

Pankajakshi (Dead) v. Chandrika (SC)(Constitution Bench), 2016 SupremeCourtOnline 0107, (2016)6 SCC 157, 2016 AIR (SC) 1213

- Section 23 of the Travancore-Cochin High Court Act prevails over Section 98(2) of the Code of Civil Procedure in Kerala.
- This rule applies when there is a difference of opinion between two judges of the Kerala High Court in any appeal, be it civil, criminal, or otherwise, before them.
- Appeals before the Kerala High Court that have a difference of opinion between two judges will be dealt with in accordance with Rule 23 of the Travancore-Cochin High Court Act.
- Section 98(3) of the Civil Procedure Code was introduced in 1928 when all the High Courts in British India were governed only by the Letters Patent establishing them.
- The reason for the introduction of Section 98(3) goes back to the landmark judgment of the Privy Council in Bhaidas' case and various other judgments following the said landmark judgment.
- Section 97(1) of the Civil Procedure Code (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, 1918.
- Letters Patent is a special law for the High Court concerned, and in case of a conflict between the two, the special law prevails.
- Whenever there is a special, local, or other law which deals with any matter specified in the Code, those laws will continue to have full force and effect notwithstanding that they deal with the same matter as is contained in the Code of Civil Procedure.
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2016 SupremeCourtOnline 0107

Supreme Court Of India

(Constitution Bench)

Before:- Anil R. Dave, Kurian Joseph, Shiva Kirti Singh, Adarsh Kumar Goel and R.F. Nariman, JJ.

PANKAJAKSHI (DEAD) Through L.Rs. & Others – Appellants

Versus

CHANDRIKA & Others – Respondents

Civil Appeal No. 201 of 2005.

25.2.2016.

Civil Procedure Code, 1908 Section 98(2) Travancore-Cochin High Court Act,

1125, Section 23 - When there is a difference of opinion between two judges of the Kerala High Court in any appeal, be it civil, criminal, or otherwise, before them, Section 23 of the Travancore-Cochin High Court Act alone is to be applied - This rule displaces the general rule which applies under section 98(2) of the Code of Civil Procedure to all Courts and in civil proceedings only - appeals before the Kerala High Court that have a difference of opinion between two judges will be dealt with in accordance with Rule 23 of the Travancore-Cochin High Court Act. (2002) 5 SCC 548 Overruled - (1995) 5 SCC 119 Distinguished - AIR 1975 Gujarat 39 (FB) Approved. [Para 37, 47, 48 and 51]

Civil Procedure Code, 1908 Section 98(3) Scope of object of introducing of Section 98(3), C.P.C - Section 98(3) was introduced in 1928 when all the High Courts in British India were governed only by the Letters Patent establishing them - The reason for the introduction of Section 98(3) goes back to the landmark judgment of the Privy Council in Bhaidas' case and various other judgments following the said landmark judgment - In Bhaidas' case, the Privy Council had to decide whether clause 36 of the Letters Patent would prevail over Section 98 of the Code of Civil Procedure Clause 36 of the Letters Patent was similar to Section 23 of the Travancore-Cochin High Court Act - The Privy Council held that there is no specific provision in section 98, and there is a special form of procedure which was already prescribed. That form of procedure section 98 does not affect. The consequence is that the appellant is right in saying that in this instance a wrong course was taken when this case was referred to other Judges for decision, and he is technically entitled to a decree in accordance with the judgment of the Chief Justice. This view of the section is not novel, for it has been supported by judgments in Madras, in Allahabad and in Calcutta . [Para 40 and 41]

Punjab Courts Act, 1918, Section 41 - Civil Procedure Code, 1908 Section 97 Section 97(1) of C.P.C. (Amendment) Act, 1976 has no application to Section 41 of Punjab Courts Act - Kulwant Kaur's (2001) 4 SCC (262) is not correct in law. [Para 25- 27]

Special law and general law - Travancore-Cochin High Court Act and the Code of Civil Procedure - Letters Patent is a special law for the High Court concerned, and in case of a conflict between the two, the special law prevails - Substituting the words "High Court's Act" for "Letters Patent" and concludes that the High Court's Act is a special law for the High Court concerned, while the Code of Civil Procedure is a general law applicable to all courts - *Hemalatha's* case has been wrongly decided and should be overruled. [Para 35]

Civil Procedure Code, 1908 Section 4(1) Scope of 4(1) of C.P.C. - Special Law and local law and local law - Whenever there is a special, local, or other law which deals with any matter specified in the Code, those laws will continue to have full force and effect notwithstanding that they deal with the same matter as is contained in the Code of Civil Procedure - From this, however, an exception is

carved out, and that exception is that there should not be any “specific provision to the contrary” contained in the Code itself - At one point in time it was not clear as to whether such specific provision should be in the Code itself or could also be contained in any other law. *Mati Lal Saha v. Chandra Kanta Sarkar & Others, AIR 1947 Calcutta 1*, the Calcutta High Court held that such specific provision to the contrary could be contained in a third Act, namely, the Presidency Small Causes Courts Act, and need not be contained even in the two competing Acts, namely the Code of Civil Procedure and a Bengal Agricultural Debtors Act. [Para 17, 18]

Travancore-Cochin High Court Act, 1125, Sections 18, 21 and 23 - The C.P.C does not corresponds to the Travancore-Cochin High Court Act. [Para 14]

Per Kurian Joseph, J :-

54. Legislature has thought it fit to allocate certain matters to be heard by a Single Judge and a few by a Bench of not less than two Judges, in common parlance what is known as Single Bench and Division Bench. A matter is stipulated to be heard by a Division Bench on account of the seriousness of the subject matter and for enabling two or more heads to work together on the same. Sitting in Division Bench is not as if two Single Judges sit. In Division Bench or in a Bench of larger strength, there is a lot of discussion in-between, clarifications made, situations jointly analysed and positions in law getting evolved.

55. Under Section 98 of The Civil Procedure Code, 1908 (for short, ‘the CPC’), when the Judges differ in opinion on a point of law, the matter is required to be placed for opinion of the third Judge or more of other Judges as the Chief Justice of the High Court deems fit and the point of law on which a difference has arisen is decided by the majority and the appeal is decided accordingly. It is to be seen that under the proviso to section 98 (2) of the [CPC](#), hearing by a third Judge or more Judges is only on the point of law on which the Division Bench could not concur. There is no hearing of the appeal by the third Judge or more Judges on any other aspect. Under section 98 (2) of the CPC, in case an appeal is heard by a Division Bench of two or more Judges, and if there is no majority and if the proviso is not attracted, the opinion of that Judge or of the equally divided strength in the Bench which concurs in a judgment following or reversing the decree appealed from, such decree shall stand confirmed.

56. Kerala High Court Act, 1958 has provided for the powers of a Bench of two Judges under Section 4. It is clarified thereunder that if the Judges in the Division Bench are of opinion that the decision involves a question of law, the Division Bench may order that the matter or question of law be referred to a Full Bench. Needless to say, it should be a question of law on which there is no binding precedent.

57. Under Section 23 of the Travancore-Cochin High Court Act, 1125, if the Division Bench disagrees either on law or facts, the Chief Justice is required to refer the matter or matters of disagreement for the opinion of another Judge and the case will be decided on the opinion of the majority hearing the case.

Per Kurian Joseph, J :-

60. Under the Travancore-Cochin High Court Act, 1125, Section 23 enables the Chief Justice to refer for the opinion of another Judge, the matter or matters on which the Division Bench has disagreed either on law or on facts and the appeal will be ultimately decided on the view taken by that Judge sitting and hearing the appeal alone. [Para 55 to 60]

Criminal Procedure Code, 1973 Section 392 - Under Section 392 of the Cr.P.C., the situation again is different. In case, the Division Bench is divided in their opinion, the appeal with the opinions should be laid before another Judge of that Court and the appeal will be decided clearly on the basis of the opinion rendered by that Judge hearing the matter sitting alone. However, the proviso under Section 392 of the Cr.P.C. enables any one of the Judges of the Division Bench or the third Judge to order the appeal to be heard by a larger Bench of Judges. (*Per Kurian Joseph, J*) [Para 61]

Civil Procedure Code, 1908 Section 98(2) - If the purpose behind the requirement of a matter to be heard by a Bench of not less than two Judges is to be achieved, in the event of the two Judges being unable to agree either on facts or on law, the matters should be heard by a Bench of larger strength. Then only the members of the Bench of such larger strength would be able to exchange the views, discuss the law and together appreciate the various factual and legal positions. The conspectus of the various provisions, in my view, calls for a comprehensive legislation for handling such situations of a Bench being equally divided in its opinion, either on law or on facts, while hearing a case which is otherwise required to be heard by a Bench of not less than two Judges, both civil and criminal. It is for the High Court and the Legislature of the State concerned to take further steps in that regard. (*Per Kurian Joseph, J*) [Para 63]

Cases Referred :-

1. *A.B. Abdulkadir v. State of Kerala*, 1962 Suppl. 2 SCR 741.
2. *Anwari Basavaraj Patil v. Siddaramaiah*, (1993) 1 SCC 636.
3. *Becharam v. Purna Chandra*, AIR 1925 Calcutta 845 (FB).
4. *Bhaidas Shivdas v. Bai Gulab*, 23 Bom LR 623 : 48 Ind App 181 : AIR 1921 Privy Council 6.
5. *Bhuta v. Lakadu Dhansing*, AIR 1919 Bombay 1 (FB).
6. *Biram Sardar v. Emperor*, AIR 1941 Bombay 146 : AIR 1939 Privy Council 47 : 1939 IA 66 : 40 CriLJ 364.
7. *Bokaro and Bangur Ltd. v. State of Bihar*, AIR 1966 Patna 154.

8. *Debi Prasad v. Gaudham Rai*, AIR 1933 Patna 67.
9. *Dhanaraju v. Motilal*, AIR 1929 Madras 641 (FB).
10. *Gopal Sardar v. Karuna Sardar*, (2004) 4 SCC 252.
11. *Gurbinder Singh v. Lal Singh*, AIR 1959 Punjab and Haryana 123.
12. *Hukumdev Narain Yadav v. Lalit Narain Mishra*, (1974) 2 SCC 133.
13. *Immidiseti Dhanaraju v. Motilal Daga*, AIR 1929 Madras 641.
14. *Jelejar Hormosji Gotla v. The State of Andhra Pradesh*, AIR 1965 Andhra Pradesh 288.
15. *Krishan Prasad Gupta v. Controller, Printing & Stationery*, (1996) 1 SCC 69.
16. *Kulwant Kaur v. Gurdial Singh Mann (dead) by LRS*, (2001) 4 SCC 262.
17. *Lachman Singh v. Ram Lagan Singh*, (1904) ILR 26 All 10.
18. *Life Insurance Corporation of India v. D.J. Bahadur*, (1981) 1 SCC 315.
19. *Maru Ram v. Union of India*, (1981) 1 SCC 107.
20. *Mati Lal Saha v. Chandra Kanta Sarkar*, AIR 1947 Calcutta 1.
21. *Mt. Sardar Bibi v. Haq Nawaz Khan*, AIR 1934 Lahore 371.
22. *Muhammad Ishaq Khan v. Muhammad Rustam Ali Khan*, ILR 40 All 292 : (AIR 1918 Allahabad 412).
23. *Nundeeapat Mahta v. Urquhart*, (1870) 4 Beng LR 181
24. *P.S. Sathappan v. Andhra Bank Ltd.*, (2004) 11 SCC 672.
25. *P.V. Hemalatha v. Kattamkandi Puthiya Maliackal Saheeda*, AIR 2002 Supreme Court 2445 : (2002) 5 SCC 548.
26. *Prafulla Kamini v. Bhabani Nath*, AIR 1926 Calcutta 121.
27. *Rajnarain v. Saligram*, (1948) ILR 27 Pat 332.
28. *Roop Lal v. Lakshmi Doss*, (1906) ILR 29 Mad 1.
29. *Shushila Kesarbhai v. Bai Lilavati*, AIR 1975 Gujarat 39 (FB).
30. *Suraj Mal v. Horniman*, 20 Bom LR 185 : AIR 1917 Bombay 62 (SB).
31. *Suresh Chandra v. Shiti Kanta*, AIR 1924 Calcutta 855.
32. *Tej Kaur v. Kirpal Singh*, (1995) 5 SCC 119.
33. *Custodian of Evacuee Property, Bangalore v. Khan Saheb Abdul Shukoor, etc.*, 1961 3 SCR 855.
34. *Thomas Challoner v. Henry WF Bolikow*, (1878) 3 AC 933.
35. *Veeraraghava Reddy v. Subba Reddy*, ILR 43 Mad 37 : AIR 1920 Madras 391 (SB).
36. *Venkatasubbiah v. Venkatasubbamma*, AIR 1925 Madras 1032.
37. *Vinita Khanolkar case*, (1998) 1 SCC 500.
38. *Sharda Devi case*, (2002) 3 SCC 705.
39. *Shah Babulal Khimji case*, (1981) 4 SCC 8.

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