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Perusing the Doctrine of Res Judicata

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ABSTRACT

In our daily lives, 'limitation' is the word that always refrains a person from doing things that are not to be done, and when we analyze the origin of Law, it is always observed by some of the famous jurists that Law evolves from the society. Doctrine of Res Judicata is also a form of limitation that is based on the constructive idea that prohibits the re-adjudication of any matter i.e. to Bar re-litigation of a case which is decided in the most legitimate manner. The aim of this article to acquaint the reader with the idea of Res Judicata in toto and its application in Indian laws with special reference to the Code of Civil Procedure, 1908.

Keywords: Legal theory, Re-adjudication, CPC.

I. INTRODUCTION

The Doctrine of *Res Judicata* is also known as the rule of definiteness of a judgment. The definiteness here refers to the decision of a judge given after perusing the fact or the law or fact and law involved in a dispute between two parties and it therefore says that after a decision is given in a particular case by the competent court then the Party cannot be permitted to reopen the very case through subsequent litigation. This thing is important because of the fact that if there exists an absence of such doctrine then the very litigation will turn to be a burden of the Judiciary and the parties leading to an excessive amount of cases in the former, and expenditure harassment and Mental agony for the latter. This doctrine is embodied under Section 11 of the Code of Civil Procedure, 1908 (hereafter CPC).

In the words of Spencer Bower, the term *Res Judicata* means a final decision pronounced by a judicial tribunal that has a competent jurisdiction over a matter in litigation. This doctrine is accepted and endorsed by almost all civilized legal systems and just to quote, in the Roman law system, the defendant was able to contest the suit against the plaintiff just on the basis of a term *ex captio res judicata*, which means that 1 suit is enough for 1 particular decision for any single dispute.

Therefore, to describe *Res Judicata* in a Judicial nutshell, it is the phenomenon where the courts prohibit a petition filed in the same or any other court pertaining to the same matter.

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Then the doctrine of *Res Judicata* would apply and the party would not be permitted to file a case either continue with it.

Let's take an example of a breach of contract case. Where X sues Z for a contract that Z allegedly breached the performance, but the Court dismisses the petition of X. Then X cannot go to the court regarding the same matter because X's right to claim the damages has already been decided in the former suit.

Essentials of the Doctrine?

1. There must remain the same parties to the very suit initiated. If a suit is initiated against any other party than the one who was existent in the former suit then that may turn to be maintainable.
2. The concerned title should be the same in the very suit initiated between the contesting parties.
3. A competent Court must have decided the very suit initiated on merits.
4. The subject-matter of the dispute should be the same as decided in the previous or former suit.

History and origin of doctrine of *res judicata*?

It is pertinent to note that the doctrine traces its work in ancient history and can be very well understood by quoting Hindu Lawyers, Muslim Jurists and Roman Jurists. As stated earlier in roman law it was recognized that 'one suit and one decision is enough for a single matter or case or dispute, under the Hindu Law it can be regarded as *Purvya Nyaya* i.e. Former judgment. The full Latin maxim that is shortened over the period of time is *Res Judicata pro veritate accipitur*. For the very nature of its uniqueness, the Doctrine of *Res Judicata* can also be observed in European and Commonwealth countries.

This very doctrine has proved to be very harsh on individuals because sometimes it is found that the former decision has been erroneous but still the functioning of the very doctrine was justified because of its wider perspective and principle of public policy that required an end to any litigation. But in case of a wrong or erroneous decision, the concerned citizen must appeal to the law-giver and not to the lawyer².

Nature, scope and object of the Doctrine?

Let us try to understand the term by segregating it so, *Res* means a dispute or a subject-matter

² *Garland V. Carlisle*, CI&F 693 at p. 705 (HL).

and on the other hand, *Judicata* means decided or adjudged or is adjudicated and therefore collectively *Res Judicata* means a dispute decided. And as said earlier, the thing which was reiterated in the case of *Lal Chand V. Radha Krishan*³, where the Hon'ble Supreme Court said that this doctrine of *Res Judicata* is generally and in a wider sense conceived as the greater good of society and the Judiciary in terms of policy, where all litigations, sooner or later must come to an end.

The other essence of this doctrine is that it is based or formulated on the principles of justice, equity and good conscience, where if a party has succeeded in a particular matter should not face any kind of harassment from further or multiplicity of litigation⁴ and that in the case of *Narayan Prabhu Venkateswara V. Narayan Prabhu Krishna*⁵, the court held that section 11 of the Civil Procedure Code 1908 and its explanations portrays a very constructive principle of Public Policy, and that it bars and avoids troublesome litigation.⁶

It is pertinent to note that this doctrine finds its genesis on 3 Latin maxims and those are as follows:

1. *Nemo debet bis vexari pro una et eadem causa*, this particular maxim means that no man should be displeased for the same cause twice.
2. The second one is *Interest reipublicae ut sit finis litium*, this maxim says that an end to litigation should be the interest of the state.
3. The third and last one is *Res Judicata pro veritate occipitur*, which says that a judicial decision must be accepted as correct.

Here it is pertinent to note the words of Sir Lawrence Jenkins regarding the Doctrine of *Res Judicata*, where he says that this very rule though based on the account of precedent is dictated by the wisdom that exists all times. Also, while we examine the above 3 Latin maxim, we'll get to know that the 2nd and 3rd maxims are broadly based on the governance and public policy while the 1st maxim gives some ancillary rights to private property.\

II. THE RELATION OF *RES JUDICATA*

The Relation of Res Judicata and Rule of Law

As stated earlier that this doctrine is a cardinal combination that is based on public policy and private interest. This is the main reason that the very doctrine finds its universal application

³ (1977) 2 SCC 88.

⁴ *Ibid.*

⁵ (1977) 2 SCC 181.

⁶ *Sulochana Amma V. Narayan Nair*, (1994) 2 SCC 14.

that and in the case of *Daryao V. State of Uttar Pradesh*⁷, where the Supreme Court iterated the fact and gave a much wider perspective to this very doctrine. So, the petitioners filed a writ petition under 226 of the Constitution which was dismissed by the Allahabad High Court, so the petitioners approached the Supreme Court under Art. 32 but here the respondents cited the Doctrine of *Res Judicata* regarding the maintainability of the very petition and the Supreme Court was convinced to dismiss the petition and Justice Gajendragadkar observed that- the binding character of the judgements that were pronounced by the courts having competent jurisdiction is per se an essential part of the rule of law and it is this rule of law that is the basis of the Administration of Justice, the ideals of which is emphasized in the Constitution. The Supreme Court Constitutional bench in this very decision said that this petition falls under the category of the Doctrine of *Res Judicata* and if any case which is dismissed by the High Court with merits under Art. 226, then the Doctrine would apply for the cases filed under Art. 32 before the Supreme Court.

The relation of *Res Judicata* and withdrawal of Suit:

This very concept of withdrawal of suit(s) is enunciated in order 23 Rule 1 of the CPC, which states that if the plaintiff withdraws a particular case and or in case abandons his/ her claim without any kind of order from the Court and then if he goes to the Court to initiate the same cause of action then he is barred from doing the same. The point that distinguishes the *Res Judicata* and *Withdrawal of Suit* is that the former is once heard and then the decision is based on merits, whereas in the latter the plaintiff per se gets prohibited after abandoning his/ her claim before the matter is decided on merits⁸.

The relation between *Res Judicata* and *Res Sub judice*:

We need to analyse two aspects here: the first one being that the former is applicable on matters that have already been adjudicated whereas the latter falls on the category of a pending trial; the second aspect is that the former specifically bars re-litigation whereas the latter bars the litigation that is pending in a former suit.

The relation between *Res Judicata* and *Lis Pendens*:

The doctrine of *Lis Pendens* is a part of the Doctrine of *Res Judicata*. The former is enunciated in section 52 of the Transfer of Property Act 1882. Wherein case if there is a conflict between the two provisions then the *Res Judicata* will prevail over *Res Sub Judice*. Let this thing be explained by giving an example, where X files a suit stating that he is the

⁷ AIR 1961 SC 1457.

⁸ Takwani, C.K., Code of Civil Procedure 1908, 18th Edition.

owner of the concerned property against Z. Now in the meanwhile Z transfers the property to Y, herein if a case is filed and then the court orders the application of *Lis Pendens* and then if the decree favours X then Y wouldn't obtain any title but let's say another case is filed by Y against Z and if that decree favours Z but before the order that favours X is decided then such decree of *Res Judicata* against X will be operative and nothing else.

The relation between *Res Judicata* and *Estoppel*:

Law of estoppel is treated as a division of the Doctrine of *Res Judicata*⁹, in some of the cases the rule is also considered as a constructive rule of estoppel¹⁰, but even then it has distinctions, and those are as follows:

1. In the case of Estoppel, it flows from the act of the parties whereas *Res Judicata* is a result of the decision of a competent court.
2. In the case of Estoppel, it is based on the principle of equity whereas *Res Judicata* is based on a wider perspective of public policy i.e. to end a litigation. In a precise way, one can say that the former reduces the multiplicity of representations whereas the latter reduces the multiplicity of suits.
3. In the case of Estoppel, it prevents a person from jumping from one statement to another or a thing said at one time and the other in the other time, whereas in *Res Judicata*, it prohibits a person from litigating twice over the same cause.
4. In the case of Estoppel, it prevents a person from denying a thing or a statement that he once said, whereas, in *Res Judicata*, the truth is already decided on the basis of merits in the former suit.

The relation between *Res Judicata* and *Stare Decisis*

The literal meaning of *Stare Decisis* is to stand by the cases that are decided or to uphold the precedents or even not to disturb the status quo of settled law, whereas *Res Judicata* means a particular thing that is already adjudicated. So, it is usually observed that these both terms belong to the same family because both are related to the adjudication of matters and both also deal with the final merits or questions involved in the very suit as both have a binding effect on future litigation. But the points of difference are that *Stare Decisis* is based on legal principles whereas *Res Judicata* is based on the conclusiveness of a particular adjudication. *Stare Decisis* on one hand binds the persons and the courts to not take a route on the law that is already decided, whereas *Res Judicata* binds the parties in a specific case that is already

⁹ *Supra* Note 6; *Swamy Atmananda V. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51.

¹⁰ *Batul Begam V. Hem Chander*, AIR 1960 ALL. 519.

decided.

Whether Section 11 of the CPC is mandatory?

It is pertinent to note here that Section 11 is mandatory per se because of some technical aspects and it is considered that the plea of *res judicata* is considered to be plea of law that encroaches upon the jurisdiction of a court to try and continue with the proceedings and also if the requirements of section 11 are met then any kind of concessions made by an advocate will not sustain and the *Doctrine of Res Judicata* apply.¹¹

The interpretation and waiver of *Res Judicata*:

In most of the cases and commentaries regarding the interpretation of this Doctrine, it is observed that the very doctrine should be applied constructively and liberally, because of the main reason of it being a doctrine that is based on a wider public policy interest and a strict, stringent and technical construction should be avoided, and that the form is not to be considered but the substance of the Doctrine is necessary¹².

III. APPLICATION OF DOCTRINE

Coming to the waiver aspect of the Doctrine then it is important here to note that the whole doctrine is based on the procedure¹³ and the party may waive the plea concerning *Res Judicata*¹⁴. And by this act, the concerned court possesses the discretion to question why this ground of *Res Judicata* is not asserted by the defendant.¹⁵

Application of this doctrine on Industrial and Taxation adjudication.

By reading Section 11 of the CPC we may come to a conclusion that this doctrine if confined to Civil suits only but that is not the case, this doctrine is based on some very generic principles of public policy and *Res judicata* applies to industrial disputes also¹⁶, which means that if there exist any award that is passed by the industrial tribunal in a specific case between the parties then the tribunal or the payment of wages authority has no jurisdiction to accept or adjudicate on the same claim again. In the case of *Bombay Gas Co. Ltd V. Jagannath Pandurang*¹⁷, the Hon'ble Supreme Court said that the Doctrine of *Res Judicata* is not confined to the matters that are governed by the provisions of the CPC but to every litigation because the main aim of this Doctrine is to avoid unnecessary litigations.

¹¹ *Pandurang Dhondi Chougale V. Maruti Hari Jadhav*, AIR 1966 SC 153.

¹² *Daryao V. State of Uttar Pradesh*, AIR 1961 SC 1457.

¹³ *Mathura Prasad V. Dossibai N.B. Jeejeebhoy*, AIR 1971 SC 2355 at page 2375.

¹⁴ *Medapati Surayya V. Tondapu Bala Gangadhara*, AIR 1948 PC 3 at page no. 7.

¹⁵ *Supra Note 11*.

¹⁶ *Burn & Co. V. Employees*, AIR 1957 SC 38 at page 43.

¹⁷ (1975) 4 SCC 690.

But the same position is not there in taxation matters because the tax is a liability that is based on year to year transaction and assessment. Therefore, each year is considered to be a separate unit, separate transactions and separate assessments. Hence so such application of this doctrine is observed in these cases.¹⁸

Application of this doctrine on Public Interest Litigations and Criminal Proceedings.

Talking about the Public Interest Litigation (hereafter PIL), it can be said that PIL is considered to be a part of Public Policy and when we observe the primary object or motive of the *Res Judicata* then it is applied to put an end to a litigation. So, when we get this interconnectedness of the two, then we can conclude that there exists no reason to extend this very doctrine on PIL and this was specifically decided by the Supreme Court in the case of *Forward Construction Co. V. Prabhat Mandal (regd.)*¹⁹, where the bench observed that a principle would apply to a PIL provided it was with a *Bona Fide intention* but in another case, the Bombay High Court observed that if repetitive petitions on the same cause is being filed in the name of PIL then those cannot be entertained.²⁰

When we talk about Criminal Litigation or Criminal Proceedings then *Res Judicata* can be observed to be applied to those too, because of the universal applicability of this doctrine and it is this universal applicability that mandates this concept to be a cardinal concept of a just society. Hence, this doctrine applies to Criminal proceedings as well²¹ because of the very fact that a person who is acquitted or even convicted by a competent court shall not be tried or prosecuted for the same offence twice²².

Application of this doctrine on Writ petitions

Writ petitions happen to be a Cardinal right of the Indian Constitution and when examining the relationship of writ petitions with that of this Doctrine then it may be concluded that this Doctrine is per se not applicable but the Supreme Court has explained a wider perspective of this Doctrine vis-à-vis Writ petitions in certain cases like in the case of *M.S.M. Sharma V. Dr. Shree Krishna*²³, the Court observed that the Cardinal principle of *Res Judicata* even applies to writ petitions under art. 32 and Art. 226 but in a general way and if a writ is dismissed by the Supreme Court then the same cause cannot be brought before the concerned court. But it is pertinent to note here that if in a writ petition some additional grounds are raised by the

¹⁸ *Amalgamated Coal fields ltd. V. Janpada Sabha*, AIR 1964 SC 1013 at page 1019; *Radhasoami Satsang V. CIT*, (1992) 1 SCC 659.

¹⁹ AIR 1986 SC 391.

²⁰ *Ramdas V. Union of India*, AIR 1995 Bom 235.

²¹ *Center of Indian Trade Unions V. Union of India*, AIR 1997 Bom 79.

²² *Bhagat Ram V. State of Rajasthan*, (1972) 2 SCC 466.; *Supra note 11*.

²³ AIR 1960 SC 1186.

petitioner and if those grounds aren't rightly perused or dismissed by the High Court on merits then those can be brought before the Supreme Court through Art. 32²⁴. Also, *Habeas Corpus* petitions don't fall under the category to which *Res Judicata* applies and this has been said in a rhetorical way by the Supreme Court in the case of *Ghulam Sarwar V. Union of India*²⁵, where the court said that if the court fails to protect the liberty of an individual who is illegally detained then this would raise questions on the constitutional protection guaranteed to the citizens.

Application of this doctrine on Special Leave petitions and in *Limine*:

It is a noteworthy point that if a dismissal is made in *Limine* of a Special Leave petition or of any other petition then those decisions cannot be brought under the ambit of *Res Judicata*. Dismissal in *Limine* means that a petition is dismissed by only writing 'petition dismissed' and not by providing merits and reasons though it is deemed here that the court has observed the contentions made by the parties and then dismissed the case but by not providing the grounds and reasons for the dismissal of the case, it cannot be said that the court has given reasonable consideration to the said issues²⁶ but if a Special Leave Petition is dismissed by not providing the grounds or in *Limine* as it was observed in the case of *Workmen V. Board of Trustees, Cochin Port Trust*²⁷, then it is deemed that the contentions raised by the parties on the merits of the case have been rejected by the Supreme Court.

Important cases in India

1. Satyadhyan Ghosal V. Deorjin Debi²⁸

In this very case the Supreme Court elucidated *Res Judicata* in the most simplest way and in the words of Justice Das Gupta- '*Res Judicata* is based on the need of giving finality to judicial decisions and primarily it applies between past litigation and future litigation.

2. Daryao V. State of Uttar Pradesh²⁹:

This was a historic case that was decided by the Supreme Court and in the instant case it was established that the Doctrine of *Res Judicata* has universal applicability and the Supreme Court enunciated a wider perspective of this doctrine. Herein a writ was filed before the Allahabad High Court under article 226 of the Constitution but unfortunately the case was dismissed by the High Court and then the petitioners again filed a writ under article 32 of the

²⁴ *Amalgamated Coal fields ltd. V. Janpada Sabha*, AIR 1964 SC 1013

²⁵ AIR 1967SC 1335.

²⁶ *Supra note 11.*

²⁷ AIR 1978 SC 1283.

²⁸ AIR 1960 SC 941.

²⁹ *Supra note 11.*

Constitution but the defendants herein raised a plea that the *Res Judicata* applies here and the Supreme Court agreed to the contentions of the defendants and stated that if a writ under Art. 226 is dismissed with merits and not in *Limine* then the suit will be barred from Subsequent writ under Art. 32.

IV. EXCEPTIONS TO THIS DOCTRINE

As stated earlier, there exist some conditions that are required to be fulfilled so as to take the defense of *Res Judicata*, some of those exceptions are as follows:

- *Res Judicata* doesn't apply to *Habeas Corpus* petitions and if the courts are dismissing the petitions then they're obliged to give proper reasoning behind the dismissal.
- *Res Judicata* doesn't apply to income tax and sales tax cases, because those are based on periodical assessments and transactions.
- In some of the cases it is also observed that *Res Judicata* doesn't apply to Public interest litigations, it will be applied only if the same cause is made out in the case.

V. CONCLUSION

By analyzing the concepts mentioned above, it is pertinent to note that *Res Judicata* is a rule that is established for a greater good of the society and also for the efficient working of a country's governance system. The stand of the Judiciary on this very doctrine appears to be much of a liberal and constructive one, wherein some of the cases, the judiciary has forthrightly explained the wide ambit of this very Doctrine and has justified the stand of this doctrine by not allowing the clock to move back again.

But in my opinion, I still feel the lacuna that this doctrine leaves and those should be addressed by bringing a much specific commentary, so that justice isn't delivered discretionarily but in a uniform way, such that the Applicability of Section 11 of the CPC should be correspondence to the principles of natural justice.
