THE HIGH COURT OF ORISSA : CUTTACK

No.XI-21/2023/..18185...../ Dated..16.11.2023

From

Pratap Kumar Patra,
Registrar General

To

The District & Sessions Judge,..... (All)

Sub:- **Judgment dated 20th October, 2023 passed in Civil Appeal No.4296 of 2023 (Yashpal Jain Vrs Sushila Devi & Others) by Hon'ble the Supreme Court of India.**

Sir,

I am directed to forward herewith a copy of the judgment dated 20th October, 2023 passed by Hon'ble the Supreme Court of India in Civil Appeal No.4296 of 2023 (Yashpal Jain Vrs Sushila Devi & Others) for your information and to request you to communicate the same to all the Trial Courts functioning within your jurisdiction for their information and strict adherence.

Yours faithfully,

16/11/2023

REGISTRAR GENERAL

Encl:- As above.

2023 INSC 948

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4296 OF 2023

Yashpal Jain …APPELLANT(S)

VERSUS

Sushila Devi & Others …RESPONDENT(S)

J U D G M E N T

Aravind Kumar, J.

PREFACE

1. Even after 41 years, the parties to this *lis* are still groping in the dark and litigating as to who should be brought on record as legal representative of the sole plaintiff Mrs. Urmila Devi (hereinafter referred to as **'Urmila Devi'** for the sake of brevity). This is a classic

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Date: 2023.10.20 17:42:53 IST
Reason:

case and a mirror to the fact that litigant public may become disillusioned with judicial processes due to inordinate delay in the legal proceedings, not reaching its logical end, and moving at a snail's pace due to dilatory tactics adopted by one or the other party. The said suit, OS No.2 of 1982, was instituted for the relief to declare the sale deed, executed by Shri Mangal Singh (hereinafter referred to as **'first defendant'** for the sake of convenience) in favour of defendants No.4 to 32 in respect of the suit properties described in the plaints schedule as item No.1 to 8, to be null and void by claiming to be the owner of the said properties; and for a decree of possession of the suit properties with costs.

BACKGROUND OF THE CASE:

2. When the aforesaid suit was still at infancy stage the **sole-plaintiff** expired on 18.05.2007. One Mr. Manoj Kumar Jain filed an application to substitute him as her legal heir, by placing reliance on the Will dated 19.05.1999 and claiming to be a legatee under the said registered Will. He also filed an affidavit stating thereunder that Mr. Yashpal Jain (hereinafter referred to as **'appellant'** for the sake of convenience) was a witness to the said registered Will. The defendants

objected to the said application contending *inter alia* that the appellant herein was the adopted son of late Urmila Devi by relying upon the adoption deed dated 06.01.1973 duly registered in the office of the Sub-Registrar. In the said proceedings, the present appellant also filed an affidavit stating thereunder that he was a witness to the Will dated 19.05.1999 executed by Urmila Devi in favour of Manoj Kumar Jain. The application filed by Manoj Kumar Jain came to be allowed by order dated 24.02.2010.

2.1 Being aggrieved by the said Order the legal heirs of the first defendant namely, legal heirs of Mangal Singh, filed a Civil Revision No.2 of 2010 before the District Judge which came to be allowed by setting aside the Order of the Trial Court on the ground that applicant had stated during the course of the revisional proceedings that he would not press the said application and as such directed the Trial Court to consider the application filed by Yashpal Jain-appellant herein and permitted him to file an application seeking condonation of delay along with the application to bring on record the legal representatives of the sole plaintiff, since he had failed to do so earlier. Accordingly, revision application came to be allowed by order dated 02.12.2011 and Mr.

Yashpal Jain filed an application before the Trial Court for condoning the delay in filing such application and also prayed for abatement of suit to be set aside. The learned Trial Judge vide Order dated 09.05.2012 allowed the application by setting aside the abatement and permitted Yashpal Jain to be substituted as legal representative of late Urmila Devi.

3. At this juncture, we would like to point out that a careful perusal of the application and the orders passed by the courts below would indicate that the parties and the courts below seem to have proceeded on the footing that they were to adjudicate the rights of a ***legal heir*** which if seen in the light of expression used in the Code of Civil Procedure (hereinafter referred to as 'CPC') is impermissible, as it is not referable to '***legal heir'*** but '***legal representative'*** as defined under Section 2 (11) which reads:

> *"**Legal representative**" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.*

On the death of a party to the suit it is the legal representative who is/are entitled to prosecute the proceedings and, in law, represent the

estate of the deceased. The legal representative who is brought on record not only includes a legatee under a Will but also an intermeddler of the property who would be entitled to sue and to be sued and/or continue to prosecute the proceedings. This vital aspect seems to have been lost sight of by the courts below conveniently.

4. Be that as it may, the aforesaid Urmila Devi who claimed to be *Bhumidar* and owner in possession of land situated in village Sonargaon, Patti Katulsyun, District Garhwal, Uttarakhand has contended in her suit that the suit schedule properties were looked after by Mangal Singh- the first defendant and as he had fraudulently obtained a *Bhumidar* Sanad of the land comprising No.77, 3/16 Nalis, she had filed an application under Section 137-A of UP Act No.1 of 1951 before the **Tehsildar/Assistant Collector**, Pauri Garhwal, challenging the said *Bhumidari* Sanad obtained by the first defendant, which was held in her favour by the Tehsildar, and confirmed by the appellate authority. Not being satisfied with the said order, the first defendant had filed a second appeal before the Revenue Board which came to be allowed in favour of Mangal Singh, against which **a review petition** was filed thereon by Urmila Devi which came to be allowed on 30.08.1982. The said order was challenged before the High Court

of Uttarakhand in Writ Petition (M/S) No.342 of 2005 (old No.14655 of 1983) by Mangal Singh. In the said proceedings **a** substitution application came to be filed by the legal representative of Mangal Singh stating thereunder that Yashpal Jain (appellant herein) is the legal representative of deceased Urmila Devi and prayed for his name to be substituted. The said application came to be allowed vide order dated 24.02.2012 and appellant herein was substituted as the legal representative of Urmila Devi in writ proceedings. There is no further challenge to said order or in other words, it has attained finality.

5. As already noticed hereinabove, appellant herein filed an application for substitution as legal representative of the original plaintiff-Urmila Devi along with an application for condoning the delay in filing said application and to set aside the abatement. The said application came to be allowed vide Order dated 09.05.2012. Being aggrieved by the said order, the Legal Representatives of Mangal Singh filed Civil Revision No.4 of 2012 before the District Judge who affirmed the Order of the Trial Court and dismissed the Revision Petition by Order dated 13.12.2012. The legal representatives of Mangal Singh filed WP No.144 of 2013 before the High Court challenging the Orders dated 09.05.2012 and 13.12.2012 passed by the

Trial Court and the Revisional Court, respectively. The High Court allowed the writ petition by quashing the impugned orders and rejecting the application of the appellant herein, thereby restoring the original order dated 17.05.2008 wherein Manoj Jain had been ordered for being substituted as legal representative of late Urmila Devi on the strength of the registered Will dated 19.05.1999 propounded by him with a direction to conclude the proceedings within a period of 9 months. Being aggrieved by the same, the present appeal has been filed.

SUBMISSIONS ON BEHALF OF THE PARTIES

6. We have heard the arguments of Ms. Rachna Srivastava, learned Senior Advocate, appearing for the appellant and Mr. Rameshwar Prasad Goyal, learned counsel, appearing for the respondents.

7. It is the contention of Ms. Rachna Srivastava, learned Senior Advocate appearing for the appellant, that the High Court committed a serious error in upsetting the findings of the Trial Court and the Revisional Court whereunder the discretionary power was exercised by condoning the delay while setting aside the abatement and

allowing the application of the appellant herein to be brought on record as legal representative of deceased Urmila Devi; the High Court erred in not considering the fact that courts below had recorded a clear finding that appellant herein was the sole surviving legal representative of the deceased plaintiff and as such it ought not to have interfered with the well-reasoned order passed by the Trial Court as affirmed by the Revisional Court; She would also contend that defendants in this suit who were the writ petitioners in WP(M/S) 342 of 2005 (old number 14655 of 1983) had substituted the appellant herein as legal representative of Urmila Devi in dispute related to the suit schedule property (involved in OS No.2 of 1982) and as such defendants cannot be permitted to take stand contrary to same. Hence, it is contended that impugned order is liable to be set aside.

8. Per contra, Shri Rameshwar Prasad Goyal, learned counsel appearing for the respondents, supports the impugned order and contends that in the Writ Petition No.144 of 2013, appellant herein who was a party therein had not filed a counter-affidavit and as such High Court had recorded that non-traversing of petition averments would amount to admission and had also taken note of the fact that

appellant herein had filed an affidavit before the Trial Court on 25.10.2008 whereunder he has accepted the Will dated 19.05.1999 executed by deceased Urmila Devi and thereby supported the stand of Manoj Kumar Jain being the legal heir of Urmila Devi. He would also draw the attention of this Court to yet another affidavit dated 21.08.2009 filed by the appellant himself in OS No.2 of 1982 whereunder he has again supported the Will dated 19.05.1999 or in other words, supported the substitution of Shri Manoj Kumar Jain as legal representative of deceased Urmila Devi. Hence, he contends there is no illegality committed by the High Court. It is further contended that appellant was having knowledge of OS No.2 of 1982 and as such he cannot plead ignorance for the delay. Lastly, challenging the adoption on the ground that same cannot be the basis for the appellant herein to be brought on record, he has sought for rejection of this appeal.

POINTS FOR CONSIDERATION

9. Having heard the learned counsels appearing for the parties and after bestowing our careful and anxious consideration to the rival

contentions raised at the Bar, we are of the considered view that following points would arise for our consideration:

> (i) Whether the impugned order dated 28.11.2019 passed in Writ Petition (M/S) No.144 of 2013 quashing the orders dated 13.12.2012 rendered in Civil Revision No.4 of 2012 by the High Court whereby the order dated 09.05.2012 passed by trial court allowing the impleadment application filed by the appellant herein had been rejected, is to be sustained or set aside?
>
> (ii) Whether any further direction or directions requires to be issued for concluding the proceedings in a time bound manner on account of Suit No.2 of 1985 pending for trial for past 41 years?
>
> (iii) What order?

RE: POINT No.(i)

10. It is not in dispute that Smt. Urmila Devi had instituted a suit O.S. No.2 of 1982 against Mangal Singh and others in respect of suit schedule properties as described in the plaint schedule for declaring the sale deeds executed by Mangal Singh in favour of defendant Nos.4 to 32, as mentioned in Plaint Schedule 1 to 18, as null and void; and during the pendency of the said suit the plaintiff- Smt. Urmila Devi expired on 18.05.2007. On her demise Mr. Manoj Kumar Jain filed an application on 17.05.2008 for substitution **as her legal heir and claiming right** legatee under the Will dated 19.05.1999. This application was followed by an affidavit of the appellant (Yashpal Jain)

dated 25.10.2008 stating thereunder that his mother Urmila Devi had executed a Will dated 19.05.1999 in favour of Manoj Kumar Jain and also stating thereunder that Will was duly registered. The legal heirs of the defendant objected the said substitution contending, *inter alia*, that the present appellant is the adopted son of Urmila Devi and said adoption deed was duly registered on 06.01.1973 in the office of the Sub-Registrar. It was also contended that Shri Rajendra Prasad Jain was the holder of power of attorney of Urmila Devi and on his (Rajendra Prasad) death on 18.02.2001, she had executed another power of attorney on 21.04.2001 appointing Virender Kumar Jain and on the basis of the same the name of his wife came to be mutated in respect of the lands indicated thereunder. Hence, it was contended that Will propounded by Manoj Kumar Jain was fabricated and forged. Hence, it was prayed that claim of Manoj Kumar Jain for being substituted as legal representative of Urmila Devi is liable to be rejected. Yet another affidavit was also filed by the appellant on 21.08.2009 reiterating the contents of the earlier affidavit dated 25.10.2008. In other words, it was contended that Manoj Kumar Jain was not the legal representative of Urmila Devi.

11. The learned trial judge allowed the application by order dated 24.02.2010 for substitution by condoning the delay with costs and directed substitution of Manoj Kumar to be the legal representative of deceased plaintiff Urmila Devi.

12. The aforestated order dated 24.02.2010 came to be challenged by legal representatives of Mangal Singh in Civil Revision No.2 of 2010 which resulted in same being allowed vide order dated 02.12.2011 and the order of the trial court dated 24.02.2010 was set aside by taking note of the fact that Manoj Kumar Jain had stated in his application 27/C along with affidavit that he would not press the substitution application. The appellant was granted liberty to file an application for impleadment as a party before the lower court. In this background appellant herein filed an application for substitution as legal representative of Urmila Devi and this application came to be filed on 05.12.2011 along with application for condonation of delay and to set aside abatement, which was opposed by the legal representatives of the first defendants by filing objections and contending that application filed by Yashpal Jain is not maintainable. After hearing the learned Advocates appearing for the parties learned trial judge by a detailed order dated 09.05.2012 condoned the delay

and allowed the application of the appellant to be brought on record as legal representative of the deceased-plaintiff Urmila Devi. This order came to be affirmed by order dated 13.12.2012 in Civil Revision No.4 of 2012 filed by the legal representatives of Mangal Singh.

13. It is pertinent to mention at this juncture that during the life time of Urmila Devi an application came to be filed under Section 137-A of U.P. Act No.1 of 1951 before Tehsildar/Assistant Collector, Pauri Garhwal contending that the *Bhumidari* Sanad had been obtained by Mangal Singh, with reference to land comprising Nos.77, 3/16 Nalis, by adopting forgery, which came to be accepted. The appeal filed by Mangal Singh before the Assistant Collector against the order of Tehsildar did not yield any result, which gave rise to filing of a Second Appeal before the Revenue Board culminating in said appeal being allowed in favour of Mangal Singh. The Review Petition filed against the order of the Second Appellate Authority came to be allowed and this was challenged by Mangal Singh in WP (M/S) No.342 of 2005 (Old No.14655 of 1983). During the pendency of the said writ petition, as noticed earlier, Urmila Devi expired and an application for substitution came to be filed by the very same legal representatives of Mangal Singh (who are Respondent Nos.1 to 5 herein) vide Annexure

P-10, specially pleading thereunder to delete the name of Respondent No.4 (therein) Smt. Urmila Devi and substitute Yashpal Jain (appellant herein) in her place. This application came to be allowed by order dated 24.02.2012 as reflected in Annexure RA/2 annexed to the rejoinder affidavit of the appellant. In this view of the matter, it cannot be gain said by the respondents herein that the appellant is not to be substituted as legal representative of deceased Urmila Devi. It is for this cogent reason, the learned trial judge vide order dated 09.05.2012 allowed the substitution and permitted the appellant herein to be substituted as legal representative of deceased plaintiff-Urmila Devi. Rightly so, this order of the trial court came to be affirmed by the Revisional Court vide order dated 13.12.2012. It would be apt and appropriate to note at this juncture and at the cost of repetition that Manoj Kumar Jain, who had initially filed an application for substitution which came to be allowed by the trial court by order dated 24.02.2010, which order was carried in Civil Revision No.2 of 2010 and in the said proceedings an application came to be filed by said Manoj Kumar Jain stating thereunder that he does not intend to press the application filed by him for being substituted as legal representative of Urmila Devi. This fact also persuaded the Revisional

Court to remand the matter back to the trial court vide order dated 02.12.2011.

14. In this factual scenario, the defendants cannot be heard to contend that appellant herein had filed two affidavits (Annexure P-5 and Annexure P-7) whereunder he had admitted Manoj Kumar Jain as the legal representative of deceased Urmila Devi and as such he cannot turn around to assert himself to be the legal representative of Urmila Devi, for the simple reason that affidavits filed by the appellant Yashpal Jain does not even remotely suggest or indicate that he have admitted Manoj Kumar Jain being the legal representative of Urmila Devi. On the other hand, said affidavits which has been perused by us, would clearly indicate that he has only affirmed and reiterated the fact that he is a signatory to the said Will and nothing more or nothing less.

15. Mr. Rameshwar Prasad Goyal, learned counsel appearing for the respondents herein, have also contended that on account of non-traversing of the writ petition averments the contents thereof are to be presumed true and correct, though seems to be an attractive proposition at first brush, it cannot be accepted for the simple reason

that consent does not confer jurisdiction. Even otherwise, the records would clearly indicate that Manoj Kumar Jain himself had filed an application, accompanied by affidavit before the Revisional Court in Civil Revision No.2 of 2010, stating thereunder that he would not press the application filed by him for substitution and this was sufficient for the High Court to have accepted the plea of the appellant or in other words, it should have sustained the order of trial court and ordered for appellant being brought on record as legal representative of deceased Urmila Devi.

16. At the cost of repetition, it requires to be noticed that respondents herein themselves having filed an application in WP (M/S) No.342 of 2005 for bringing the present appellant (Yashpal Jain) as her legal representative in the writ petition (M/S) 342/2005 and prosecuted the same, would reflect that they were in the acquaintance of the fact that present appellant being the legal representative of deceased Urmila Devi but yet are attempting to contend that Manoj Kumar Jain is to be brought on record as legal representative of Urmila Devi. In this background the impugned order which has resulted in rejection of the application filed by the appellant to be brought on record as legal representative of Urmila Devi if

sustained would result in the estate of deceased plaintiff not being represented, as a consequence of which suit would abate or would be put to a silent death by the defendants without claim made in the suit being adjudicated on merits. Hence, point No.(i) is answered in favour of the appellant and against respondents and therefore, the impugned order is set aside.

17. As far as the question of right of the appellant over the suit schedule properties, we are of the view, by virtue of adoption propounded, it is an issue which would be at large before the learned trial court and the veracity of the Will dated 19.05.1999 alleged to have been executed by Urmila Devi in favour of Manoj Kumar Jain, is to be decided in appropriate proceedings and as such we desist from expressing any opinion in that regard and contentions of both parties are kept open.

RE: POINT No.(ii)

18. Case papers on hand would disclose that dispute between the parties relates back to 02.02.1982 the date of institution of the suit No.2/1982 by the original plaintiff Smt. Urmila Devi. As to the stage of the suit namely, as to whether trial has commenced or otherwise,

the material available before this court are silent but the fact remains that proceedings have got protracted from 1982 till demise of Urmila Devi on 18.05.2007 and thereafter it has moved at a snail's pace or in other words, the litigation seems to have not been taken to its logical end for reasons best known. The death of the original plaintiff opened up a flood of litigation and as a result of it, several orders came to be passed by the courts below, both in original jurisdiction and revisional jurisdiction, which also reached the High Cout and ultimately before this Court by the present proceedings. The cause for delay has been myriad. It is for this reason we have expressed our anguish at the beginning of this judgment as to likelihood of litigant public getting disillusioned of justice delivery system due to delays. It would be apt to note that certain litigations initiated more than 50 years back are still pending. As per the data extracted from National Judicial Data Grid (NJGD), we have noted hereinbelow the three oldest civil and criminal cases:

TOP 3 PENDING CIVIL CASES

1. **West Bengal**

   (a) Civil Judge Senior Division, Malda – Partition Suit No.30 of 1952 – registered on 04.04.1952

(b) Civil Judge, Sr. Division, Medinipur – Other Suit No.39 of 2017 -registered on 15.09.1953.

2. **Uttar Pradesh**

Civil Judge, Junior Division, Varanasi – Original Suit No.319 of 1953 – registered on 02.07.1953

TOP 3 PENDING CTRIMINAL CASES

(1) **Maharashtra**

(a) Chief Judicial Magistrate, Amravati – R.C.C. No.2319 of 1959 – registered on 11.04.1959

(b) CJJD & JMFC Mehkar – R.C.C. No.61 of 1960 – registered on 06.10.1959

(c) Chief Judicial Magistrate, Amravati – R.C.C. No.778 of 1961 – registered on 30.08.1961

The Underlying factors behind Judicial Delays

19. The causes of delay are numerous loopholes in the law itself, redundant and voluminous paper work, absence of the witnesses, adjournments sought and granted for no justifiable reason as also delay in service of summons, lack of implementation of the provisions of Code of Civil Procedure (hereinafter referred to as 'CPC') and Code

of Criminal Procedure (hereinafter referred to as 'Cr.P.C'), as the case may be. These are only illustrative and not exhaustive. It is not that there has been any lack of effort to speed up the Justice Delivery System. However, the attempts made hitherto have yielded limited results. Time and again various provisions of C.P.C. and Cr.P.C. have been amended to cater the ever-increasing demands for speedy disposal of cases and the results are not inspiring. There is an urgent need to take pro-active steps to not only clear the huge backlog of cases at all levels but there should be introspection by all the stakeholders to gear up to meet the aspirations of the litigant public who would only seek for speedy justice and to curtail the methods adopted to delay the proceedings which may suit certain section or class of the litigant public. When millions of consumers of justice file their cases by knocking at the doors of the courts of first instance, they expect speedy justice. Thus, an onerous responsibility vests on all stakeholders to ensure that the people's faith in this system is not eroded on account of delayed justice. It is imperative to note that about 6 per cent of the population in India is affected by litigation, in such a scenario the courts would play an important role in the life of a nation governed by Rule of Law. Peace and Tranquility in the society and harmonious

relationship between the citizens are achieved on account of effective administration of justice and its delivery system, even the economic growth of a country is dependent on the robust Justice Delivery System which we have in our country.

20. When the efficiency has become the hallmark of modern civilization and in all spheres of life there is an urgent need to hasten the pace of delivery of justice by reducing the time period occupied by the trial of suits and criminal proceedings as also the offshoots of such litigation which results in revisions, appeals etc. arising out of them.

A historical outlook of steps taken to curb the Judicial delay

21. The issue of delay has been bothering all the stakeholders for ages. Way back in the year 1924, a committee was constituted known as the Civil Justice Committee to enquire into the issues relating to changes and improvements necessary to bring in "more speedy, economical and satisfactory dispatch of the business transacted in the courts" under the chairmanship of Justice Rankin. Delay in disposal of cases beyond a period of two and a half years was a crucial concern and it was emphasized by the said Committee that "where the arrears

are unmanageable, improvement in the methods can only palliate. It cannot cure".[1] The Central Government under the chairmanship of Justice S.R. Das set up a committee known as High Court Arrears Committee in the year 1949. In 1979, the Law Commission of India in its 77th Report on '*delay and arrear in trial courts'* observed that the delay in civil or criminal matters have decreased the confidence among the general public about the judicial system. It was emphasized that civil cases should be treated as lapsed if the matter was not disposed of within one year from the date of registration, whereas a criminal matter should be disposed within six months and in case of sessions trial it should not go beyond one year. It was also suggested to timely fill up the vacancies, appoint additional and ad-hoc judges and increase overall judicial strength. Some of the key recommendations of the Committee were:

> "(i) Improvement of judicial system to meet modern requirement of society.
>
> (ii) Time for scrutiny of the cases should not take more than one week.
>
> (iii) Summons and notices should be attached with the plaint at the stage of filing, without stating the filing date.
>
> (iv) Procedural reforms in civil and criminal case proceedings."

[1] Civil Justice Committee, 1924

22. The 79th reports of the Law Commission of India pertains to "*Delay and Arrears in High Courts and Appellate Court"* which when read along with the 77th report as aforementioned, has provided a step-by-step manual for managerial judging, prescribing upper time limits for trial procedure to ensure speedy disposal of cases to be followed by Trial Courts, High Courts, and other appellate courts. Its recommendations range from ways in which judges should expedite the service of summons to the drafting of the decree and includes the suggestions that they should become more active in conciliation efforts. Other notable recommendations include:

> "(i) Appointment of administrative justices who supervise the work of process servers;
>
> (ii) Fixing of dates should be done by presiding officer and not readers, cases should deliberately not be fixed when the prospects of them being taken up for low and a standard of number of cases pending before courts should be decided and whenever there are indications that the number of cases will go beyond the standard, additional courts should be set up."

23. The 120th Law Commission Report on '*Manpower planning in judiciary: a blueprint'* recommended that the most effective way to overcome the heavy pendency of cases clogging on the judicial system is by reducing judicial delay. It further states that the judiciary is overburdened by large number of cases filed each year, which clog an

already stressed system. The report states that in 2002, when the ratio of the judges to population was 13 judges to 10,00,000 people, the Supreme Court recommended, in *All India Judges Association vs. Union of India (2002) 4 SCC 247,* to increase the ratio to at least 50 judges per 10,00,000 people.

24. The *Malimath* Committee, constituted on Reforms of Criminal Justice System, suggested multiple recommendations in its report, for Criminal Justice System, however some of them can be applied even in the civil litigation:

1. Time limit for filing written statements, amendments of pleadings, service of summons etc., must be prescribed.

2. So far as possible, parties must endeavor to decide or to settle the cases outside the court and to carry out the same objective, Section 89 in CPC, was introduced.

3. To record the evidences by issuing the Commission instead of by presence before the court of law. For the purpose of the same under Section 75 of the CPC, commission can be issued for collecting evidence.

4. Time frame need to be provided for oral argument before the court of law.

5. Restriction on Right of appeal.

25. Similarly, the Delhi High Court undertook a pilot project titled "*Zero Pendency Court Project Report'*[2] whereunder 22 specific pilot and reference courts were referred to collect data to examine meticulously the life cycles of the legal cases. At its core, the project sought to understand how the cases progressed through the legal system in the absence of any backlog. The Data collected from the pilot project led to suggestions of some major recommendations which included, primarily, the assessment of Judicial strength, which as per the report, is regarded as a vital attribute to the cause of delay. The report in this regard suggested to arrive at an optimal judge strength to handle cases pending in different court and went on to provide the Ideal number of judges for different court. The report also highlighted that in criminal cases, prosecution evidence hearings accounts for the Highest percentage of court hearings however when it comes to allocation of time, the courts tend to dedicate more minutes to final arguments and the issuance of final orders. In civil cases, miscellaneous hearings are common, but final order proceedings

[2] The Inspiration for the project was a remark by Justice M.N. Venkatachalaih (former CJI) in a conversation with Justice Ravindra Bhat, one of the members of the State Court Management System Committee (SCMS) of the Delhi HC.

receive more time nevertheless, judges allocate a greater amount of time to the final order or judgment hearings.

26. *Melvin M Belli*, a member of the California Bar, in his article titled *"The Law's Delays: Reforming Unnecessary Delay in Civil Litigation"*, which was prepared as a project for the Belli society, has noted "*Trial delays or the period of the American Legal System*". The backlog of the system has become so typical that a plaintiff has to wait 5 years for trial of a simple personal injury claimed. In case, if there is an appeal, a final disposition of the case may occur 10 years after plaintiff has been injured and the following factors were outlined as the major contributors to the delay:

> (i) The inefficient management of the court system by the judiciary.
> (ii) A Tremendous increase in litigation.
> (iii) The philosophy of procrastination of many judges and lawyers, and
> (iv) The priority of criminal or civil cases on the court calendar.

To tackle the aforesaid problems, the following remedial measures were suggested as possible solutions:

> 1) Appointment of surrogate judges (auditors, referees, judges pro tempore) to handle certain cases. The idea of using surrogate judges is to avoid unnecessary adjudication under formal trials. This is followed in Massachusetts, where court appointed auditors or referees, who were practicing attorneys, used to adjudge motor vehicle tort cases. They report their

findings of facts and conclusions to the court and the parties may accept the auditor's report as final or request a trial. If the case goes to trial, the auditor's findings are prima facie evidence and may be read to the jury.

2) The imposition of interest accruing retroactively from the time of incident, rather than from time of judgment, to remove defendant's incentives to delay.

3) The elevation of civil cases to parity with criminal cases so that civil cases will not be usurped.

4) A requirement that judges set definite trial dates and honor them, so that litigation cannot be delayed by one of the attorneys.

DELAY ON ACCOUNT OF PROCEDURAL LAWS

27. At the outset, it is necessary to point out the reasons for delay in civil trial namely:

(i) Absence of strict compliance with the provisions of CPC;

(ii) Misuse of processes of the court;

(iii) Lengthy/prolix evidence and arguments. Non-utilization of provisions of the CPC namely Order X (examination of parties at the first hearing);

(v) Non-Awarding of realistic cost for frivolous and vexatious litigation;

(vi) Lack of adequate training and appropriate orientation course to judicial officers and lawyers;

(vii) Lack of prioritization of cases;

(viii) Lack of accountability and transparency.

28. Apart from the above reasons, the other vital reasons include the over-tolerant nature of the courts below while extending their olive branch to grant adjournment at the drop of the hat and thereby bringing the entire judicial process to a grinding halt. It is crucial to understand that the wheels of justice must not merely turn, they must turn without friction, without bringing it to a grinding halt due to unwarranted delay. It is for such reasons that the system itself is being ridiculed not only by the litigant public but also by the general public, thereby showing signs of constant fear of delay in the minds of public which might occur during the resolution of dispute, dissuading them from knocking at the doors of justice. All the stakeholders of the system have to be alive to this alarming situation and should thwart any attempt to pollute the stream of judicial process and same requires to be dealt with iron hands and curbed by nipping them at the bud, as otherwise the confidence of the public in the system would slowly be eroded. Be it the litigant public or Member of the Bar or anyone connected in the process of dispensation of justice, should not be allowed to dilute the judicial processes by delaying the said process by

in any manner whatsoever. As held by this Court in ***T. Arivandandam*** vs. ***T.V. Satyapal & Another*** *AIR (1977) 4 SCC 467* the answer to an irresponsible suit or litigation would be a vigilant judge. This analogy requires to be stretched in the instant case and to all the pending matters by necessarily holding that every stakeholder in the process of dispensation of justice is required to act swiftly, diligently, without giving scope for any delay in dispensation of justice. Thus, an onerous responsibility rests on the shoulders of the presiding officer of every court, who should be cautious and vigilant against such indolent acts and persons who attempt to thwart quick dispensation of justice. A response is expected from all parties involved, with a special emphasis on the presiding officer. The presiding officer must exercise due diligence to ensure that proceedings are conducted efficiently and without unnecessary delays. While it's important to maintain a friendly and cooperative atmosphere with the members of the Bar, this should not be misused as a pretext for frequent adjournment requests. A word of caution to the learned members of the Bar, at this juncture, would also be necessary because of they being considered as another wheel of the chariot of dispensation of justice. They should be circumspect in seeking adjournments, that too in old matters or matters which have

been pending for decades and desist from making request or prayer for grant of adjournments for any reason whatsoever and should not take the goodness of the presiding officer as his/her weakness.

29. In-fact, the utilization of the provision of CPC to the hilt would reduce the delays. It is on account of non-application of many provisions of the CPC by the presiding officers of the courts is one of the reason or cause for delay in the proceedings or disputes not reaching to its logical conclusion.

30. The very fact of the pendency of the present suit No. 2 of 1982, in the instant case, for the past 41 years is reflective of the fact, as to how some of the civil courts are functioning and also depicting how stakeholders are contributing to such delays either directly or indirectly. The procedure that is being adopted by the courts below or specifically the trial courts is contrary to the express provisions of the CPC. It can also be noticed that there are party induced delays. It is laid down under Orders VIII Rule (1) that a defendant shall at or before the first hearing or within 30 days, or 90 days as the court may permit, present a written statement of his defence. In most cases, there would be no difficulty in presenting such a written statement on the date fixed, and no adjournment should be given for the said purpose

except for a good cause shown, and in proper cases, costs should be awarded to the opposite side, namely realistic costs. However, this is seldom found. Delay in filing the written statement and seeking adjournments is also another tactic used by the parties to litigation to delay the proceedings No doubt in catena of judgments including ***Kailash vs. Nanku*** *2005 (4) SCC 480,* ***Serum Advocates Bar Association, Tamil Nadu*** **vs** ***Union of India,*** *AIR 2005 SC 3353.* ***Bharat Kalra vs. Raj Kishan Chhabra*** *(2022) SCC OnLine SC 613* and ***Shoraj Singh vs Charan Singh*** *(2018) SCC OnLine All 6613* the time limit prescribed under the CPC has been held to be directory and not mandatory which by itself does not mean that adjournments if sought should be granted for mere asking. Only when such prayer being honest and prayer sought with a *bona-fide* intention, which we will have to be demonstrated in express terms, at least by way of an affidavit, such prayers should be entertained as otherwise the purpose of the legislative mandate would get defeated and the purpose of the amendment brought to CPC by Act 22 of 2002 would also become otiose. In other words, it is high time that the presiding officers of all the trial courts across the country strictly enforce the time schedule prescribed under sub-rule (1) of Rule (1) of Order VIII in its letter and

spirit rather than extending the olive branch on account of said provision being held directory to its illogical end even where circumstances of a particular case does not warrant time being enlarged. Although Order XVII of the CPC indicate under the heading "adjournments", making it explicitly clear the procedure which requires to be adopted by the civil courts in the matter of trial, as evident from plain reading of the said provision would reveal, seems to have been completely lost sight of by all the stakeholders, which can be held as one of the root cause for delay in disposal of civil cases. It would be apt and appropriate to extract Order XVII of the CPC and it reads:

ORDER XVII

> **"1. Court may grant time and adjourn hearing**" (1) The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing:
> Provided that no such adjournment shall be granted more than three time to a party during hearing of the suit.
>
> **(2) Costs of adjournment**. -In every such case the Court shall fix a day for the further hearing of the suit, and
> [shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit:
> Provided that, -
>
> **(a)** when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the

> adjournment of the hearing beyond the following day is necessary.
>
> **(b)** no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,
>
> **(c)** the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,
>
> **(d)** where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,
>
> **(e)** where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid."

The High Court of Karnataka in the matter ***of M. Mahalingam*** vs. ***Shashikala*** reported in ILR Karnataka 4055 had an occasion to deal with this rule and it was observed as under:

> **"17.** The proviso to sub-rule (2) of Rule 1 of Order XVII was introduced by the code of Civil Procedure (Amendment) Rules, 1976. The object and reason behind the introduction of this proviso was that, when hearing of evidence has once begun such hearing shall be continued from day to day. The said provision is being made more strict so that once such stage is reached, an adjournment should be granted only for unavoidable reasons. A few other restrictions were also being imposed on the grant of adjournments. The intention in enacting the said proviso is that, when the hearing of the suit has commenced, it shall be continued from day-to-day, until all the witnesses in attendance have been examined. In other words, it provided that a suit being tried like a sessions

case in a Criminal Court. Therefore, the Rule is, once trial begins, evidence should be recorded on day-to-day basis. Even in exceptional cases, if an adjournment becomes necessary, it has to be adjourned to the following day only. Clauses-(b) (c) and (d) were introduced restricting the power of the Court to grant adjournments on the grounds set out therein. These clauses make it clear that, the fact that a pleader of a party is engaged in another Court, is not a ground for adjournment. Even the illness of the pleader and inability of a pleader to conduct a case is not a ground for adjournment, unless the Court is satisfied that the party applying for adjournment could not have engaged another pleader in time. It also provides for the Court to record the statement of witnesses who are present in Court, when the party who summoned him and the party who has to cross-examine, the said witnesses and their counsel being not present Therefore, it is clear that the Court can be liberal in granting adjournments before the commencement of the Trial. But once the trial commences, there is an obligation cast on the Court to conduct the said trial day-to-day until all the witnesses in attendance have been examined. Unfortunately, this procedure which is in the statute book since 1976, is followed more in breach. Adjournments are sought for and granted by the Courts as a matter of course. The intention of the Parliament in enacting the said provision was not appreciated. In spite of introduction of the proviso, there was no marked change in the trial of suits. Adjournments continued to dominate and obstruct speedy trial. Therefore, the parliament amended the law once again and now an attempt is made to control the power of the courts in granting adjournments.

18. This time sub-rule (1) and (2) of Rule 1 of Order XVII was amended substantially by the code of Civil Procedure (Amendment) Act, 1999. The object and reason behind the amendment Act was that, every effort should be made to expedite the disposal of civil suits and proceedings so that justice may not be delayed. The committee on Subordinate Legislation (11th Lok Sabha) recommended that it should be made obligatory to record reasons for adjournment of cases as well as award of actual or higher cost and not merely notional cost against the parties seeking adjournment in favour of the opposite party. Further limit up to three adjournments has also been fixed in a case.

19. The amended Sub-rule (1) of Rule 1 provides that at any stage of the suit, if sufficient cause is shown, the Court may adjourn the hearing of the suit for the reasons to be recorded in writing. Therefore, an adjournment cannot be granted for a mere asking. There should be sufficient cause for such an adjournment. Before granting adjournment, the Court has to record in writing the reasons, which constituted sufficient cause for it to adjourn the case. The proviso to sub-rule (1) of Rule 1 puts an embargo on the Court's power to grant adjournments, in as much as, it restricts the said power to grant adjournments to three times to a party during the hearing of the suit. Therefore, the Court cannot exercise its power of granting adjournments arbitrarily, whimsically and it should know its limitations. The amendment to sub-rule (2) of Rule 1 makes it obligatory on the part of the Court to make an order as to costs occasioned by the adjournments. This rule is intended to see that the imposition of costs may act as a deterrent to the party seeking adjournment when there being no sufficient cause. By such costs, the cost of litigation would increase and it may dissuade the party from seeking adjournment on flimsy grounds.

20. In spite of the legislative mandate reflected in the aforesaid provision, the Courts and the Lawyers continue to ignore the said statutory provisions and the requirement of holding a continuous trial day to day. The Courts, in practice, have buried the rule fathoms deep and have been granting adjournments on the flimsiest grounds. In every case these provisions are honoured more in breach than in compliance with the spirit of providing justice expeditiously. It is rare indeed when a court holds a trial continuously in terms of this rule. If only the provisions of the Code are followed in letter and spirit, the grievance of delay in disposal of cases would have been reduced considerably. The rule of law requires respect for the law by all the citizens of this country. The Judges and Lawyers who are the officers of the Court are No. exception. First, they should respect the rule of law, i.e., these statutory provisions. Without any exception they cannot plead any difficulty in implementing these provisions in letter and spirit. They are duty bound to act according to these statutory provisions. Without doing what we are legally expected to do, we are barking up at the wrong tree and by this process we are deceiving ourselves. Any number of amendments to the Code or any efforts to reform the law would have no effect, unless the Courts give effect to the statutory provisions contained in the Code. If the Courts do

not implement the law, one cannot find fault with the Advocates or the litigants. If these rules are implemented in letter and spirit, it may lead to some inconvenience and hardship as, for more than a century, the Judges, the lawyers and litigants are used to a particular atmosphere in Court. It is this atmosphere in Courts, which has no legal support and is the cause for delay in disposal of cases. Therefore, it is high time in the interest of speedy disposal of cases, these rules are implemented; once implemented, in course of time, lawyers and litigants would fall in line.

In order to implement these statutory provisions as amended, what is required is a change of mind set among the Judges and they must have the courage to depart from the practice which is in vogue. They must remind themselves that till now these provisions are not followed and the procedure which is adopted in Courts was totally different from what is provided under the statute and thus has no legal basis. That is the real cause for delay in disposal of cases. Therefore, the need of the hour is a change of mental attitude, firstly, on the part of the judges and secondly, on the part of lawyers and litigants. A beginning has to be made. It has to be done by Judges and Judges alone. In spite of the criticism and the amendment to the law made by the Parliament, if the Judges are not sensitive and do not give effect to these provisions which are made with an avowed object of speedy disposal of cases, the Judges would be failing in their duty. Therefore, one may not blame the Code for delay in disposal of cases. The delay is on account of not following the provisions of the Code and in not knowing the philosophy behind these statutory provisions. Even now it is not too late for the Judges and Lawyers to give effect to the statutory provisions and render speedy justice to the litigants. Time has come that this malady should be treated with even handed at all levels.

21. In fact this view finds support from the observations made by the Law Commission in the Reports on the Code of Civil Procedure:

"In the 14th Report of the Law Commission of India on "Reform of Judicial Administration", the Commission notes with concern the failure of the Courts to appreciate that Order 17 Rule 1 contemplates the continued hearing of a case, once it has started, from day to day until it is finished. It noted with concern that the judiciary seemed to think that the interrupted hearings should be a rule and day to day hearings the exception. Both the lawyers and the subordinate

judiciary still persist in floating these provisions by refusing to have a continuous trial.
27th Law Commission Report reads as under:
"There is a popular belief that the technicalities of legal procedure can be exploited and a case continued almost indefinitely if so desired. In a weak case, apart from numerous applications for adjournment, frivolous interlocutory applications are made, e.g. applications for amendment of the pleadings or for amendment of issues, examination of witnesses on commission summoning unnecessary witnesses etc., These tactics do not succeed before an experienced and astute Judge. They succeed only before Judges who have no adequate experience. And such tactics succeed not because of the observance, but because of the non-observance, of the rules of procedure. Delay under this item is, therefore, not due to any defects in procedure. Rules of procedure are intended to subserve and not to delay or defeat justice."

22. Therefore, while considering the prayer for grant of adjournment, it is necessary to keep in mind the legislative intent. After the trial commences, the legislative mandate is, it shall be continued from day to day until all the witnesses in attendance have been examined. Even to grant an adjournment beyond the following day exceptional reasons should exist and it should be recorded in writing before adjourning the hearing beyond the following day. A reading of the proviso makes it clear that the limitation of three adjournments contained in proviso to sub-rule (1) apply where adjournment is to be granted on account of circumstances which are beyond the control of that party. Even in cases which may not strictly fall within the category of circumstances beyond the control of a party, the Court by resorting to the provisions of higher cost which can also include punitive cost grant adjournment beyond three times, having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case and compensate the party who is inconvenienced by such adjournment. The said cost cannot be notional. It should be realistic. As far as possible actual cost incurred by the other party shall be awarded where the adjournment is found to be avoidable but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the ease. Therefore, an attempt is made by the Parliament to enable the Court to have complete control over the litigant and prevent parties from controlling

the course of the litigation. The whole object is to deter the parties from seeking adjournment for the sake of mere adjournment. If a party wants to have the luxury of an adjournment, he should be made to pay for such luxury and the opposite party who is inconvenienced is to be compensated. In other words, the cost of litigation should be made high in so far as a party who is not interested in speedy trial. A person who wants to obstruct the course of justice, delay the disposal of cases, abuse the process of court and wants to harass his opponent by virtue of his money power, for him the litigation should become costly which is not so now. Therefore, this provision of imposition of cost to prevent the litigant from seeking adjournment, thus, delay the disposal of cases, is to be given full effect. It is a weapon in the armory of the Judge to control the course of litigation and expedite trial. In spite of this provision if the Judges do not understand the significance and importance of these amendments and allow the parties to control the course of litigation, it only shows either lack of will on their part to implement these statutory provisions or their inability to give effect to these statutory provisions.

23. When the litigants complain of delay in disposal of cases, they cannot seek adjournments as a matter of right, as it is against their interest. An adjournment at the instance of one party, puts the other party to inconvenience, which in turn gives rise to such complaints. But an adjournment may become necessary for various reasons. Therefore, in such circumstances it would be in the interest of justice to grant adjournment, but at the same time the party inconvenienced has to be duly compensated. It is in this background the provision of Rule 1 of order XVII of CPC as amended has to be understood and given effect to. A party to a litigation cannot have any grievance for day-to-day trial and on the contrary he should welcome it. It is only those litigants who want to abuse the judicial process and wants to use this legal machinery as a weapon of oppression against his opponents can have any grievance. It is there, these amended provisions come in handy to the courts to prevent such abuse of the judicial process.

The Case Flow Management System Rules: An Overlooked Lifesaver

31. On the recommendation of this Court in '***Salem Bar Association vs. Union of India*** *AIR 2003 SC 189=2003 (1) SCC 49* a committee was appointed to study the application on implementation of Case Flow Management system in India, and in response, *'Case Flow Management Rules for High Courts and Subordinate Courts'* were meticulously crafted. These guidelines mirrored the suggestions outlined in the *'National Mission for Delivery of Justice and Legal Reform,*' which served as a comprehensive blueprint for judicial reforms through its strategic initiatives from 2009 to 2012. Furthermore, the introduction of the Justice A.M. Khanwilkar Committee on Case Management System aimed to align with these efforts. On the basis of above recommendation most of the states have adopted the concept of Case Flow Management and have framed their own Rules for ensuring timely delivery of justice since 2005. However, some of the States are yet to frame the rules. We request the Hon'ble Chief Justices of those High Courts where said Rules are yet to be framed to take immediate steps to formulate such rules.

32. Be that as it may, mere framing of the rules would not suffice the problem on hand, until and unless the spirit underlying in the making of the such rules is effectively implemented. The mode, method and manner in which it requires to be implemented is in the hands of the respective High Courts. In this regard, although many High Courts have constituted committees (with different nomenclature) to monitor the same, the effective implementation seems to have gone into oblivion. Thus, it would be imperative on the part of the High Courts to ensure the object with which such committees were constituted would not remain on paper but are implemented in its letter and spirit by constant monitoring, at least by securing the reports from trial courts through the District Judges once in two months and keeping a watch and vigil particularly, over the old cases. Such Committees should focus their attention through monitoring efforts so as to keep a check on matters being adjourned for no justifiable reason. When such exercise is carried out with utmost dedication, it would necessarily yield positive results. Therefore, both the existing committees and any yet-to-be-constituted Committees by the respective High Courts should make all endeavours to achieve the object of making such rules. The Hon'ble Chief Justices of the

High Courts are requested to activate these Committees and ensure the implementation of the rules**.** It is in this background, with utmost concern the observations were made in the Chief Justice's Conference, 2016 towards strengthening Case Flow Management Rules for the purposes of not only reducing arrears but also for ensuring speedy trial.

Numbers speak more than words: A closer look to the Statistics of the National Judicial Data Grid

33. One of the gravest Administrative and structural delay in litigation in whole, appears to be because of judicial delay. According to National Judicial Data Grid, the figures available for the contribution of judicial delay in pendency of cases is alarming. The State-wise pendency of cases before the respective High Courts and overall Civil Courts as on 16.10.2023 are as under:

S. No	**Name of the State & High Courts**	**High Courts**		**Civil Courts**	
		Civil	Criminal	Civil	Criminal
1	Andhra Pradesh	2,12,317	37,615	4,15,774	4,40,468
2	Arunachal Pradesh (Gauhati High Court)	47,941	13,817	2,911	14,378

3	Assam (Gauhati High Court)			98,763	3,38,828
4	Bihar (Patna High Court)	1,08,550	87,779	5,07,039	3,022,705
5	Chattisgarh (Chhatisgarh High Court)	59,640	32,342	23,419	76,331
6	Goa (Bombay High Court)	6,01,362	1,14,309	26,040	30,521
7	Gujarat (Gujarat High Court)	1,10,403	56,267	4,02,283	12,70,278
8	Haryana (Punjab & Haryana High Court)	2,76,432	1,65,363	4,55,539	11,13,672
9	Himachal Pradesh (Himachal Pradesh High Court)	81,875	13,618	1,63,805	3,70,345
10	Jharkhand (Jharkhand High Court)	37,565	46,895	85,359	4,21,577
11	Karnataka (Karnataka High Court)	2,535,097	45,802	9,33,869	10,69,156
12	Kerala (Kerala High Court)	1,99,169	55,659	5,56,950	13,70,576
13	Madhya Pradesh (Madhya Pradesh High Court)	2,74,085	1,75,924	3,68,346	16,37,442
14	Maharashtra (Bombay High Court)			15,96,833	34,09,391
15	Manipur (Manipur High Court)	4,567	493	5,049	2,670
16	Meghalaya (Meghalaya High Court)	883	189	3,517	10,880
17	Mizoram (Gauhati High Court)			2,980	3,120

18	Nagaland (Gauhati High Court)			1421	2747
19	Odisha (Orissa High Court)	1,08,154	38,078	3,50,358	15,05,895
20	Punjab (Punjab and Haryana High Court)			3,93,004	5,24,061
21	Rajasthan (Rajasthan High Court)	4,86,248	1,78,745	5,50,742	18,19,230
22	Sikkim (Sikkim High Court)	119	39	522	1,126
23	Tamil Nadu (Madras High Court)	4,89,316	58,164	7,48,895	6,56,014
24	Telangana (Telangana High Court)	2,20,677	30,974	3,38,275	5,33,262
25	Tripura (Tripura High Court)	1,075	138	11,719	32,952
26	Uttarakhand (Uttarakhand High Court)	28,117	21,898	37,760	2,80,476
27	Uttar Pradesh (Allahabad High Court)	5,62,794	4,94,366	16,38,238	96,34,553
28	West Bengal (Calcutta High Court)	1,69,651	27,275	609910	20,09,011
29	National Capital Territory of Delhi (Delhi High Court)	78,890	32,770	2,40,118	11,44,038
30	Jammu & Kashmir and Ladakh (High Court of J&K)	36443	8195	78,981	1,95,903
31	Andaman & Nicobar Islands (Calcutta High Court)			4,757	4,923

32	Chandigarh (High Court of Punjab & Haryana)			23419	76331
33	Lakshadweep (Kerala High Court)			140	365
34	Dadra and Nagar Haveli and Daman and Diu (Bombay High Court)			1412	1572
35	Puducherry (Madras High Court)			13,196	19,015
	TOTAL	**67,31,370**	**17,36,714**	**1,06,91,343**	**3,30,43,812**

34. Further, according to National Judicial Data Grid, if we consider the stage-wise pendency, it is revealed that majority of the pendency in cases is at the Evidence/ Argument/ Judgement stage (43,22,478), within which the maximum pendency is caused at the stage of hearing and evidence. High pendency is also caused during the Appearance/Service stage (27,03,493), within which the maximum pendency is appearance and service/summons related. The reasons behind the maximum pendency as stated by the NJDC has been ruled to be matters which are stayed (9,69,262) unattended (8,31,076) and awaiting records (8,219,929).

35. It is important to acknowledge that while striving for the oft-cited goal of expeditious justice, courts, litigants, staff, and lawyers

may encounter some level of inconvenience. However, this inconvenience should take a backseat in light of the Fundamental Duties enshrined in the Constitution, specifically Article 51A(j) which obligates every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. Article 51A is to be understood to be in a positive form with a view to strive towards excellence. The people should not conduct themselves so as to enable anyone to point fingers at them or blame them. “Excellence” means honest performance. It is the vision of the founder of constitution makers that citizens of this great country India that is Bharat, should discharge duties in an exemplary manner rather than perform half-heartedly. The duties envisaged under Article 51A are obligatory on citizens. No doubt the fundamental duties cannot be enforced by Writs and it is in this background it has to be understood that the duties which are required to be performed by the citizens in general and particularly by the stakeholders of judicial dispensation system should ensure that they do discharge the obligations prescribed under the law in an exemplified manner and not blame worthy.

36. In the hallowed halls of justice, where the rights and liberties of every citizen are protected, we find ourselves at a critical juncture. Our Judiciary, the cornerstone of our democratic system, stands as the beacon of hope for those who seek remedy. Yet, it is a solemn truth that we must confront with unwavering resolve—the spectre of delay and pendency has cast a long shadow upon the very dispensation of justice. In this sacred realm, where the scales of justice are meant to balance with precision, the backlog of cases and the interminable delays have reached a disconcerting crescendo. The relentless march of time, while it may heal wounds for some, it deepens the chasm of despair for litigants who await the enforcement of their rights. Hence, It is here, in the chambers of jurisprudence, that we must heed the clarion call of reform with unwavering urgency.

37. It is undisputedly accepted that the significance of a swift and efficient judiciary cannot be overstated. It is a cornerstone of democracy, a bulwark against tyranny, and the guarantor of individual liberties. The voices of the oppressed, the rights of the marginalized, the claims of the aggrieved—all are rendered hollow when justice is deferred. Every pending case represents a soul in limbo, waiting for closure and vindication. Every delay is an affront to the very ideals that

underpin our legal system. Sadly, the concept of justice delayed is justice denied is not a mere truism, but an irrefutable truth.

Thus, we stand at a crossroads, not of our choosing but of our duty where the urgency of legal reforms in our judiciary cannot be overstated, for the pendulum of justice must swing unimpeded. The edifice of our democracy depends on a judiciary that dispenses justice not as an afterthought but as a paramount mission. We must adapt, we must reform, and we must ensure that justice is not a mirage but a tangible reality for all.

38. Therefore, in this pursuit, we call upon all stakeholders—the legal fraternity, the legislature, the executive, and the citizens themselves—to join hands in a concerted effort to untangle the web of delay and pendency. We must streamline procedures, bolster infrastructure, invest in technology, and empower our judiciary to meet the demands of our time.

39. The time for procrastination is long past, for justice cannot be a casualty of bureaucratic inefficiency. We must act now, for the hour is late, and the call for justice is unwavering. Let us, as guardians of the law, restore the faith of our citizens in the promise of a just and

equitable society. Let us embark on a journey of legal reform with urgency, for the legacy we leave will shape the destiny of a nation. In the halls of justice, let not the echoes of delay and pendency drown out the clarion call of reform. The time is now, and justice waits for no one. Hence, the following requests to Hon'ble the Chief Justices of the High Courts are made and directions are issued to the trial courts to ensure 'speedy justice' is delivered.

RE: POINT NO.3

For the reasons aforestated, we proceed to pass the following

ORDER

1. Civil Appeal is allowed and the order dated 28.11.2019 passed in Writ Petition (M/S) No.144 of 2013 by High Court of Uttarakhand at Nainital is set aside and the order dated 09.05.2012 passed by the Trial Court as affirmed in Civil Revision No.4 of 2012 dated 13.12.2012 stands affirmed.

2. The following directions are issued:

> **i.** All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule (2) of CPC and

same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.

ii. All courts at District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under proviso to sub-Rule (1) of Order VIII of CPC.

iii. All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89 and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.

iv. In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.

v. Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.

vi. Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would

result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.

vii. The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.

viii. The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).

ix. The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.

x. At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.

xi. The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same and forward it to the review committee constituted by the respective High Courts for enabling it to take further steps.

xii. The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.

It is also made clear that further directions for implementation of the above directions would be issued from time to time, if necessary,

and as may be directed by this Court.

3. The Secretary General is directed to circulate the copy of this judgment to the Registrar General of all the High Courts for being placed before the respective Chief Justices for a consideration and suitable steps being taken as opined herein above.

4. We make no order as to costs.

…….J.
(S. Ravindra Bhat)

……..……J.
(Aravind Kumar)

New Delhi,
October 20, 2023