

In **State of Punjab v. Davinder Pal Singh Bhullar & Ors.**; 2011 (14) SCC 770; the Court explained the doctrine of waiver on the basis of earlier pronouncements which are taken note of discussed in the following manner:

“37. In Manak Lal this Court held that alleged bias of a Judge/official/Tribunal does not render the proceedings invalid if it is shown that the objection in that regard and particularly against the presence of the said official in question, had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of its right to challenge the presence of such official. The Court further observed that: (SCC p. 431, para 8) “8. ... waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question.”

38. Thus, in a given case if a party knows the material facts and is conscious of his legal rights in that matter, but fails to take the plea of bias at the earlier stage of the proceedings, it creates an effective bar of waiver against him. In such facts and circumstances, it would be clear that the party wanted to take a chance to secure a favourable order from the official/court and when he found that he was confronted with an unfavourable order, he adopted the device of raising the issue of bias. The issue of bias must be raised by the party at the earliest. (See Pannalal Binjraj v. Union of India and P.D. Dinakaran (1) v. Judges Enquiry Committee.)

39. In Power Control Appliances v. Sumeet Machines (P) Ltd. this Court held as under: (SCC p. 457, para 26) “26. Acquiescence is sitting by, when another is invading the rights.... It is a course of conduct inconsistent with the claim.... It implies positive acts; not merely silence or inaction such as involved in laches. ... The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant....”

40. Inaction in every case does not lead to an inference of implied consent or acquiescence as has been held by this Court in P. John Chandy & Co. (P) Ltd. v. John P. Thomas. Thus, the Court has to examine the facts and circumstances in an individual case.

41. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim [pic]or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. (Vide Dawsons Bank Ltd. v. Nippon Menkwa Kabushiki Kaisha, Basheshar Nath v. CIT, Mademsetty Satyanarayana v. G. Yelloji Rao, Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh, Jaswantsingh Mathurasingh v. Ahmedabad Municipal Corpn., Sikkim Subba Associates v. State of Sikkim and Krishna Bahadur v. Purna Theatre.)

42. This Court in Municipal Corpn. of Greater Bombay v. Dr Hakimwadi Tenants’ Assn. considered the issue of waiver/acquiescence by the non-parties to the proceedings and held: (SCC p. 65, paras 14-15) “14. In order to constitute waiver, there must be voluntary

and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case. ...