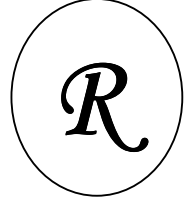




IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JANUARY, 2025



BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

REVIEW PETITION NO.598 OF 2024

IN

MISCELLANEOUS FIRST APPEAL No.3185 OF 2017

BETWEEN:

M/S RENRAM FASHIONS INDIA PVT LTD.,
NO.1/1, 1ST CROSS
SOMESHWARA NAGAR INDUSTRIAL SUBURB
APMC YARD, YESHWANTHPURA
BANGALORE 560 022
REP. BY TIS MANAGING DIRECTOR
SRI VEERA MARE GOWDA

...PETITIONER

(BY SRI JOSEPH KANIKARAJ, ADVOCATE)

AND:

THE ESI CORPORATION
SRO PEENYA
HARINI TOWERS, 3RD MAIN
3RD CROSS, INDUSTRIAL SUBURB
YESHWANTHPUR
BENGALURU - 560 2022
REP. BY ASG - SHASHI KANTH C

...RESPONDENT

(BY SRI C SHASHIKANTHA, ADVOCATE)





THIS REVIEW PETITION IS FILED UNDER ORDER 47 RULE 1 OF CPC, PRAYING TO REVIEW THE ORDER DATED 19.11.2024 PASSED IN MFA NO.3185/2017 AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

ORAL ORDER

This review petition is filed praying this Court to review the order dated 19.11.2024 passed in MFA No.3185/2017.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case is that the respondent passed an order on 13.06.2014 under Section 85-B of the Employees State Insurance Corporation Act directing the petitioner to pay a sum of Rs.26,34,569/- towards damages for the delay in payment of contribution for the period from January 2009 to June 2013. The same



was challenged before the Employees State Insurance Court, Bengaluru in ESI No.27/2014 and the ESI Court vide order dated 13.06.2014 was pleased to allow the said petition in part reducing the damages from Rs.26,34,569/- to Rs.6,00,000/-. The respondent challenged the said order in MFA No.3185/2017 before this Court and this Court having heard the respective counsel for the parties was pleased to allow the said appeal vide order dated 19.11.2024 by setting aside the order of the ESI Court passed in ESI Application No.27/2014.

4. Now the respondent/review petitioner filed the present review petition under Order 47 Rule 1 of CPC contending that the order dated 19.11.2024 passed by this Court suffers from want of jurisdiction. It is contended that admittedly, the appeal in MFA No.3185/2017 is lack of jurisdiction since the value of the appeal is Rs.26,34,569/- and the counsel referring Section 5(i) of the Karnataka High Court Act, 1961 would vehemently contend that all first appeals against a decree or order passed in a suit or



other proceedings, the value of subject matter of which exceeds Rs.15,00,000/- shall be heard by a Bench consisting of not less than Two Judges of the High Court and other first appeals shall be heard by a Single Judge of the High Court. The counsel referring this provision would vehemently contend that this Court is not having jurisdiction to hear and dispose of the appeal. Hence, it requires interference of this Court. The counsel also brought to notice of this Court that though the amendment is brought on 19.06.2024 regarding this aspect is concerned, the same has been stayed and the same is not given any effect. The counsel also would vehemently contend that this Court also passed the resolution stating that when the order is stayed in the judicial side regarding amendment is concerned, the same has not been given effect. The counsel also would vehemently contend that Section 21 of CPC cannot be invoked and the High Court Act, 1961 overrides the CPC and hence, the contention of the respondent cannot be accepted.



5. The counsel for the review petitioner in support of his arguments relies upon the judgment passed by this Court in **MFA No.102577/2014 dated 18.04.2016** wherein also discussed Section 19 of the Civil Courts Act as well as Section 5 of the High Court Act, 1961 and also considered the material available on record and comes to the conclusion that when first appeals lie to the High Court, all such first appeals, whose value of the subject matter exceeds Rupees Fifteen Lakhs, shall be heard by a Bench of not less than two judges of this Court, and other first appeals shall be heard by a Single Judge of this Court.

6. The counsel also relied upon the judgment reported in **AIR 1990 CALCUTTA 168** in the case of **SOHAN LAL BAID vs STATE** wherein also discussion was made with regard to Article 225 of the Constitution of India and held that power to hear specified classes of case, it is derived only from allocation of business among Judges made by Chief Justice, case not covered by such



allocation, cannot be heard by Judges sitting singly or in Division Courts.

7. The counsel also relied upon the judgment reported in **(1998) 1 SCC 1** in the case of **STATE OF RAJASTHAN vs PRAKASH CHAND AND OTHERS** wherein discussed with regard to allocation of work is concerned and brought to notice of this Court paragraph 59 wherein elaborate discussion was made regarding the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals and when the work was allotted to particular Judges by the Chief Justice and if it is not considered and if there is any exercising of powers, it amounts to anarchy and chaos and hence, the order passed by this Court it amounts to without jurisdiction and hence, order requires to be reviewed.

8. Per contra, the learned counsel appearing for the respondent brought to notice of this Court the very proviso of Section 21 of CPC. The counsel referring this



Section would vehemently contend that when the matter was heard without any objection and objection ought to have been taken in the Court at first instance at the earliest possible opportunity and in all cases where issues are settled or before such settlement and unless there has been a consequent failure of justice. The counsel referring this Section would contend that if there is any objections, the same ought to have been raised at the initial stage and Section 21 of CPC is applicable in all proceedings and the very contention of the petitioner's counsel that the High Court Act, 1961 overrides the CPC cannot be accepted. The counsel also would vehemently contend that unless the review petitioner makes out a case for failure of justice, cannot seek for review of the order. The counsel would vehemently contend that the ground which has been urged in the petition is only with regard to the pecuniary jurisdiction and no other grounds are urged before this Court. The counsel would vehemently contend that even with regard to failure of justice as well as prejudice was not pleaded in the review petition and only



ground urged in the review petition is with regard to pecuniary jurisdiction. Hence, the very contention of the counsel for the review petitioner cannot be accepted.

9. The counsel for the respondent in support of his arguments relied upon the judgment of this Court reported in **1999 (2) KCCR 1379** in the case of **SHRI AMARESHWAR FLOUR MILLS vs JAMBOO KUMAR AND OTHERS** and brought to notice of this Court paragraph 5 and referring this judgment would vehemently contend that the Court has to take note of the fact that in cases where the Court lacks inherent jurisdiction to pass a decree it may be said to be nullity and may not be executable and objection to that effect against execution of decree which is nullity and that account non-executable may be raised but where objections to executability of decree is not on the ground of its being null and void on account of inherent lack of jurisdiction of the Court passing it, but is based on lack of territorial jurisdiction of Court passing the decree or lack of



pecuniary jurisdiction of the Court passing the decree same are not open to be raised at the execution stage. The counsel also brought to notice of this Court the discussion made with regard to the legislative intention that cause and course of justice should not be allowed to be obstructed by sheer technicalities. It is also observed that this intention is exhibited by the provisions of Section 21 of CPC. The counsel also brought to notice of this Court to further discussion made with regard to Section 21 of CPC provides that objection as to lack of territorial jurisdiction or as to lack pecuniary jurisdiction of the Court to entertain and to decree the suit have to be and are required to raise at the earliest stage of the suit or before the settlement of issues and if are not so raised the objection to decree on such ground should not be allowed to be raised at the stage of appeal or revision from the decree, unless it is shown that there has been a consequential failure of justice. Basic concept is justice should not be denied to any party on the ground of technicalities and simple technical defects. It is also



observed that it is always open to the party to waive it, as such Section 21 provides if objections based on want of territorial jurisdiction or lack of pecuniary jurisdiction have not been raised at earliest stages as referred to Section 21 then such objections are not to be allowed to raise at subsequent stages of appeal or revision etc. The counsel also brought to notice of this Court to the discussions made with regard that it should not be liable to be reversed only on the technical grounds such as lack of territorial or pecuniary jurisdiction, unless it is shown to have resulted in the failure of justice and the policy of the legislature has been to treat objections to jurisdiction on grounds both of territorial and pecuniary as technical and not open to consideration at later Stage after decree passed in the suit. The counsel referring this judgment would vehemently contend that at the time of consideration the appeal on merits not raised such objections and after getting an order which it goes against the review petitioner, he come up with the ground of



pecuniary jurisdiction and the said ground is not maintainable at this stage.

10. The counsel also relied upon the judgment reported in **AIR 1996 SC 1567** in the case of **INDERMANI KIRTIPAL vs UNION OF INDIA AND OTHERS** and brought to notice of this Court paragraph 2 of the judgment wherein also discussion was made with regard to allocation of work is concerned and also brought to notice of this Court that Section 21 CPC objections relating to pecuniary or territorial jurisdiction should be raised at the earliest and if the parties omit to plead and raise the objections, at a later stage, unsuccessful party would be precluded to raise lack of jurisdiction.

11. The counsel also relied upon the recent order of the Apex Court passed on **01.03.2025** in **Civil Appeal arising out of SLP(C) Nos.15347-15348/2020** wherein discussion was made with regard to Section 21 of CPC and an observation is made that principle enjoins that objections regarding the place of suing shall not be



allowed unless such objection is taken in the Court/tribunal of first instance at the earliest possible opportunity and in this judgment, a reference was to the judgment reported in **(2005) 7 SCC 791** in the case of **HARSHAD CHIMAN LAL MODI vs DLF UNIVERSAL LTD., AND ANOTHER** and also the judgment reported in **(2007) 13 SCC 560** in the case of **SUBHASH MAHADEVASA HABIB vs NEMASA AMBASA DHARMADAS (DEAD) BY LRS AND OTHERS** and referring these judgments comes to the conclusion that the said objections cannot be raised in a belated stage.

12. The counsel also relied upon the judgment reported in **(2009) 2 SCC 244** in the case of **MANTOO SARKAR vs ORIENTAL INSURANCE COMPANY LIMITED AND OTHERS** and brought to notice of this Court paragraph 16 wherein also discussion was made with regard to Section 21 of CPC and held that entertain an appeal on the ground of lack of territorial jurisdiction on the part of the Court below unless he has been prejudiced



thereby. Other respondents did not raise any question of jurisdiction. Although one witness each had been examined on behalf of the truck owner and owner of the bus, neither a question of lack of territorial jurisdiction was raised nor the question of any prejudice had been argued. It is only the first respondent who raised the question of territorial jurisdiction. The counsel also brought to notice of this Court paragraph 18 of the said judgment wherein also discussion was made that the Tribunal is a Court subordinate to the High Court. An appeal against the Tribunal lies before the High Court. The High Court, while exercising its appellate power, would follow the provisions contained in the Code of Civil Procedure or akin thereto. The counsel referring this judgment also would vehemently contend that it was, therefore, obligatory on the part of the appellate Court to pose unto itself the right question viz., whether the first respondent has been able to show sufferance of any prejudice. The counsel also brought to notice of this Court paragraph 20 of the judgment wherein discussion was made with regard to



jurisdiction to the subject matter of the suit and that of territorial and pecuniary jurisdiction and the same should not have been raised in the absence of any finding of sufferance of any prejudice on the part of the first respondent. The counsel referring this judgment also would vehemently contend that in the similar set of facts also the Courts came to the conclusion that appellate Court has the jurisdiction. In the case on hand also the order is passed by the ESI Court and this Court is having the appellate jurisdiction.

13. The counsel also relied upon the judgment reported in **AIR 1966 SC 634** in the case of **BAHREIN PETROLEUM CO. LTD vs P J PAPPU AND ANOTHER** and brought to notice of this Court paragraph 3 wherein also Section 21 of CPC was discussed and held that Section 21 of CPC provides an exception, and a defect as to the place of suing, that is to say, the local venue for suits cognizable by the Courts under the Code may be waived under this section. The waiver under Section 21 is



limited to objections in the appellate and revisional Courts. But Section 21 is a statutory recognition of the principle that the defect as to the place of suing under Sections 15 to 20 may be waived. Independently of this section, the defendant may waive the objection and may be subsequently precluded from taking it. The counsel also brought to notice of this Court paragraph 4 of the said judgment and also brought to notice of this Court the judgment of **AIR 1962 SC 199** and the said judgment was discussed in the earlier judgment and in paragraph 4 also discussion was made and held that on the other hand an objections as to the local jurisdiction of a Court can be waived and this principle has been given a statutory recognition by enactment to Section 21 of CPC. Having consented to have the controversy between the parties resolved by reference to arbitration through Court, the defendant deprived himself of the right to question the authority of the Court to refer the matter to arbitration or of the arbitrator to render the award. It is clear, therefore, that the defendant is estopped from challenging the



jurisdiction of the Bombay High Court to entertain the suit and to make the reference to the arbitrator. He is equally estopped from challenging the authority of the arbitrator to render the award.

14. The counsel referring these judgments would vehemently contend that the judgments which have been relied upon by him even applicable not only in respect of the case of ESI even in respect of arbitration as well as other execution of the proceedings. Once the consent was given and right is waived, cannot raise the objection at the belated stage. The counsel referring these judgments would vehemently contend that in the case on hand also already the review petitioner had suffered the order on merits and now only ground urged before this Court is pecuniary jurisdiction and not lack of any inherent jurisdiction hence, the judgments relied upon by the review petitioner's counsel cannot be accepted. The counsel also would vehemently contend that the law is settled that if only in a case of lack of inherent jurisdiction



if the order is nullity, then the Court can consider. But in the case on hand, only pecuniary jurisdiction urged stating that the value of the appeal exceeds Rs.15,00,000/- and the same cannot be considered at this stage since the same is contended after the disposal of the appeal that too in a review petition. Hence, the said order cannot be reviewed.

15. Having heard the learned counsel appearing for the respective parties and also on perusal of the material available on record as well as considering the principles laid down in the judgments referred supra, the points that would arise of the consideration of this Court are:

1. Whether the review petitioner has made out the ground to review the order passed on merit on the ground of pecuniary jurisdiction as this Court is not having a jurisdiction to pass such an order?
2. What order?



Point No.1:

16. Having heard the learned counsel appearing for the respective parties, it is not in dispute that the order is challenged before this Court in MFA is questioning the order passed by the ESI Court. It is contended that the ESI Court committed an error in reducing the damages of Rs.6,00,000/- as against Rs.26,34,569/- and appeal was preferred against this order and this Court allowed the said appeal and set aside the order of the ESI Court and restore the order of the concerned competent authority. Now the review petitioner filed this petition only on the ground that Section 5(i) of the High Court Act, 1961 says that all first appeals against a decree or order passed in a suit or other proceedings, the value of subject matter of which exceeds Rs.15,00,000/- shall be heard by a Bench consisting of not less than Two Judges of the High Court and other first appeals shall be heard by a Single Judge of the High Court. Hence, this Court would like to refer Section 5 (i) of the High Court Act, 1961 which reads as follows:



"5. First appeals.— (i) all First Appeals against a decree or order passed in a suit or other proceedings, the value of subject matter of which exceeds fifteen lakh rupees shall be heard by a Bench consisting of not less than two Judges of the High Court and other First Appeals shall be heard by a Single Judge of the High Court."

17. The learned counsel for the respondent also relied upon Section 21 of CPC in support of his argument and hence, this Court also would like to refer Section 21 of CPC which reads as follows:

"21. Objections to jurisdiction. (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."



18. Having considered the proviso of Section 5(i) of the High Court Act, it is very clear that the first appeal which valued more than Rs.15,00,000/-, shall be heard by a Bench consisting of not less than two Judges of the High Court and other First Appeals shall be heard by a Single Judge of the High Court and no dispute with regard to said Section. It is important to note that the counsel for the respondent also relied upon Section 21 of CPC in respect of jurisdiction is concerned. Having read the proviso of Section 21 referred above, it is very clear that no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

19. The counsel for the review petitioner would contend that deciding the matter by the Single Judge as against the roster it leads to a anarchy and chaos. This



contention cannot be accepted for the reason that when the matter was listed before the Single Bench that means this Bench, while hearing the matter, he did not raise said objection and he kept quiet and argued the matter on merits when the order has been passed and it goes against him, the present petition is filed only on the ground that this Court is not having any jurisdiction.

20. It is important to note that having taken note of Section 21 of CPC, it is very clear that if there is any objection with regard to the jurisdiction, same has to be raised at the earliest possible opportunity but the same has not been done and now, after passing the order, when the said order goes against him, the present review petition is filed on the ground of pecuniary jurisdiction.

21. The judgments which have been relied by the petitioner's counsel i.e., in the case of **STATE OF RAJASTHAN; MFA No.102577/2014** as well as the case of **SOHAN LAL BAID**, all are with regard to allocation of



work is concerned and it is not in dispute that administration control of the High Court vests with the Hon'ble Chief Justice alone. But in the case on hand, it is not a case of allocation of work to the Single Judge and the objection raised in this petition is with regard to pecuniary jurisdiction that too after disposal of the appeal. In the case of **MANTOO SARKAR** referred supra, it is held that when there is no any prejudice is caused to either side, the question of entertaining the review petition does not arise. The counsel for the respondent also contends that no pleading in the review petition with regard to causing of prejudice is concerned. The respondent counsel also relied upon the judgment of **BAHREIN PETROLEUM CO. LTD's** case referred supra wherein it is held that Section 21 of CPC was discussed and held that Section 21 of CPC provides an exception, and a defect as to the place of suing, that is to say, the local venue for suits cognizable by the Courts under the Code may be waived under this section. The waiver under Section 21 is limited to objections in the appellate and revisional Courts. But



Section 21 is a statutory recognition of the principle that the defect as to the place of suing under Sections 15 to 20 may be waived. Independently of this section, the defendant may waive the objection and may be subsequently precluded from taking it. The counsel referring this judgment would vehemently content that the petitioner had waived his right when the matter come up before this Court for final hearing. The counsel also relied upon the case of **SHRI AMARESHWAR FLOUR MILLS** referred supra wherein this Court in detail dealt with regarding Section 21 of the CPC wherein it is held that such objections are not to be allowed which raised subsequent stages of appeal or revision and etc.

22. In the case on hand also such objections has not been raised when the matter was heard on merit and even specific observation is made in the judgment referred supra that it should not be liable to be reversed only on the technical grounds such as lack of territorial or pecuniary jurisdiction, unless it is shown to have resulted



in the failure of justice and the policy of the legislature has been to treat objections to jurisdiction on grounds both of territorial and pecuniary as technical and not open to consideration at later Stage after decree passed in the suit. In the case on hand also when the appeal is considered on merits and after disposal of the appeal, the review petitioner come up with the said objections and hence, this Court also even discussed in detail that even if any lack of inherent jurisdiction, such objection can be raised but in the case on hand, only ground urged is with regard to pecuniary jurisdiction. It is also important to note that the Apex Court in the recent judgment dated **01.03.2025** in **Civil Appeal arising out of SLP(C) Nos.15347-15348/2020** referred supra also discussed Section 21 of CPC and an observation is made that principle enjoins that objections regarding the place of suing shall not be allowed unless such objection is taken in the Court/tribunal of first instance at the earliest possible opportunity and in this judgment, a reference was to the judgment reported in **(2005) 7 SCC 791** in the case of



HARSHAD CHIMAN LAL MODI vs DLF UNIVERSAL LTD., AND ANOTHER and also the judgment reported in **(2007) 13 SCC 560** in the case of **SUBHASH MAHADEVASA HABIB vs NEMASA AMBASA DHARMADAS (DEAD) BY LRS AND OTHERS** and referring these judgments comes to the conclusion that the said objections cannot be raised in a belated stage. Even in the case of **INDERMANI KIRTIPAL** referred supra also discussion was made with regard to allocation of work is concerned and also brought to notice of this Court that Section 21 CPC objections relating to pecuniary or territorial jurisdiction should be raised at the earliest and if the parties omit to plead and raise the objections, at a later stage, unsuccessful party would be precluded to raise lack of jurisdiction. In the case on hand also when the review petitioner was unsuccessful in the appeal, come up for review of the order of the appeal only on the ground of pecuniary jurisdiction. Hence, the Court has to take note of the conduct of the review petitioner in filing this review petition.



23. The counsel for the review petitioner only ground urged in this petition is pecuniary jurisdiction and no other ground has been urged that is ground of failure of justice or any prejudice as contended by the counsel for the respondent and no pleadings to that effect. Section 21 of CPC is clear that same is applicable to any other proceedings also as observed by the Apex Court. The very contention of the counsel for the review petitioner that High Court Act overrides Section 21 and the said contention cannot be accepted. The review petitioner has not raised any such objections earlier and only after disposal of the appeal that too when the order goes against him, he has come with this objection and hence, this Court has to take note of the conduct of the petitioner and when the principles are settled as referred supra in the judgments relied upon by the respondent counsel and when there is no lack of inherent jurisdiction, the very contention of the petitioner cannot be accepted. Hence, I answer the above point as negative.



Point No.2:

24. In view of the discussions made above, I pass the following:

ORDER

The review petition is dismissed with cost of Rs.25,000/- payable within four weeks from today. If cost not paid in time, registry is directed to recover the same in accordance with law.

Sd/-
(H.P.SANDESH)
JUDGE

SN