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Civil Procedure Code, 1908, Section 11 – res judicata – Interlocutory order – Application of principle of res judicata.

Interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status qo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of res judicate does not apply to the findings on which these orders are based, though if application were made for relief on the same basis after the same has once been disposed of the court would be justified in rejecting the same as an abuse of the process of Court. There are other orders which are also interlocutory, but would fall into a different category. The difference from the ones just now referred to lies in the fact that they are not directed to maintaining the status quo, or to preserve the property pending the final adjudication, but are designed to ensure the just, smooth, orderly and expeditious disposal of the suit. They are interlocutory in the sense that they do not decide any matter in issue arising in the suit, nor put an end to the litigation. The case of an application under Order IX, Rule 7, would be an illustration of this type. If an application made under the provisions of that rule is dismissed and an appeal were filed against the decree in the suit in which such application were made, there can be no doubt that the propriety of the order rejecting the reopening of the proceeding and the refusal to relegate the party to an earlier stage might be canvassed in the appeal and dealt with by the appellate court. In that sense, the refusal of the court to permit the defendant to “set the clock back” does not attain finality. But what we are concerned with is slightly different and that is whether the same Court is finally bound by that order at later stage, so as to preclude its being reconsidered. Even if the rule of res judicata does not apply, it would not follow that on every subsequent day on which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on the basis of identical facts. The principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the Court does not however necessarily rest on the principle of res judicata. Thus if an application for the adjournment of a suit is rejected, a subsequent application for the same purpose even if based on the same facts, is not barred on the application of any rule of res judicata, but would be rejected for the same grounds on which the original application was refused. The principle underlying the distinction between the rule of res judicata and a rejection of the ground that no new facts have been adduced to justify a different order is vital. If the principle of res judicata is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issues, where as in the other case, on proof of fresh facts, the court would be competent, nay would be bound to take those into account and make an order conformably to the facts freshly brought before the court

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