

ABDUL RAZAK (D) THROUGH LRS. AND ORS.

v.

MANGESH RAJARAM WAGLE AND ORS.

(Civil Appeal No. 55 of 2010)

JANUARY 07, 2010

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Code of Civil Procedure, 1908:

Or.6, r.16 – Additional written statement filed by appellants, the LRs of deceased defendant – Taken on record without any objection from plaintiffs-respondents – Respondents also did not object to framing of additional issues and led evidence in support of their case – Belated application filed by respondents for striking out additional written statement – Effect of – Held: The application of respondents was frivolous and not maintainable – Respondents filed application for striking out the additional written statement after a long time gap without any explanation – The application was filed by respondents after almost one year of completion of their evidence – In absence of any contrary evidence, it can be reasonably and legitimately presumed that respondents must have produced their evidence keeping in view the pleadings contained in the additional written statement.

Or.6, r.16 – Power of Court to strike out pleadings – When exercisable – Held: Such power can be exercised in either of the three eventualities i.e., where the pleadings are considered by the court unnecessary, scandalous, frivolous or vexatious; or where the court is satisfied that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise considered as an abuse of the court – Since striking out pleadings has serious adverse impact on the

A *rights of the concerned party, the power to do so has to be exercised with great care and circumspection.*

B *Or.6, r.16 and Or.22, r.4 – Additional written statement filed by appellants, after their impleadment as LR's of deceased defendant – Plea of plaintiffs-respondents that the pleadings contained in the additional written statement were inconsistent with the defence set up by the predecessor-in-interest of appellants in the original written statement and the trial Court was duty bound to discard the same in view of Or.22, r.4 – Tenability of – Held: Not tenable – Claim made*

C *by the appellants was in no way inconsistent with or derogatory to the defence set up by their predecessor-in-interest – Once the additional written statement filed by appellants was taken on record without any objection by plaintiffs-respondents, who also led their evidence keeping in*

D *view the pleadings of the additional written statement, the High Court was not at all justified in allowing the application filed for striking off the additional written statement and that too without even advert to Or.6, r.16 and without considering whether respondents were able to make out a case for*

E *exercise of power by the Court under that provision.*

F *Constitution of India, 1950 – Articles 226 and 227 – Exercise of power under – Limitations of certiorari jurisdiction and supervisory jurisdiction – On facts, while deciding the writ petition filed by respondents and granting relief to them, the High Court erroneously did not keep in mind the guiding principles laid down for exercise of power under Articles 226 or 227 of the Constitution and adjudicated upon the writ petition, as if it was exercising appellate jurisdiction.*

G *High Courts – Exercise of jurisdiction – High Courts to refrain from deciding writ petitions as if adjudicating appeals against orders of lower courts or other judicial/quasi judicial bodies/authorities.*

H **Respondent nos.1 and 2 filed suit for declaration that**

they were lawful tenants of the suit premises, and alternatively, for recovery of possession of the suit premises, which they alleged was forcibly occupied by respondent no.3. The premises in question is situated in the State of Goa. A

Respondent no.3-defendant not only denied the averments contained in the plaint that he had illegally taken possession of the suit premises, but also pleaded that he was doing business of distribution of liquor in the suit premises on the basis of permission accorded by 'A', the other defendant, and further that the competent authority had granted him excise licence after being satisfied that the suit premises were suitable for doing business in liquor. B C

'A' filed a separate written statement stating that the predecessor-in-interest of respondent nos.1 and 2 had voluntarily surrendered the suit premises and thereafter, respondent no.3 occupied the same for conducting the business of distribution of liquor. D

'A' died during the pendency of the suit. Thereupon, respondent nos.1 and 2 filed application for impleading A's widow (appellant no.1), son (appellant no.2) and three daughters (appellant nos. 3, 4 and 6) and two son-in-laws (appellant nos. 5 and 7) in place of 'A'. Appellant nos.3, 4 and 6 objected to the impleadment of appellant nos. 5 and 7, i.e. the son-in-laws on the ground that they were non-Goans and were not governed by personal law relating to properties in Goa. They also objected to the impleadment of appellant nos.1 and 3, i.e. the widow and son, on the ground that they themselves had become owners of the suit premises by virtue of the orders passed in the inventory proceedings initiated after the death of their grandparents. The trial court overruled all the objections raised by appellant nos. 3, 4 and 6 and E F G H

A allowed the application of respondent nos. 1 and 2 by observing that joining of the widow, son and son-in-laws of the deceased will not prejudice the daughters i.e. the appellant nos. 3, 4 and 6 and they will be entitled to take defence suitable to their plea.

B In furtherance of the observation made by the trial court, the appellants filed additional written statement, the sum and substance of which was that appellant nos.3, 4 and 6 had become owners of the suit property by virtue of the orders passed in the earlier inventory proceedings after the death of their grandparents. After filing of the additional written statement, the trial Court framed additional issues. Respondent nos.1 and 2 did not object to the taking on record of the additional written statement filed by the appellants or framing of the additional issues and led evidence. Thereafter, the appellants produced their evidence.

E However, when the case was fixed for cross-examination of appellant no.3, respondent nos.1 and 2 filed application for striking off the additional written statement by asserting that the LRs of 'A' did not have right under the CPC to file such written statement and, in any case, they cannot be allowed to raise new plea about their title to the suit premises. Respondent nos.1 and 2 further pleaded that the additional written statement was liable to be struck off as before filing the same, the appellants did not seek leave of the court.

G In their reply, the appellants pleaded that the additional written statement was filed with a view to bring on record the facts relating to the earlier inventory proceedings and the same cannot be struck off because the applicants had failed to make out a case for exercise of power by the court under Order VI, Rule 16 CPC.

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The trial Court dismissed the application of
respondent Nos. 1 and 2 by observing that leave of the
Court will be presumed to have been granted because
after the additional written statement was filed,
respondent Nos. 1 and 2 had not objected to the same.
As regards their plea that new or inconsistent case was
sought to be set up by the appellants, the trial Court
observed that this point can be considered at the time of
deciding the case on merits. The trial Court then referred
to Order VI Rule 16 and held that respondent Nos.1 and
2 had not been able to make out a case for striking off
the additional written statement.

Respondent nos.1 and 2 filed writ petition, which the
High Court allowed holding that the LRs of 'A' were not
entitled to take a plea derogatory to the plea already
taken; and that the trial Court was not justified in
dismissing the application filed by respondent nos. 1 and
2 on the ground of delay, which could have been
compensated by imposing cost.

In appeal to this Court, the questions which arose for
consideration were - (i) What is the effect of delay in filing
the application by respondent nos.1 and 2 for striking off
the additional written statement (ii) Whether the High
Court could pass an order for striking off the additional
written statement despite the fact that respondent nos.1
and 2 failed to make out a case for exercise of power by
the court under Order VI Rule 16 CPC and (iii) Whether
the High Court was justified in setting aside the order of
the trial Court without being satisfied that the same was
vitiated by an error of jurisdiction or an error of law
apparent on the face of the record and that such error
resulted in substantial failure of justice.

Allowing the appeal, the Court

HELD:1. The additional written statement was filed

A by the appellants and taken on record without any objection from respondent nos.1 and 2, who did not even seek leave of the court to file further pleadings in the light of the additional written statement. Also, it is clear that respondent nos.1 and 2 led evidence in support of their case and completed the same. In the absence of any contrary evidence, it can be reasonably and legitimately presumed that respondent nos.1 and 2 must have produced their evidence keeping in view the pleadings contained in the additional written statement. They filed application for striking out the additional written statement after a long time gap of three years and six months without explaining as to why they did not object to the taking on record of the additional written statement and framing of additional issues when it was filed and why they chose to lead evidence knowing fully well that after their impleadment as legal representatives of 'A', appellant Nos. 3, 4 and 6 had pleaded that they had become owners of the property by virtue of the orders passed in the inventory proceedings. The High Court casually brushed aside and rejected the plea of the appellants that the application filed by respondent nos.1 and 2 for striking off the additional written statement was highly belated and no explanation worth the name had been offered for the same by observing that the trial Court could have compensated them by imposing cost. The High Court should have seriously examined the issue of delay in the backdrop of the facts that respondent Nos. 1 and 2 did not object to the taking on record the additional written statement or framing of additional issues and led their evidence and further that the application was filed after almost one year of completion of their evidence. The observation made by the High Court that the proceedings of the suit will be delayed if the legal representatives of 'A' are allowed to take the plea based on their title is neither here nor there. It is true

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that the suit filed by respondent Nos. 1 and 2 is pending for last about 17 years, but there is nothing on record to show that the appellants or their predecessors are responsible for the delay. The death of 'A' was not a predictable event, the happening of which could be averted by the parties or the court. In any case, the appellants cannot be blamed for the delay, if any, in the trial of the case. As a matter of fact, respondent Nos. 1 and 2 have delayed the proceedings for over two years by filing frivolous application for striking off the additional written statement. [Para 14] [914-G-H; 915-A-H; 916-A]

2.1. A reading of the plain language of Order VI Rule 16 CPC makes it clear that the court's power to strike out any pleading at any stage of the proceedings can be exercised in either of the three eventualities i.e., where the pleadings are considered by the court unnecessary, scandalous, frivolous or vexatious; or where the court is satisfied that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise considered as an abuse of the court. [Para 16] [916-E-F]

2.2. Normally, a court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or the court is satisfied that suit is an abuse of the process of the court. Since striking off pleadings has serious adverse impact on the rights of the concerned party, the power to do so has to be exercised with great care and circumspection. [Para 17] [916-G-H; 917-A]

A 2.3. In the present case, the trial Court did make a
 reference to the provisions of Order VI Rule 16 and held
 that the application made by respondent Nos. 1 and 2
 does not fall in either clauses of Rule 16. The High Court
 did not even bother to notice Order VI Rule 16 what to
 B say of considering its applicability to the pleadings
 contained in the additional written statement and granted
 the prayer of respondent Nos. 1 and 2 by assuming that
 the plea raised by the appellants was inconsistent with
 the defence set up by their predecessor-in-interest. The
 C High Court did not have the jurisdiction to direct striking
 off the additional written statement without being satisfied
 that respondent Nos. 1 and 2 were able to make out a
 case for exercise of power by the court under either of
 three clauses of Order VI Rule 16 CPC. [Para 19] [917-A;
 D 918-A-C]

Sathi Vijay Kumar v. Tota Singh and others, (2006) 13
 SCC 353, relied on.

E *Roop Lal Sathi v. Nachhattar Singh Gill*, (1982) 3 SCC
 487; *K.K.Modi v. K.N. Modi*, (1998) 3 SCC 573 and *Union
 Bank of India v. Naresh Kumar*, (1996) 6 SCC 660, referred
 to.

Knowles v. Roberts, (1888) 38 Ch D 263, referred to.

F 3.1. Although, from the record produced before this
 Court, it is not clear whether respondent Nos. 1 and 2 had
 filed writ petition under Article 226 of the Constitution or
 they invoked supervisory jurisdiction of the High Court
 under Article 227 of the Constitution, but a reading of the
 G impugned order does not leave any manner of doubt that
 while granting relief to respondent Nos. 1 and 2, the High
 Court did not keep in mind the guiding principles laid
 down by this Court for exercise of power under Articles
 226 or 227 of the Constitution. It seems that the High
 H Court decided the matter by assuming that it was hearing

an appeal against the order of the trial Court. If this was not so, the High Court was duty bound to first consider whether it was called upon to exercise power under Article 226 of the Constitution or under Article 227 thereof. If respondent Nos. 1 and 2 had invoked the High Court's jurisdiction under Article 226, then the High Court ought to have considered whether the trial Court committed a jurisdictional error by refusing to strike off the additional written statement filed by the appellants or it was a case of failure on the part of the trial Court to exercise the power vested in it under Order VI Rule 16 CPC or the order under challenge was vitiated by an error of law apparent on the face of the record or there was violation of the rules of natural justice. In either case, the High Court was also required to consider whether there was substantial failure of justice or manifest injustice was caused to respondent Nos. 1 and 2 on account of the trial Court's refusal to strike off the additional written statement. [Para 20] [918-E-H; 919-A-C]

3.2. While deciding the writ petition filed by respondent Nos. 1 and 2, the High Court did not keep in mind the principles laid down by this Court and decided the same, as if it was exercising appellate jurisdiction of the High Court. It is hoped that in future the High Courts would keep in view the limitations of certiorari jurisdiction/ supervisory jurisdiction and refrain from deciding the writ petitions filed under Article 226 or petitions/applications filed under Article 227 of the Constitution as if they are adjudicating appeals filed against the orders of the lower courts or other judicial/quasi judicial bodies/authorities. [Para 21] [922-A-D]

3.3. The argument of respondent nos.1 and 2 that the pleadings contained in the additional written statement filed by appellants were inconsistent with and beyond the scope of the defence set up by 'A' in the original written statement and the trial Court was duty bound to discard

A the same in view of the provision contained in Order 22
Rule 4 CPC is meritless and deserves to be rejected. In
the plaint filed by them, respondent nos.1 and 2 did not
make a mention of the inventory proceedings held after
the death of the appellants' grandparents. There is
B nothing in the written statement of 'A' from which it can
be inferred that he claimed ownership over the suit
property. However, after the appellants were brought on
record as legal representatives of late 'A', they filed
additional written statement incorporating therein the plea
C that the suit property had become subject matter of
inventory proceedings and the same was allotted to the
daughters of 'A' i.e. appellant nos.3, 4 and 6. According
to the appellants, 'A' was looking after the suit property
because at the time of death of his parents, appellant
D Nos. 3, 4 and 6 were minor. Therefore, it cannot be said
that the plea raised by the appellants is inconsistent with
the averments contained in the original written statement
by 'A'. The claim made by the appellants is in no way
inconsistent with or derogatory to the defence set up by
E 'A'. In any case, once the additional written statement
filed by the appellants was taken on record without any
objection by respondent nos. 1 and 2, who also led their
evidence keeping in view the pleadings of the additional
written statement, the High Court was not at all justified
F in allowing the application filed for striking off the
additional written statement and that too without even
adverting to Order VI, Rule 16 CPC and considering
whether respondent nos. 1 and 2 were able to make out
a case for exercise of power by the Court under that
provision. [Paras 22 and 26] [922-E-H; 923-A-D; 926-F-H;
G 927-A]

Syed Yakoob v. K.S. Radhakrishnan AIR 1964 SC 477;
Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675 and
J.C. Chatterjee v. Sri Kishan (1972) 2 SCC 461, relied on.

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Bal Kishan v. Om Parkash (1986) 4 SCC 155 and *Vidyawati v. Man Mohan* (1995) 5 SCC 431, distinguished. A

Case Law Reference:

(2006) 13 SCC 353 relied on Para 18

(1982) 3 SCC 487 referred to Para 18 B

(1998) 3 SCC 573 referred to Para 18

(1996) 6 SCC 660 referred to Para 18

AIR 1964 SC 477 relied on Para 20 C

(2003) 6 SCC 675 relied on Para 20

(1972) 2 SCC 461 relied on Para 22

(1986) 4 SCC 155 distinguished Para 22 D

(1995) 5 SCC 431 distinguished Para 22

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 55
of 2010.

From the Judgment & Order dated 1.2.2008 of the High
Court of Bombay at Goa in Writ Petition No. 58 of 2008. E

A. Sharan, Anis Suhrawardy, Shamama Anis, S. Mehdi
Imam, Tabrez Ahmed for the Appellants. F

Devatatt Kamat, Priyanka Telang, Rauf Rahim, Dinesh
Kumar Garg, Abhishek Garg, Dhanjayan Garg for the
Respondents.

The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. Leave granted. G

2. The appellants are aggrieved by the order of the learned
Single Judge of the Bombay High Court, Goa Bench whereby
he allowed the writ petition filed by respondent Nos. 1 and 2 H

A and granted their prayer for striking off the additional written statement filed by the appellants after their impleadment as legal representatives of defendant No.2 – Abdul Razak.

B 3. Respondent Nos. 1 and 2 filed suit in the Court of Civil Judge (Senior Division), Panaji (hereinafter described as 'the trial Court') for declaring them as lawful tenants of suit premises and also for restraining the defendants – Suresh D. Naik (respondent No.3 herein) and Abdul Razak, who died during the pendency of the suit and is being represented by his legal representatives (appellants herein) to remove the lock allegedly put by respondent No.3 on the suit premises along with materials dumped there. An alternative prayer made by respondent Nos. 1 and 2 was for recovery of possession of suit premises in case it was held that they had already been dispossessed. The substance of the case set up by respondent D Nos. 1 and 2 before the trial Court is that the suit premises were let out to their predecessor Shri Rajaram D. Wagle in 1951 by one Jussab Abdul Karim at a monthly rent of Rs.15/- which was subsequently increased to Rs.25/-; that the owner-cum-landlord sold the premises to Abdul Kadar Haji Jaffar (grandfather of appellant Nos.2, 3, 4 and 6); that Rajaram D. Wagle died on E 29.4.1981 and after his death they have been using the suit premises for parking their cars; that on 5.1.1992, respondent No.3 broke open the lock of the suit premises and dumped his goods i.e., boxes of liquor bottles, but the same were removed F by the police on a complaint made by respondent No.1 in that regard; that on 8.1.1992, respondent No. 3 again broke open the lock and forcibly occupied the suit premises and this time the police did not act on the complaint made by them.

G 4. In his written statement, respondent No.3 not only denied the averments contained in the plaint that he had illegally taken possession of the suit premises after breaking open the locks put by respondent Nos. 1 and 2, but also pleaded that after being forced to leave Kuwait in the wake of war, he came to H India and is doing business of distribution of liquor in the suit

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MANGESH RAJARAM WAGLE [G.S. SINGHVI, J.]

premises on the basis of permission accorded by defendant No.2 – Abdul Razak, who was a family friend. Respondent No.3 further pleaded that the competent authority granted him excise licence after being satisfied that the suit premises were suitable for doing business in liquor.

5. Abdul Razak (predecessor of the appellants) filed a separate written statement. He largely denied the averments contained in the plaint and pleaded that much before his death, Shri Rajaram D. Wagle had voluntarily surrendered the suit premises and thereafter, respondent No.3 was allowed to occupy the same for conducting business of distribution of liquor.

6. Abdul Razak died during the pendency of the suit. Thereupon, respondent Nos. 1 and 2 filed an application for impleading his widow (appellant No.1), son and three daughters (appellant Nos. 2, 3 4 and 6) and two son-in-laws (appellant Nos. 5 and 7) in place of the deceased. Appellant Nos. 3, 4 and 6 objected to the impleadment of the son-in-laws by stating that they are non-Goans and are not governed by personal law relating to properties in Goa. They also objected to the impleadment of appellant Nos. 1 and 3 i.e., the widow and son of the deceased on the ground that the suit premises had been allotted to them in the inventory proceedings.

7. By order dated 10.12.2003, the learned trial Court overruled all the objections raised by appellant Nos. 3, 4 and 6 and allowed the application of respondent Nos. 1 and 2 by observing that joining of the widow, son and son-in-laws of the deceased will not prejudice the daughters and they will be entitled to take defence suitable to their plea.

8. In furtherance of the observation made by the trial Court in the aforementioned order, the appellants filed additional written statement dated 3.3.2004, the sum and substance of which is that in the inventory proceedings No.80/1989/A held in the Court of Civil Judge (Senior Division) at Panaji after the

A death of Abdul Kadar Haji Jaffar and his wife, the suit property was allotted to their grand-daughters (appellant Nos.3, 4 and 6) because other heirs did not object to this. The appellants pleaded that in the meeting held on 10.4.1990, members of the Family Council unanimously agreed for allotment of the properties and this was approved by the Court vide order dated 26.9.1990. A reference was also made to Special Civil Suit No. 89/99/B filed by appellant Nos. 3, 4 and 6 in the trial Court for grant of permanent injunction on the ground that respondent Nos. 1 and 2 had filed Execution Application No.15/98/A for being put in possession of the suit premises in execution of order dated 17.4.1997 passed in an application for temporary and mandatory injunction. According to the appellants, the trial Court allowed the execution application and the appeal and special leave petition filed by them were dismissed by the High Court and this Court respectively. In the additional written statement, it was also averred that son-in-laws of late Abdul Razak have no right, title or interest in the suit property and, therefore, they cannot be treated as his legal representatives. The impleadment of appellant No.2 was also questioned on the premise that he has no right in the suit property.

E 9. After filing of the additional written statement, the trial Court framed the following additional issues:

F 1. Whether the plaintiffs prove that defendants illegally damaged and destroyed the two ramps existing adjacent to the entrance of the suit premises?

G 2. Whether the plaintiffs prove that the suit filed by them for declaration of tenancy right is maintainable for want of the owners of the suit premises?

H 3. Whether the plaintiffs prove that Sajeeda Razak, Matheen I Saint, Mohammad Arif Razak Ajaz Ahmed are legal representatives of deceased defendant No.2 impleaded in the suit as defendants 2(i), 2(ii), 2(v) and 2(vii) respectively.

What relief? What order?

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10. Respondent Nos. 1 and 2 did not object to the taking on record of the additional written statement filed by the appellants or framing of the additional issues and led evidence, the recording of which was completed during 2006. Thereafter, the appellants produced their evidence. When the case was fixed for cross-examination of appellant No.3, who is one of the witnesses cited by the appellants, respondent Nos. 1 and 2 filed application dated 9.10.2007 for striking off the additional written statement by asserting that the legal representatives of the deceased defendant No.2 do not have right under the Code of Civil Procedure (CPC) to file such written statement and, in any case, they cannot be allowed to raise new plea about their title to the suit premises. Respondent Nos. 1 and 2 further pleaded that the additional written statement is liable to be struck off because before filing the same, the appellants did not seek leave of the court. In their reply, the appellants pleaded that the additional written statement was filed with a view to bring on record the facts relating to the inventory proceedings and the same cannot be struck off because the applicants have failed to make out a case for exercise of power by the court under Order VI Rule 16 CPC.

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11. The trial Court dismissed the application of respondent Nos. 1 and 2 by observing that leave of the Court will be presumed to have been granted because the additional written statement was filed on 3.3.2004 and respondent Nos. 1 and 2 had not objected to the same. As regards their plea that new or inconsistent case was sought to be set up by the appellants, the trial Court observed that this point can be considered at the time of deciding the case on merits. The trial Court then referred to Order VI Rule 16 and held that respondent Nos. 1 and 2 have not been able to make out a case for striking off the additional written statement.

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12. Respondent Nos. 1 and 2 challenged the order of the trial Court in W.P. No. 58/2008. By the impugned order, the

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A learned Single Judge allowed the writ petition and held that the legal representatives of deceased defendant No.2 could have taken a plea which was appropriate to their character as legal representatives, but they were not entitled to take a plea derogatory to the plea already taken. The learned Single Judge
 B further held that the trial Court was not justified in dismissing the application on the ground of delay, which could have been compensated by imposing cost.

C 13. We have heard learned counsel for the parties. Three questions which merit consideration by this Court are –

- (i) What is the effect of delay in filing the application by respondent Nos. 1 and 2 for striking off the additional written statement?
- D (ii) Whether the High Court could pass an order for striking off the additional written statement despite the fact that respondent Nos. 1 and 2 failed to make out a case for exercise of power by the court under Order VI Rule 16 CPC?
- E (iii) Whether the High Court was justified in setting aside the order of the trial Court without being satisfied that the same was vitiated by an error of jurisdiction or an error of law apparent on the face of the record and that such error resulted in
 F substantial failure of justice?

Re: (i):

G 14. Undisputedly, the additional written statement was filed on 3.3.2004 and the same was taken on record without any objection from respondent Nos. 1 and 2, who did not even seek leave of the court to file further pleadings in the light of the additional written statement. Although, the parties have not furnished details of the proceedings of the case for next about
 H two years, this much is clear that respondent Nos.1 and 2 led evidence in support of their case and completed the same in

2006. In the absence of any contrary evidence, it can be reasonably and legitimately presumed that respondent Nos. 1 and 2 must have produced their evidence keeping in view the pleadings contained in the additional written statement. They filed application for striking out the additional written statement after a long time gap of three years and six months without explaining as to why they did not object to the taking on record of the additional written statement and framing of additional issues in 2004 and why they chose to lead evidence knowing fully well that after their impleadment as legal representatives of Abdul Razak, appellant Nos. 3, 4 and 6 had pleaded that they had become owners of the property by virtue of the orders passed in the inventory proceedings. The learned Single Judge casually brushed aside and rejected the plea of the appellants that the application filed by respondent Nos. 1 and 2 for striking off the additional written statement was highly belated and no explanation worth the name had been offered for the same by observing that the trial Court could have compensated them by imposing cost. In our view, the learned Single Judge should have seriously examined the issue of delay in the backdrop of the facts that respondent Nos. 1 and 2 did not object to the taking on record the additional written statement or framing of additional issues and led their evidence and further that the application was filed after almost one year of completion of their evidence. The observation made by the learned Single Judge that the proceedings of the suit will be delayed if the legal representatives of the deceased defendant are allowed to take the plea based on their title is neither here nor there. It is true that the suit filed by respondent Nos. 1 and 2 is pending for last about 17 years, but there is nothing on record to show that the appellants or their predecessors are responsible for the delay. The death of Abdul Razak was not a predictable event, the happening of which could be averted by the parties or the court. In any case, the appellants cannot be blamed for the delay, if any, in the trial of the case. As a matter of fact, respondent Nos. 1 and 2 have delayed the proceedings for over two years by filing frivolous application for striking off the

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A additional written statement which, as mentioned above, was taken on record in March, 2004.

Re: (ii):

B 15. Order VI Rule 16 CPC which empowers the Court to strike out the pleadings reads thus:

“Striking out pleadings. – The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

C (a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

D (c) which is otherwise an abuse of the process of the court.”

E 16. A reading of the plain language of the above reproduced provisions makes it clear that the court’s power to strike out any pleading at any stage of the proceedings can be exercised in either of the three eventualities i.e., where the pleadings are considered by the court unnecessary, scandalous, frivolous or vexatious; or where the court is satisfied that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise considered as an abuse of the court.

F 17. Normally, a court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or the court is satisfied that suit is an abuse of the process of the court.

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Since the striking off pleadings has serious adverse impact on the rights of the concerned party, the power to do so has to be exercised with great care and circumspection. In *Knowles v. Roberts* (1888) 38 Ch D, 263, Boven, L.J. Observed:

“It seems to me that the rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right. It is a recognized principle that a defendant may claim *ex debito justitiae* to have the plaintiff’s claim presented in an intelligible form, so that he may not be embarrassed in meeting it; and the Court ought to be strict even to severity in taking care to prevent pleadings from degenerating into the old oppressive pleadings of the Court of Chancery.”

18. The above reproduced observations have been quoted with approval in *Sathi Vijay Kumar v. Tota Singh and others* (2006) 13 SCC 353. In that case, the order passed by the High Court deleting paragraphs 11, 12 and 13(a) from the election petition filed by the appellant was questioned before this Court on the ground that the case does not fall within the ambit of Order VI Rule 16. This Court first held that the provisions of Order VI Rule 16 CPC are applicable to election petitions. The Court then referred to the earlier judgments in *Roop Lal Sathi v. Nachhattar Singh Gill* (1982) 3 SCC 487, *K.K. Modi v. K.N. Modi* (1998) 3 SCC 573, *Union Bank of India v. Naresh Kumar* (1996) 6 SCC 660 and held that the power to strike out pleading is extraordinary in nature and must be exercised by the Court sparingly and with extreme care, caution and circumspection.

19. In this case, the learned trial Court did make a

A reference to the provisions of Order VI Rule 16 and held that the application made by the plaintiffs (respondent Nos. 1 and 2 herein) does not fall in either clauses of Rule 16. The learned Single Judge of the High Court did not even bother to notice Order VI Rule 16 what to say of considering its applicability to the pleadings contained in the additional written statement and granted the prayer of respondent Nos. 1 and 2 by assuming that the plea raised by the appellants was inconsistent with the defence set up by their predecessor-in-interest. In our opinion, the learned Single Judge did not have the jurisdiction to direct striking off the additional written statement without being satisfied that respondent Nos. 1 and 2 were able to make out a case for exercise of power by the court under either of three clauses of Order VI Rule 16 CPC.

Re: (iii) :

D 20. Although, from the record produced before this Court it is not clear whether respondent Nos. 1 and 2 had filed writ petition under Article 226 of the Constitution of India or they had invoked supervisory jurisdiction of the High Court under Article E 227 of the Constitution, but a reading of the impugned order does not leave any manner of doubt that while granting relief to respondent Nos. 1 and 2, the learned Single Judge did not keep in mind the guiding principles laid down by this Court for exercise of power under Articles 226 or 227 of the Constitution. F It seems to us that the learned Single Judge decided the matter by assuming that he was hearing an appeal against the order of the trial Court. If this was not so, the learned Single Judge was duty bound to first consider whether he was called upon to exercise power under Article 226 of the Constitution of India or under Article 227 thereof. If respondent Nos. 1 and 2 had G invoked the High Court's jurisdiction under Article 226, then the learned Single Judge ought to have considered whether the trial Court committed a jurisdictional error by refusing to strike off the additional written statement filed by the appellants or it was H a case of failure on the part of the trial Court to exercise the

power vested in it under Order VI Rule 16 CPC or the order under challenge was vitiated by an error of law apparent on the face of the record or there was violation of the rules of natural justice. In either case, the learned Single Judge was also required to consider whether there has been substantial failure of justice or manifest injustice has been caused to respondent Nos. 1 and 2 on account of the trial Court's refusal to strike off the additional written statement. These are the parameters laid down by this Court in *Syed Yakoob v. K.S. Radhakrishnan* AIR 1964 SC 477. If the petition filed by respondent Nos. 1 and 2 was under Article 227 of the Constitution of India, then the learned Single Judge should have taken note of the often quoted judgment in *Surya Dev Rai v. Ram Chander Rai* (2003) 6 SCC 675, in which a two-Judge Bench, after threadbare analysis of Articles 226 or 227 of the Constitution and considering large number of judicial precedents on the subject, recorded the following conclusions:

"(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction — by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction — by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no

A procedure specified, and thereby occasioning failure of justice.

B (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

C (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

E (6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

G (7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate

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court and the error though calling for correction is yet A
capable of being corrected at the conclusion of the
proceedings in an appeal or revision preferred
thereagainst and entertaining a petition invoking certiorari
or supervisory jurisdiction of the High Court would obstruct B
the smooth flow and/or early disposal of the suit or
proceedings. The High Court may feel inclined to intervene
where the error is such, as, if not corrected at that very
moment, may become incapable of correction at a later
stage and refusal to intervene would result in travesty of C
justice or where such refusal itself would result in
prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory D
jurisdiction will not convert itself into a court of appeal and
indulge in reappraisal or evaluation of evidence or
correct errors in drawing inferences or correct errors of
mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction E
to issue a writ of certiorari and those calling for exercise
of supervisory jurisdiction are almost similar and the width
of jurisdiction exercised by the High Courts in India unlike
English courts has almost obliterated the distinction
between the two jurisdictions. While exercising jurisdiction
to issue a writ of certiorari, the High Court may annul or F
set aside the act, order or proceedings of the subordinate
courts but cannot substitute its own decision in place
thereof. In exercise of supervisory jurisdiction the High
Court may not only give suitable directions so as to guide
the subordinate court as to the manner in which it would
act or proceed thereafter or afresh, the High Court may in G
appropriate cases itself make an order in supersession
or substitution of the order of the subordinate court as the
court should have made in the facts and circumstances of
the case."

A 21. We regretfully note that while deciding the writ petition
 filed by respondent Nos. 1 and 2, the learned Single Judge did
 not keep in mind the principles laid down by this Court in the
 B have been several other instances in which different High
 Courts have passed orders in exercise of power under Articles
 226 or 227 of the Constitution of India disregarding the
 limitations identified and indicated by this Court in several
 C in future the High Courts would keep in view the limitations of
 certiorari jurisdiction/supervisory jurisdiction and refrain from
 deciding the writ petitions filed under Article 226 or petitions/
 applications filed under Article 227 of the Constitution as if they
 are adjudicating appeals filed against the orders of the lower
 D courts or other judicial/quasi judicial bodies/authorities.

22. Before concluding, we deem it appropriate to consider
 the argument of the learned counsel for respondent Nos. 1 and
 2 that the pleadings contained in the additional written
 statement filed by the appellants were inconsistent with and
 E beyond the scope of the defence set up by Abdul Razak in the
 original written statement and the trial Court was duty bound to
 discard the same in view of the provision contained in Order
 22 Rule 4 CPC and the judgments of this Court in *J.C.*
Chatterjee v. Sri Kishan (1972) 2 SCC 461, *Bal Kishan v. Om*
 F *Parkash* (1986) 4 SCC 155 and *Vidyawati v. Man Mohan*
 (1995) 5 SCC 431. In our opinion, the argument of the learned
 counsel is meritless and deserves to be rejected. In the plaint
 filed by them, respondent Nos. 1 and 2 did not make a mention
 of the inventory proceedings held after the death of Abdul Kadar
 G Hazi Jaffar and his wife and order dated 26.9.1990 passed by
 the trial Court. In his written statement, Abdul Razak pleaded
 that before his death, the tenant Shri Rajaram D. Wagle had
 surrendered possession of the premises to him and that the
 plaintiffs had nothing to do with the suit premises. He further

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pleaded that the suit premises were given to defendant No.2 A
for conducting business of distribution of liquor. There is nothing
in the written statement of Abdul Razak from which it can be
inferred that he has claimed ownership over the suit property.
After they were brought on record as legal representatives of B
late Abdul Razak, the appellants filed additional written
statement incorporating therein the plea that the suit property
had become subject matter of inventory proceedings No.80/89/
A and the same was allotted to the daughters of Abdul Razak
i.e. appellant Nos.3, 4 and 6. The appellants also pleaded that
in the meeting of the Family Council held on 10.4.1990, a C
unanimous decision was taken for allotment of the properties
and the same was approved by the trial Court vide order dated
26.9.1990. According to the appellants, Abdul Razak was
looking after the suit property because at the time of death of
his parents, appellant Nos. 3, 4 and 6 were minor. Therefore, D
it cannot be said that the plea raised by the appellants is
inconsistent with the averments contained in the original written
statement by Abdul Razak. Order 22 Rule 4(1) and (2) CPC
on which reliance has been placed by learned counsel for
respondent Nos. 1 and 2 reads as under:

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"4. *Procedure in case of death of one of several
defendants or of sole defendant.*—(1) Where one of two
or more defendants dies and the right to sue does not
survive against the surviving defendant or defendants
alone, or a sole defendant or sole surviving defendant dies F
and the right to sue survives, the court, on an application
made in that behalf, shall cause the legal representative
of the deceased defendant to be made a party and shall
proceed with the suit.

G
(2) Any person so made a party may make any defence
appropriate to his character as legal representative of the
deceased defendant."

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23. In *J.C. Chatterjee's* case, this Court interpreted the

A above reproduced provision and held:

B Under sub-clause (ii) of Rule 4 of Order 22 of the Civil
 C Procedure Code any person so made a party as a legal
 D representative of the deceased, respondent was entitled
 E to make any defence appropriate to his character as legal
 F representative of the deceased respondent. In other
 G words, the heirs and the legal representatives could urge
 H all contentions which the deceased could have urged
 except only those which were personal to the deceased.
 Indeed this does not prevent the legal representatives from
 setting up also their own independent title, in which case
 there could be no objection to the court impleading them
 not merely as the legal representatives of the deceased
 but also in their personal capacity avoiding thereby a
 separate suit for a decision on the independent title.

24. In *Bal Kishan's* case, the proposition laid down in *J.C. Chatterjee's* case was reiterated, but its width was limited by observing that the same would apply only to those cases where the Court hearing the case has jurisdiction to try the issues relating to independent title also. The facts of *Bal Kishan's* case were that respondent No. 1 therein filed a petition for eviction of the tenant by alleging that the latter had sublet the premises without his consent. During the pendency of the petition, the tenant Musadi Lal died. Thereupon, the appellant Bal Kishan filed an application for being brought on record as legal representative of the deceased. The Rent Controller allowed the application. Thereafter, the appellant filed additional written statement asserting therein that the premises in question being residential and commercial, the legal heir of the tenant could not be treated as a tenant as defined under Section 2(h) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and that possession of such legal heir of the tenant would be that of a trespasser. He accordingly prayed for dismissal of the eviction petition. The Rent Controller rejected the appellant's plea and allowed the eviction petition by holding that Musadi

Lal had sublet the premises to Med Ram without his consent. A
The appeal and revision filed by the appellant were dismissed
by the Appellate Authority and the High Court respectively.
Before this Court, the appellant relied upon the ratio of *J.C.
Chatterjee's* case and argued that he was entitled to raise an
additional plea that the eviction petition was not maintainable. B
While rejecting this plea, this Court held:

But in the instant case the appellant cannot claim the
benefit of the above decision for two reasons. First, the
appellant had not been brought on record as a respondent C
in the eviction petition in his personal capacity but had
been brought on record only as the legal representative of
Musadi Lal. Secondly, in the circumstances of this case,
even if a prayer had been made to bring the appellant on D
record in his personal capacity, the Rent Controller could
not have allowed the application and permitted him to raise
the plea of independent title because such a plea would
oust the jurisdiction of the Rent Controller to try the case
itself. *The observations made in the Jagdish Chander*
Chatterjee case have to be confined to only those cases E
where the court hearing the case has jurisdiction to try
the issues relating to independent title also. The Rent
Controller, who had no jurisdiction to pass the decree for
possession against a trespasser could not have, therefore,
impleaded the appellant as a respondent to the petition
for eviction in his independent capacity. F

(emphasis supplied)

25. In *Vidyawati's* case, this Court considered the question
whether a person impleaded as a legal representative of the
deceased defendant can independently claim title to and G
interest in the property under a will. It was contended by the
appellant that claim of the original defendant and that of the
legal representative are founded on the will executed by
Champawati and the courts below were not right in refusing to H

A permit her to file additional written statement. While approving
 the view taken by the courts below, this Court observed "whether
 the petitioner has independent right, title and interest de hors
 the claim of the first defendant is a matter to be gone into at a
 later proceeding. It is true that when the petitioner was
 B impleaded as a party-defendant, all rights under Order XXII
 Rule 4(2), and defences available to the deceased defendant
 became available to her. In addition, if the petitioner had any
 independent right, title or interest in the property, then she had
 to get herself impleaded in the suit as a party-defendant.
 C Thereafter, she could resist the claim made by the plaintiff or
 challenge the decree that may be passed in the suit. For taking
 this view, the Court relied upon the judgments in *J.C.
 Chatterjee's case* and *Bal Kishan's case*.

D 26. The judgments of *Bal Kishan's case* and *Vidyawati's*
 case are clearly distinguishable. In the first case, the earlier
 judgment in *J.C. Chatterjee's case*, which substantially supports
 the appellants was distinguished on the ground that the plea
 raised by the impleaded legal representative of the tenant was
 inconsistent with his defence and, if accepted, the same would
 E result in ouster of the jurisdiction of the Rent Controller. In the
 second case also, the Court found that the plea raised by the
 appellant, who was impleaded as legal representative of the
 defendant that she had independent title under the will executed
 by Champawati was not in consonance with the plea taken by
 F the original defendant. However, as discussed in the earlier part
 of the judgment, the claim made by the appellants is in no way
 inconsistent with or derogatory to the defence set up by Abdul
 Razak. In any case, once the additional written statement filed
 by the appellants was taken on record without any objection by
 G respondent Nos. 1 and 2, who also led their evidence keeping
 in view the pleadings of the additional written statement, the
 High Court was not at all justified in allowing the application filed
 for striking off the additional written statement and that too
 without even advertng to Order VI Rule 16 CPC and
 H considering whether respondent Nos. 1 and 2 were able to

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make out a case for exercise of power by the court under that A
provision.

27. In the result, the appeal is allowed. The impugned order
of the High Court is set aside and the one passed by the trial
Court is restored. Respondent Nos. 1 and 2 shall pay cost of B
Rs.25,000/- to the appellants for burdening them with
unnecessary litigation.

B.B.B.

Appeal allowed.