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Research Article

LIMITATIONS ON THE INTERPRETIVE ROLE OF THE COURTS

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A B S T R A C T

The article is critical analysis of the Apex Court judgment in Vaishali Abhimanyu Joshi v Nanasaheb Gopal Joshi with a purpose to identify limitations on the interpretive role of the Courts. The case is a classic illustration of how the Courts, sometimes, probably in their over zealously abandon the institutional essentialist outlook in lawmaking under the garb of interpretation. Here the argument is adherence to institutional essentialism in some cases particularly where the parliament has in clear and express words carved out exceptions. Primacy must be accorded to the law making role of the Legislature.

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INTRODUCTION

The doctrine of separation of power as posited by Montesquieu[1], is rooted on the premise that political liberty and progress depends on the separation of powers between the Executive, Legislature and the Judiciary.[2]The principle reinforces the rule of law which is opposed to despotism. Montesquieu separation of powers led to greater activity and independence of the legislature in the field of law making. The Indian Legal system does not adopt the principle of separation of powers; however each organ is supreme within the fields allocated to them under the Constitution, subject to constitutional limitations[3].Thus the Parliament of India is constitutionally empowered to make laws while the judiciary is constitutionally empowered to adjudicate and interpret the laws.

The doctrine has a special significance in the context of statutory interpretation as it has significantly influenced both judicial and juristic exposition on the role perception of each organ of the State. If law making is the exclusive domain of the legislature then the task of the judiciary whilst undertaking the task of interpretation is no more than to fathom the intention of the legislature and apply it to the case before it.[4] The Courts have adopted a varied canons of interpretation while performing their interpretive role such as Sententia Legis, reading the Statute as a whole etc.

One principle which has dominated Statutory Interpretation is "Sententia Legis" that is the intention of the Parliament in enacting a particular law. It is a common assumption that the Courts will make every effort to discover the Sententia Legis and give effect to the same. In fact the Court is supposed to

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[1]Montesquieu 'Spirit of law' published in 1748 is one of the great classic of political and legal literature which has rendered memorable services to legislation and legislatures

[2]M.Ruthnasamy Legislation Principles and Practice D.K Publishing House,.1974 pg 27

[3] Article 13 forbids legislation inconsistent with or in derogation of the fundamental rights. Articles 245 and 246 define the scope of legislative power and distribute it between the Union Parliament and State Legislatures.

[4]N.S Bindra "Interpretation of Statute"(ed) AmitaDhanda, Lexis Nexis 2014 pg 3

pay due deference to the legislative intent as it is meant to exemplify the will of the people. And thus the most fair and rational method of interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of law[5]. The legislative intent should be given effect as is expressed in the language of the provisions. The construction must not, be strained to include cases which are excluded by the legislature. The Court should not traverse the legislative intent unless there is a blatant ambiguity or obscurity. A strict adherence to institutional essentialism in some cases should be adopted by the Courts. Here the author does not wish to adhere to the old Blackstonian doctrine that judges never make the law, they only find it. Here the argument is adherence to institutional essentialism in some cases particularly where the parliament has in clear and express words carved out exceptions.

The Apex Court judgment in Vaishali Abhimanyu Joshi[6] case is a classic illustration of how the Courts , sometimes, probably in their over zealously abandon the institutional essentialist outlook in lawmaking under the garb of interpretation. The article is critical analysis of this judgment with a purpose to identify certain limitations on the interpretive role of the Courts.

A light on some necessary facts is necessary to understand the issues raised in the case. Abhimanyu in 2000 got married to the appellant- son of the respondent and started residing in the suit flat along with her husband. The suit flat was allotted to the respondent by the society in the year 1971.Subsequently the husband of the Appellant left the suit flat and shifted to live with the respondent, father in law of the appellant, who was residing along with his wife in another flat nearby. A suit for divorce was filed by the appellant on basis of cruelty against her husband. Subsequently a notice was sent on behalf of the respondent to the appellant to revoke the gratuitous license and asking the appellant to stop the use and occupation of the suit flat. The appellant responded to the notice and there after the respondent filed a suit in the Small Causes Court, Pune seeking an order of mandatory injunction from the Court to restrain the appellant from using and occupying the suit flat.

The appellant filed the written statement and contended that the suit flat was intended to be used by the joint family as a joint family property. In the written statement the appellant filed a counter claim and prayed for a declaration that the suit flat is a shared household and also prayed for an order of residence in the suit flat under section 19, of Protection of Woman from Domestic Violence Act 2005.

The case raises an intriguing question of law pertaining to interpretation of section 26 of the Protection of Women from Domestic Violence Act 2005 qua the Provincial Small Causes Act 1887.

At this juncture it is necessary to throw light on the object and purpose of the above mentioned legislations. The Provincial Small Causes Courts Act 1887 was enacted to create a separate court for dealing with small causes. The object obviously was that small causes may be dealt with expeditiously. A summary procedure was also envisaged for dealing with small causes. Moreover, the Act provided for only one appeal to the District Court & thereafter revision to High Court. Further the Small Causes Court is not competent to take cognizance of certain suits. It has limited jurisdiction and no substantive issues can be decided by the Small Causes Court. The Act has been amended in the State of Maharashtra in 1984 whereby Section 26 is inserted. Section 26 of the said Act, specifically provides for jurisdiction of the Small Causes Court to entertain suits or proceedings between licensor and licensee landlord and tenant, for recovery of possession of immovable property and license fee or rent.

The Protection of Women from Domestic Violence Act 2005 was enacted with a purpose to provide more effective protection of rights to women guaranteed under the Constitution who are the victims of violence occurring within the family and to give effect to International Conventions. The Act also provides for authorities under the Act such as the Protection officers and the Jurisdiction is vested with the Magistrate for availing various reliefs claimed under the Act. The question of law involved in this case is whether the counter claim filed by the Appellant seeking right of residence in accordance with Section 19 of the Protection of Women from Domestic Violence Act 2005 Act in a suit filed by the respondent under the Provincial small Causes Court Act 1887 is maintainable.[7]

The Appellant relied on section 26 of 2005 Act which enables the aggrieved person to claim reliefs in any other suits or legal proceedings and contended that the 2005 Act is a special law enacted to provide various remedies and a special law according to settled rules of interpretation shall have an overriding effect over the Provincial Small Causes Court Act 1887, which is a general law. Further it is the argument of the Appellant that Section 3(c) of the 1887 Act saves the applicability of local law or any special law and therefore the 2005 Act being a special law should be given a full effect and section 3 of the 1887 Act itself carves out an exception. Further in case of conflict between the special and general statute the special statute will have an overriding effect.[8]

The respondent refuted the contentions and forcefully argued that the counter claim is barred by section 15 read with schedule II Item no 11, 17,19 and moreover emphasized on the fact that the Small Causes Court has a limited jurisdiction. Further under Order L of Civil Procedure Code limited provisions of CPC are made applicable which suggests that Provincial Small Causes Court cannot decide any substantive issues. The respondent also drew attention to Section 12 and 18 of the 1887 Act gives certain powers to the Registrar who is the chef Ministerial Officer of the Court and is empowered to try certain suits which a judge of the Small Causes Court by general or special order directs ; and argued that this power given to the Registrar to decide certain issues militates against

[5]N.S Bindra "Interpretation of Statutes" ed AmitaDhandaLexix Nexis 2014 pg 9

[6] AIR 2017 SC 2926

[7] AIR 2017 SC 2926 para 2

[8] AIR 2017 SC 2926,para 9

that substantive issues cannot be decided by the Small Causes Court[9].

Justice Sikri and Justice Bhusan allowed the appeal. and held that the embargo under Item 11 Schedule II read with section 15 Act 1887 stands whittled down and engulfed by section 26 of the of the 2005 Act[10].

The Apex Courts assessment was based on two principles

Firstly the opening language of section 26 of the 1887 Act which begins with the words "Notwithstanding…which is a non obstante clause and a non obstante clause overrides all the contrary provisions contained in the 1887 Act. The Court conceded that the relief claimed by the Appellant in the Court of Small Causes falls within the meaning of section 26 of the 1887 of the Act.

Secondly proceeding before the Small Causes Court is a legal proceeding within the meaning of section 26(1) Act 2005 and that the Small Causes Court is a Civil Court. Therefore on the strength of section 26 any relief available under section 18 to 22 of Act 2005 can be sought by the aggrieved person[11].

The Court further remarked that of the 2005 Act has to be interpreted in a manner to effectuate the very purpose and object of the act and observed that unless the claim of the aggrieved person seeking any order as contemplated under 2005 Act is expressly barred from consideration by a civil court the court should not read in a bar in consideration of any such claim in any legal proceeding before the civil Court.[12]

The Apex Court has erred in ruling that the Small Causes Court has jurisdiction to entertain the counter claim filed by the Appellant seeking right of residence in accordance with Section 19 of the Protection of Women from Domestic Violence Act 2005 Act in a suit filed by the respondent under the Provincial Small Causes Court Act 1887.

Section 15(1) of of the Provincial Small Court Act 1887 is one of the excepted categories and does not empower the Small Causes Court to entertain and try suits for the determination or enforcement of any other right to or interest in immovable property. The legislative intent is clearly and strongly expressed in section 15 of 1887 Act; read with schedule II of the Act that if the suit is triable by the Small Causes Court then it cannot be tried by any other court. The Court has overlooked Sec.16 which provides for exclusive jurisdiction of Small Causes Court. Sec.26 (2) of the 2005 provides for the relief that can be granted by Civil, Criminal or Family Court but it does not specifically state about the Small Causes Court. The Apex Court ruling has enlarged the jurisdiction of Small Causes Court which is definitely contrary to the legislative mandate of section 15 (1) read with schedule II.

Moreover if we interpret "any court" to include Small Causes Court; then what about the "competent authority", which is not a court but has trappings of civil court and deals with matters, pertaining to residential leave & license agreements between the parties. The interpretation of Apex Court could even lead to abuse of process and smart litigants are bound to misuse the law.

In the alternate the Apex Court failed to appreciate the fact that the 2005 Act does not indicate in any way nor is there any provision under the 2005 Act conferring jurisdiction on the Small Causes Court Act to entertain and try disputes falling under the 2005 Act.

Further with reference to Sec.15 & Schedule II , the Supreme Court has overlooked Item no.19 with regard to suits for declaratory Decree. The Appellant has sought declaration as regards "shared household" as can be gathered from facts of the case. Also determination of right or interest is covered under Item no.11. The relief claimed by the Appellant does fall under Item nos.4 & 17.Most importantly the reasoning given by the Apex Court, violates rules of interpretation as it is amounts to addition of or supplying words to the Statute. The Apex Court has sought to recast the law which was not called for; particularly in the case at hand no ambiguity or obscurity was found within the law. Admittedly every ruling of the Court has a consequences may be constitutional, social, economic or political. The Court should have visualized the dangers in such a ruling. The Court has in fact vested jurisdiction where none is provided by the Legislature.

Further the Apex Court has overlooked the valuation aspect as mentioned in Sec.15(2) of the Act. If the provisions of Maharashtra Court Fees Act,1959 are perused, the valuation of suit is bound to exceed Rs.500/- as each relief is required to be evaluated separately and there is declaration as regards status and also injunction that is claimed in the case. Further if the relevant provisions of Sec.6 of Maharashtra Court Fees Act,1959 if applied, the valuation of suit will be in excess of Rs.500/-.

The Courts have no power to defeat the plain intention of the legislature. Primacy must be accorded to the law making role of the Legislature. The Courts must recognize that there are limitations on its interpretative role. The Courts must resist the temptation to change the law under cover of interpretation. If the Courts use the power to alter laws which they may not like or to make new laws which they think should be made, that would be a corrupt use of their power. Courts have to observe constant vigilance against such corrupt use of their powers[13].

CONCLUSION

Thus the proposition that legislatures are law makers and the Courts are only interpreters is at the heart of institutional essentialism. Hence it is not the perspective of the Court but the intention of the legislature which is a guide to interpretation. There is an intimate connection between judicial process and statutory interpretation. The Courts have to perceive their role within this structural segregation. The Apex Court in Vaishali Abhimanyu Joshi case has undertaken a deliberative interpretation even though no ambiguity or obscurity was found within the law. The court in fact

[9] Ibid para 10
[10] Ibid para 30
[11] Ibid para 36
[12] Ibid para 36

[13] N.S.Bindra Interpretation of Statute,(ed) Amita Dhanda,Lexis Nexis,2014 pg 20

proceeded to confer jurisdiction on the Provincial Small Causes Court to decide counter claim for a relief of residence order ; which was not the intention of the Legislature Undoubtedly the Courts may exercise their law making power and trench on the legislative choices but certainly this must be done in public interest.

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