon the District Court in light of the language as used in Section 72 (2), of the B.P.T. Act, but the consideration therein, was limited to the point as to whether the nature of jurisdiction under Section 72 (3), was akin to an appellate jurisdiction which could be equated with that of Section 100 of the C.P.C.. In this view of the matter, in my humble opinion, the judgment of the Hon’ble Full Bench in the case of **Prabhakar Sambhu Choudhary (supra)**, does not come to the assistance of learned Counsel Mr. N.C. Garud.

24. Mr. N.C. Garud further placed reliance upon the judgment in the case of **James Joseph Vs. State of Kerala (supra)**, and specifically para 19 (iv) and (v) which read as under:

“(iv) If the legislature’s intention is to limit the jurisdiction in an appeal, it may indicate such limits in the provision providing for appeal. Alternatively, it may expressly or impliedly incorporate the provisions of Section 100 of the Code, into the provision for appeals.

(v) Generally statutory provisions for appeals against original orders or decrees (that is, first appeals) will not have any limitations and therefore rehearing on both law and fact is contemplated; and statutory provisions for appeals against appellate orders (that is, second appeals) will be restricted to questions of law. But such restriction is not on account of any legal principle that all second appeals, should always be with reference to questions of law, but would depend upon the wording of the statute placing the restrictions upon the scope of second appeal”

25. A bare perusal of the language of paras 19 (iv) and (v) would demonstrate that it is permissible for the legislature to limit the jurisdiction in an appeal, which limitation would be indicated from the language of the provision conferring jurisdiction, as is the case in the matter of a second appeal as provided in Section 100 of the Code of Civil Procedure. It has further been enunciated, that the restriction would depend upon the wording of the Statute placing the restriction upon the scope of the jurisdiction. This being so, as stated earlier, the language of the provision conferring jurisdiction assumes importance, in the matter of determining the jurisdiction / authority conferred upon the Court by it. Though words of exclusion may not be

expressly used in the provision, the exclusion can very well be inferred by absence of words which have an expansive meaning. As demonstrated above, the word "modify", is not of an expansive character, and therefore cannot be held to include a power to remand, in light of which such a power cannot be inferred, as a power to remand has to be expressly conferred, which can be seen from the provisions of Order 41 Rule 23 of the Code of Civil Procedure. This is so, for the reason that a remand cannot be for the mere asking of it. The provision permitting remand, has to set conditions and parameters, within which the case has to fall, in order to exercise the power of remand. It cannot be said that the legislature, while framing Section 72 (2) of the B.P.T. Act was oblivious of the nature, scope and ambit of a power of remand and the exclusion of such a provision in Section 72 (2) of the B.P.T. Act could not be said to be unintentional. It is a trite position of law that the legislation, has to be read as framed in light of the language as used therein. Thus, when the legislature intentionally did not use words, which could indicate conferment of the power of remand in section 72 (2) of the B.P.T. Act inspite of being aware of it, the power of remand cannot be read into the Section.

In fact, the case of **James Joseph (supra)**, as relied upon by Mr. Garud, the learned Counsel for the respondents, supports the above position.

26. The reliance on the case of **Ramchandra Govardhan Pandit Vs. Charity Commissioner, AIR 1987 SC 1598** placed by Mr. N.C. Garud, learned Counsel for the contesting respondents does not further his case in any manner, for the reason, that **Ramchandra Pandit's case (supra)**, was on a different proposition, namely whether the word "apply" could be equated with the word "appeal" so as to infer that the jurisdiction under Section 72 (1) of the District Court was an appellate jurisdiction and whether against the decision of a learned Single Judge of the High Court, under Section 72 (4), challenging an order under Section 72 (1), an appeal under Clause 15 of the Letters Patent would lie, in which situation, the Hon'ble Apex Court had held that the jurisdiction conferred upon the district Court under Section 72 (1) of the B.P.T. Act was in fact an appellate jurisdiction. This does not detract from the propositions as laid down in the cases of **Sri Raja Laxmi Dyeing Works and James Joseph (supra)**, that the question of the extent of jurisdiction, has to be considered in each case with reference to the language employed by the Statute.

27. The judgment in the case of **Anil Motiram Kalyankar Vs. Shree Jogeshwar Mahadev Mandir Trust (supra)** relied upon by the learned Counsel for the contesting respondents is on the question, whether the High Court, in deciding the First Appeal did not entertain it as if it is a Second Appeal, considering only the substantial question of law which arose before the Court, on the ground that the Second Appeal could not be decided without formulating a substantial question of law and does not help the contesting respondents, as the core issue herein as to the ambit, scope, parameter of the jurisdiction under Section 72 (2) of the B.P.T. Act, was neither considered nor decided therein. Similar in the position in the case of **Subhash Inamdar Vs. Pandurang Savner, 2003 Mh. L. J. 131.**

28. The learned Counsel for the respondent, then invited my attention to Section 76 of the B.P.T. Act, which reads as under:

76. Civil Procedure Code to apply to proceedings (before Court) under this Act.

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court under this Act”.

and contended that the entire C.P.C would therefore be applicable to proceedings under Section 72 (1) of the B.P.T. Act, including the provisions of Order 41 Rule 23 of the C.P.C. in light of which the remand was ordered by the first Appellate Court, was within jurisdiction. I am afraid I cannot agree with this submission. Section 76 of the B.P.T Act commences with the expression "Save in so far as they may be inconsistent with anything contained in this Act". The above expression clearly defines the parameters of application of C.P.C. to proceedings before the "Court" under the B.P.T. Act. The above expression will have to be read in the light of and in context of the language of Section 72 (2) and being so read would exclude the applicability of Order 41 Rule 23 of C.P.C. in view of absence of power of remand as conferred upon the District Court, under Section 72 (2) of the B.P.T. Act. Thus, Section 76 of the B.P.T. Act is of no assistance to the respondents.

29. In light of the discussion as made above, I am of the view, that the language of sub-section (2) of Section 72 of the Bombay Public Trust Act does not confer a power of remand upon the District Court and I choose to follow the judgments in the cases of **Vasantrao Mane and Gaffar Sattar Khan Pathan (supra)**, in light of which the impugned order dated 16.01.2012, passed

by the District Judge-7, Ahmednagar, in Trust Application No. 3 /2003 is set aside. The District Judge-7 is further directed, to decide the matter on merits after calling for the record from the concerned authorities.

30. Before parting with the judgment, I deem it appropriate to place on record my appreciation for the able assistance provided by both the learned Counsels Mr. A.S. Bajaj and Mr. N.C. Garud.

(AVINASH G. GHAROTE, J.)

VD_Dhirde.