SHAH NEWAZ KHAN & ORS.

v.

STATE OF NAGALAND & ORS.

(Civil appeal no. 1497 of 2023)

FEBRUARY 28, 2023

[HRISHIKESH ROY AND DIPANKAR DATTA*, JJ.]

Code of Civil Procedure, 1908 – ss.24, 25 – Constitution of India – Arts. 214, 231 – Suit – Transfer of – Appellant-plaintiff moved an application u/s. 24 of CPC before the Gauhati High Court (Common High Court for the states of Assam, Nagaland and two other states) for an order to transfer of a suit filed by appellant in the court of the District Judge, Dimapur, Nagaland to the court of the District Judge at Gauhati, Assam – High Court rejected the transfer application – In appeal before the Supreme Court, issue was: Is the Supreme Court the sole repository of power in terms of s. 25 of the CPC to direct transfer of a suit, appeal or other proceeding from a Civil Court in one State to a Civil Court in another State? Or, is it open for a High Court, if it is the common High Court for two or more States, to entertain an application for transfer u/s. 24 of the CPC and transfer a suit, appeal or other proceeding from a Civil Court to another Civil Court, both of which are subordinate to such High Court but situate in different States in relation to which it exercises jurisdiction, for consideration and decision – Held: A true and proper interpretation of s.25 of the CPC leads to conclusion that same applies to inter-State transfer of a suit, appeal or other proceeding where both States have a High Court in terms of Art.214 of the Constitution and not to a transfer where both States have a common High Court under Art. 231 – Power u/s. 24 of the CPC can be exercised by the High Court even for inter-State transfer of a suit, appeal or other proceeding, if it is the common High Court for two or more States under Art. 231 of the Constitution and both the Civil Courts (transferor and transferee) are subordinate to it – Judgment of High Court set aside – Gauhati High Court to now decide the application u/s. 24 of CPC afresh.

* Author

Code of Civil Procedure, 1908 – ss.24, 25 – Interpretation of – Held: A narrow interpretation of s.25 imposing a bar for entertainment of an application u/s. 24 for transfer of a suit, appeal or other proceeding by a common High Court like the Gauhati High Court inter-se the four States in relation to which it exercises jurisdiction could place a heavy burden and might pose an insurmountable obstacle for litigants of the far-flung areas of the North-East, if they were made to approach Supreme Court for such transfer on the specious ground that the Civil Court to which the same is proposed to be transferred is in a State other than the State in which the suit has been instituted.

Interpretation of Statutes – An interpretation of the law that seeks to address the mischief, that is consistent with the Constitution and promotes constitutional objectives and that which responds to the needs of the nation must be adopted.

Allowing the appeal, the Court

HELD :

1. **Section 24 of the CPC is a general power of 'transfer and withdrawal' capable of being invoked by the High Courts at any stage either *suo motu* without notice or on the application of any of the parties after notice, whereas section 25 confers exclusive power on the Supreme Court, on the application of either of the parties and after notice, to transfer suits, etc. from the Courts stated therein. While section 24 is part of the general law, section 25 is the special law. Law is well-settled, and referring to the decision in *Amarendra Pratap Singh vs. Tej Bahadur Prajapati,* that a general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else, an effort has to be made at reconciling the two provisions by homogenous reading. What, therefore, needs to be seen and appreciated is whether there is any conflict or inconsistency between the general law (section 24) and the special law (section 25) for the former to yield to the latter, and ascertain whether the High Court still has the jurisdiction under the general law to order an inter-State transfer notwithstanding the special law vesting the Supreme Court with such power**

of transfer. There has to be an inconsistency between the two so as to apply the maxim *generalia specialibus non derogant.* The jurisdiction conferred on the Supreme Court pursuant to the amendment of section 25 of the CPC in 1976 though special, invocation of the jurisdiction of the High Court under section 24 may not come in conflict and defeat section 25, if jurisdiction is still found available to be exercised in a given case under the former without doing violence to the latter. [Para 37]

2. A High Court ~ howsoever big or small, old or new ~ is as much a Constitutional Court as this Court is and enjoys wide ranging powers vested in it by law. No doubt, the power under section 25 is a special power, but the common High Courts of the country ought not to read section 24 of the CPC in a manner as if the power of the Supreme Court under section 25 to order an inter-State transfer is available to be exclusively exercised by it in all cases of inter-State transfer, thereby denuding the common High Courts of the country of their jurisdiction by mere reference to involvement of an inter-State transfer and without anything more being looked at. [Para 42]

3. In opinion of this Court, an approach to construe section 25 of the CPC has to be fair, pragmatic, reasonable and realistic. Any construction of section 25 which would impede "access to justice", considered to be a Fundamental Right, has to be eschewed. A narrow interpretation of section 25 imposing a bar for entertainment of an application under section 24 for transfer of a suit, appeal or other proceeding by a common High Court like the Gauhati High Court *inter-se* the four States in relation to which it exercises jurisdiction could place a heavy burden and might pose an insurmountable obstacle for litigants of the far-flung areas of the North-East, if they were made to approach this Court for such transfer on the specious ground that the Civil Court to which the same is proposed to be transferred is in a State other than the State in which the suit has been instituted. An interpretation of the law that seeks to address the mischief, that is consistent with the Constitution and promotes constitutional objectives

and that which responds to the needs of the nation must be adopted. If "access to justice" has to be real, it becomes the moral responsibility of the Supreme Court, the supreme guardians/protectors of the rights of people guaranteed by the Constitution and the laws, not to construe the substantive part in section 25 of the Code in a pedantic manner to bring about a situation that would thwart the initiative of making "access to justice" real. [Para 46]

4. In view of the aforesaid discussions, the issue is answered by concluding that:

(i) a true and proper interpretation of section 25 of the CPC lead to the conclusion that the same applies to inter-State transfer of a suit, appeal or other proceeding where both States have a High Court in terms of Article 214 of the Constitution and not to a transfer where both States have a common High Court under Article 231 thereof; and

(ii) the power under section 24 of the CPC can be exercised by the High Court even for inter-State transfer of a suit, appeal or other proceeding, if it is the common High Court for two or more States under Article 231 of the Constitution and both the Civil Courts (transferor and transferee) are subordinate to it. [Para 48]

Durgesh Sharma vs. Jayshree **(2008) 9 SCC 648 : [2008] 13 SCR 1056- distinguished.**

D. Saibaba v Bar Council of India & Anr. **(2003) 6 SCC 186 : [2003] 3 SCR 1209;** *Amarendra Pratap Singh vs. Tej Bahadur Prajapati* **(2004) 10 SCC 65 : [2003] 6 Suppl. SCR 42 – referred to.**

Pomi Sengupta vs. Biswajit Sengupta **(2015) 6 GLR 396;** *Megha Jain vs. Kartik Jain* **(2019) 6 GLR 379;** *Chalasani Deepthi vs. Chalasani Krishna Chaitanya* **2015 SCC OnLine Hyd 978;** *Irene Blanch Khera vs. Glenn John Vijay* **2018 (6) Mh. L.J. 199 – referred to.**

12th Edition of 'Principles of Statutory Interpretation' at page 131 (Para 6 (e))

SHAH NEWAZ KHAN & ORS. v. STATE OF NAGALAND & ORS.

CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal No.1497 of 2023.

From the Judgment and Order dated 10.12.2015 of the High Court of Gauhati in TR No.68 of 2015.

With

Transfer Petition (c) No.307 of 2016.

Parthiv K. Goswami, Sr. Adv., Ms. Ragini Pandey, Ms. Atiga Singh, Ms. Diksha Rai, Advs. for the Appellants.

K N Balgopal, Sr. Adv., Ms. K. Enatoli Sema, Ms. Limayinla Jamir, Amit Kumar Singh, Ms. Chubalemla Chang, Prang Newmai, Vivek Narayan Sharma, Ms. Mahima Bhardwaj, Ms. Laksha Bhavnani, Pranshu Kausha, Shubham Awasthi, Rajeev Kumar Jha, Ram Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

DIPANKAR DATTA, J.

1. Leave granted.

THE ISSUE

2. An issue, pristinely legal and novel, emerges for decision. It is novel in the sense that although three different High Courts of the country have taken views which are entirely consistent, except the view taken in the judgment and order under challenge of the Gauhati High Court which impliedly stands overruled by a larger Bench of the same High Court, this Court hitherto might not have had the occasion to deal with such an issue and decide either way.

3. Shortly put, the issue is:

   Is the Supreme Court the sole repository of power in terms of section 25 of the Code of Civil Procedure (for brevity 'the CPC') to direct transfer of a suit, appeal or other proceeding from a Civil Court in one State to a Civil Court in another State? Or, is it open for a High Court, if it is the common High Court for two or more States, to entertain an application for transfer under section 24 of the CPC and transfer a suit, appeal or other proceeding from a Civil Court to another Civil Court, both of which are subordinate to such High Court but situate in different States in relation to which it exercises jurisdiction, for consideration and decision?

FACTS AND THE ORDER UNDER CHALLENGE

4. The facts leading to presentation of this appeal reveal that the appellants having instituted a suit for declaration of right, title and interest as well as for perpetual injunction and damages in the court of the District Judge at Dimapur, Nagaland sometime in 2007, failed to prosecute it in the right earnest allegedly due to hostile circumstances created by the private defendants in the suit resulting in dismissal and restoration thereof on three occasions. Pleading why it is impossible for them to continue with prosecution of the suit at Dimapur, the appellants moved an application under section 24 of the CPC before the Gauhati High Court for an order to transfer the suit to the court of the District Judge at Guwahati, Assam. A learned Judge of the Gauhati High Court, which presently happens to be the common High Court for the States of Assam, Nagaland, Mizoram and Arunachal Pradesh, presiding over the Bench at the principal seat at Guwahati, rejected the application for transfer by a judgment and order dated 10th December, 2015. While so rejecting, the learned Judge followed His Lordship's previous decision in **Pomi Sengupta vs. Biswajit Sengupta**[1] which, in turn, had entirely relied on the decision of this Court in **Durgesh Sharma vs. Jayshree**[2]. The judgment and order of rejection of the application under section 24 of the CPC is under challenge in this appeal.

5. The appellants, by way of abundant caution, have also applied before this Court under section 25 of the CPC seeking the same relief that was disallowed by the learned Judge.

APPELLANTS' CONTENTIONS

6. Appearing in support of the appeal, Mr. Goswami, learned senior counsel contended that:

   a. Article 214 of the Constitution of India ordains that there shall be a High-Court for each State. Article 231 of the Constitution of India provides for the establishment of a common High Court for two or more States.

   b. The relevant provisions of the CPC for the purpose of a decision on the present dispute are sections 22 to 25 read with section 3 thereof dealing with subordination of courts.

1 (2015) 6 GLR 396
2 (2008) 9 SCC 648

c. The power of the High Court and the District Courts to direct transfer of proceedings is provided in section 24 of the CPC.

d. The facts of the instant case clearly satisfy all the ingredients of section 24 CPC, more particularly, sub-clause (ii) of clause (b) of sub-section (1) thereof. A bare perusal of such provision 24 would indicate that the High Court may, at any stage, direct transfer of proceedings pending before it to any court subordinate to it, or transfer proceedings pending in any court subordinate to it to itself or to any other court subordinate to it. Thus, the emphasis under the said provision is on the expression *"court subordinate to it"*. Section 3 of the CPC, *inter alia*, defines the courts subordinate to the High Court. Thus, on a plain reading of section 24 of the CPC, it is evident that the common High Court, i.e., the Gauhati High Court, has the power and jurisdiction to direct inter-State transfer of proceedings, provided both the transferor and transferee courts are subordinate to it, and fall within its territorial jurisdiction, which is the case here.

e. On a harmonious construction of section 24 and section 25 of the CPC, it is clear that the latter will apply only to inter-State transfer of proceedings between two States where the two States in question have different High Courts, whereas, in a case involving inter-State transfer of proceedings within the territorial jurisdiction of a common High Court, the common High Court would have the power and jurisdiction to direct inter-State transfer of proceedings of the nature stated above, in exercise of its power under section 24 of the CPC.

f. It is a settled proposition of law that in construing a provision, the consequences that befall on a particular interpretation of a provision is a relevant consideration. Justice G.P. Singh in his treatise[3] has observed thus:

4. REGARD TO CONSEQUENCES

If the language used is capable of hearing more than one construction, in selecting the true meaning, regard. Must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity, or anomaly or which leads

3 12th Edition of 'Principles of Statutory Interpretation' at page 131

to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results.

g. This observation was quoted with approval by the Supreme Court in paragraph 17 of its decision in **D. Saibaba v Bar Council of India & Anr.**[4].

h. Therefore, the aforementioned observation would also lend support to the submission of the appellants in as much as it would be more convenient for litigants within the territory of the common High Court to approach the Gauhati High Court for seeking transfer.

7. Mr. Goswami also cited three other decisions. The first is a decision of the larger bench of the Gauhati High Court in **Megha Jain vs. Kartik Jain**[5]. This decision has overruled **Pomi Sengupta** (supra), on which the impugned judgment and order is premised. The second is a decision of the (undivided) Andhra Pradesh High Court in **Chalasani Deepthi vs. Chalasani Krishna Chaitanya**[6] and the last a decision of the Bombay High Court in **Irene Blanch Khera vs. Glenn John Vijay**[7].

8. Based on his aforesaid submissions, Mr. Goswami urged us to set aside the order under challenge and to remit the matter to the Gauhati High Court for fresh consideration of the application of the appellants under section 24 of the CPC. In the alternative, he submitted that the application under section 25 may be considered by us on its own merits.

CONTENTIONS OF THE RESPONDENTS 1 TO 3

9. Opposing the appeal, Mr. Balgopal, learned senior counsel for the State of Nagaland and its officers, contended as follows:

a. A brief issue with regard to the scope and ambit of section 24 vis-à-vis section 25 of the CPC has arisen before this Court in the instant case in view of the peculiar circumstances wherein two States share a common High Court as provided under Article 231 of the Constitution of India.

4 (2003) 6 SCC 186
5 (2019) 6 GLR 379
6 2015 SCC OnLine Hyd 978
7 2018 (6) Mh. L.J. 199

b. Section 24(1)(b), CPC gives power to the High Court to withdraw any suit, appeal or other proceeding pending in any court subordinate to it and to transfer the same for trial or disposal to any Court subordinate to it which is competent to try or dispose of the same. As the State of Nagaland does not have a separate High Court, consequently all courts functioning in the State of Nagaland are subordinate to the Gauhati High Court, being the common High Court for the States of Assam, Nagaland, Mizoram and Arunachal Pradesh.

c. However, in order to appreciate whether the common High Court has the power to withdraw any suit, appeal or other proceeding pending before any Court subordinate to it from one State and to transfer the same to any Court subordinate to it, in another State, the provisions of both sections 24 and 25 of the Code will have to be examined as it involves an inter-State transfer and not an intra-State transfer simplicitor.

d. To appreciate the true import and meaning of the provisions of section 25(1), the said provision will have to be read in two parts as it contains two-fold power to direct any suit, appeal or other proceeding to be transferred:

   i. From one High Court to another High Court; o

   ii. From one Civil Court in one State to another Civil Court in any other State.

   This interpretation is substantiated by the observation made by this Court in **Durgesh Sharma** (supra).

e. Section 25 is the only provision in the CPC, which refers to transfer of a case from a Civil Court in one State to a Civil Court in another State. Incidentally, the appellants themselves are asking for this relief.

f. Report of the Joint Committee, Lok Sabha of the Code of Civil Procedure (Amendment) Bill 1974 which was passed on 1st April, 1976 shows that this issue was raised by one of the North-Eastern States, i.e., State of Meghalaya with regard to conflict between sections 24 and 25 insofar as the North-East area is concerned and reading of the minutes suggests that the Committee assured to look into the issue.

g. In view of the specific provision in section 25(1) of the CPC, it is only the Supreme Court and no other court which has the power to direct transfer of the suit instituted by the appellants from the Civil Court in Dimapur, Nagaland to the Civil Court in Guwahati, Assam, if at all any ground is set up therefor.

10. In view of the aforesaid contentions, it was submitted by Mr. Balgopal that the impugned judgement needs no interference and deserves to be upheld.

ARGUMENTS OF THE RESPONDENTS 4 AND 5

11. Mr. Sharma, learned counsel appearing for the respondents 4 and 5, advanced the following arguments:

a. Power to effect inter-State transfer of any suit, appeal or other proceeding is not available to be exercised by a High Court in terms of section 24 of the CPC since such power is expressly and exclusively provided in section 25 thereof, to be exercised only by the Supreme Court.

b. Reliance placed by the learned senior counsel for the appellants on **Durgesh Sharma** (supra) is misplaced since that case is distinguishable. The observations in paragraph 47 were made by this Court to decide the issue captured in paragraph 3 and this Court had no occasion to examine the issue in the light as it has occurred in the present case. It is trite to submit that such an observation could at best be treated as *obiter dicta* (defined as an incidental remark of a Judge's expression of opinion uttered in court or in a written judgment, but not essential to the decision and therefore not legally binding as a precedent).

c. Be that as it may, what has been held by this Court in paragraph 57 of **Durgesh Sharma** (supra) nullifies the point sought to be urged on the behalf of the appellants.

d. In **Megha Jain** (supra), the Division Bench of the Gauhati High Court has held that it has jurisdiction to exercise powers under section 24 of the CPC read with section 23(1) and/or section 23(2) thereof to transfer a suit, appeal or any other proceeding from one of the four States under its jurisdiction to any other State under its jurisdiction for trial. In paragraph 9 of **Megha Jain** (supra), reference has been made to section 24 (1) (a) of the CPC to

arrive at the conclusion that the High Court or the District Court may, at any stage, transfer any suit etc. pending before it to any court subordinate to it and that a transfer petition seeking transfer from one State to any of the four States shall be maintainable thereunder. The abovesaid conclusion is not the correct exposition of law. Sections 22 to 24 of the CPC and section 25 thereof are two different codes within the CPC and there is no overlapping in relation to the domain where these two sets of codes operate.

e. A plain reading of section 22 of the CPC would show that the words *"several Courts"* occurring in its last has been continued in section 23, while no such co-relation exists either between sections 22 and 25 or sections 23 and 25. Therefore, application of section 23 together with section 25 appears completely faulty. Also, in relation to the exercise of power under section 24, the said power has been made available to even a District Court, which makes it amply clear that the power under section 24 is a continuation of sections 22 and 23 only.

f. Further, the power of transfer of suits under section 22 can be exercised, *"(W)here a suit may be instituted in any one of two or more courts and is instituted in one of such courts"*. And this power under section 22 is explained in section 23 for the purposes as to which court an application for transfer may lie. Further, after the application is made, under section 24, such power is explained as to how the same can be exercised. Therefore, section 22 provides which of the suits, section 23 provides which of the courts and section 24 provides how such transfers can be effected.

g. In contrast to the above, the power under section 25 has been clearly defined and the same does not have any mention in sections 22 to 24 in the same manner as it occurs in section 25, categoric and precise. Therefore, the legislative intent is clear that only under section 25 of the CPC a direction that any suit, appeal or other proceeding may be transferred from a Civil Court in one State to a Civil Court in any other State and that can only be made by this Court.

12. Resting on the aforesaid arguments, Mr. Sharma too urged that no case for interference had been made out by the appellants and the appeal deserves dismissal.

THE RELEVANT PROVISIONS OF LAW

13. Sections 24 and 25 of the CPC being at the heart of the debate, the same need to read carefully. To the extent relevant, the said provisions read as follows:

"24. *General power of transfer and withdrawal.*— (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

***"

"25. Power of Supreme Court to transfer suits, etc.—

(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

***"

14. Prior to its amendment in 1976, section 25 of the Code read as follows:

"25. *Power of State Government to transfer suits.*—(1) Where any party to a suit, appeal or other proceeding pending in a High Court presided

over by a Single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the State Government, which may, by notification in the Official Gazette, transfer such suit, appeal or proceeding to any other High Court.

Provided that no suit, appeal or proceeding shall be transferred to a High Court without the consent of the State Government of the State in which that High Court has its principal seat."

15. Since acceptance of the arguments of Mr. Balgopal and Mr. Sharma would result in denuding a common High Court of the jurisdiction to even entertain an application under section 24 of the CPC for transfer of a suit from a Civil Court in one State to a Civil Court of another State, notwithstanding that exercise of jurisdiction by such High Court extends to both such States, it is absolutely necessary to consider Chapter V of the Constitution of India titled *"(T)he High Courts in the States"* and more particularly the terms of Articles 214, 231, 227, 235 and 228 which, to our mind, are of utmost relevance for deciding the legal issue. At the same time, having regard to the terms of pre-amended section 25 of the CPC, a peep into the pages of history as to how the Gauhati High Court became the common High Court for the State of Assam and the other States seems to be imperative.

16. Article 214 is clear that there shall be a High Court for each State. Article 231, inserted in the Constitution by the Constitution (Seventh Amendment) Act, 1956, is an ordainment that notwithstanding anything contained in the preceding provisions of Chapter V, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory. Article 227 is the recognition of the power of superintendence of every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The control over all District Courts and courts subordinate thereto, in terms of Article 235, vests in the High Court. One other important provision is Article 228. Article 228 empowers the High Court, subject to its satisfaction that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution and the determination of which is necessary for the disposal of the case, to withdraw the case and (a) either dispose of the case itself, or (b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a

copy of its judgment on such question, whereupon the said court shall proceed to dispose of the case in conformity with such judgment.

ORIGIN AND EVOLUTION OF THE COMMON HIGH COURT

17. We now move on to note the origin and evolution of the common High Court, i.e., the Gauhati High Court and the trajectory that it has been ordained to follow in relation to the territories over which it exercises jurisdiction.

18. The precursor of the Gauhati High Court was the High Court of Assam, which was established on 5th April, 1948 in terms of the Assam High Court Order, 1948 (for brevity 'the 1948 Order') made by the Governor General in exercise of power conferred by section 229 of the Government of India Act, 1935 and as adopted by the India Provincial Constitution (Amendment) Order, 1948. In terms of paragraph 4 thereof, the High Court of Assam was conferred, in respect of the territories for the time being included in the province of Assam, all such original, appellate and other jurisdiction as, under the law in force immediately before the prescribed day, was exercisable in respect of the said territories or any part thereof, by the High Court in Calcutta or by the Governor of Assam exercising the functions of a high court.

19. In 1962, by an Act of Parliament titled the State of Nagaland Act, 1962 (for brevity 'the 1962 Act'), the State of Nagaland was formed. While sub-section (1) of section 13 of the 1962 Act ordained that there shall be a common high court called the High Court of Assam and Nagaland, sub-section (3) thereof provided that expenditure in respect of the salaries and allowances of the Judges of the common High Court shall be allocated between the States of Assam and Nagaland in such proportion as the President may by order determine.

20. The 1962 Act was followed by the North-Eastern Areas (Reorganisation) Act, 1971 (for brevity 'the 1971 Act'). This enactment contained provisions for the establishment of the States of Manipur and Tripura and for the formation of the State of Meghalaya, and the Union territories of Mizoram and Arunachal Pradesh, by reorganizing the existing State of Assam. Part IV of the 1971 Act titled "High Court" contained sections 28 to 43. Sections 28 and 29, being relevant are quoted below:

"28. Common High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.— (1) On and from the appointed day,—

(a) the High Court of Assam and Nagaland shall cease to function and is hereby abolished;

(b) there shall be a common High Court for the States of Assam, Nagaland, Meghalaya, Manipur and Tripura to be called the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura);

(c) the Judges of the High Court of Assam and Nagaland holding office immediately before that day shall, unless they have elected otherwise, become on that day the Judges of the common High Court:

(2) Nothing in clause (*a*) of sub-section (1) shall prejudice or affect the continued operation of any notice served, injunction issued, direction given or proceedings taken before the appointed day by the High Court of Assam and Nagaland under the powers then conferred upon that Court."

"29. Jurisdiction of the common High Court.—On and from the appointed day, the common High Court shall have, in respect of the territories comprised in the States of Assam, Manipur, Meghalaya, Nagaland and Tripura, all such jurisdiction, powers and authority as under the law in force immediately before the appointed day, are exercisable in respect of those territories by the High Court of Assam and Nagaland or the Court of the Judicial Commissioner for Manipur, or the Court of the Judicial Commissioner for Tripura, as the case may be."

21. With the enactment of the State of Arunachal Pradesh Act, 1986 and the State of Mizoram Act, 1986, two new States were born. Section 18 of the former and section 15 of the latter legislation, more or less commonly worded, when read together would evince that a common High Court for the States of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh to be called the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) came into existence. The common thread that runs through the developments of 1962, 1971 and 1986, noted above, is that as and when the jurisdiction of the High Court of Assam and thereafter the Gauhati High Court came to be enlarged and extended to States other than Assam, all seven sister States in the North- Eastern part of the country agreed to bear the expenditure in respect of the salaries and allowances of the Judges of the common High Court as shall be allocated amongst the States in such proportion by an order of the President.

22. In view of the provisions of the 1971 Act, till little over a decade back, the Gauhati High Court was the common High Court for the seven sister states. The jurisdiction of the said High Court extended throughout the territories of Assam, Nagaland, Tripura, Manipur, Meghalaya, Mizoram and Arunachal Pradesh.

23. However, the 1971 Act came to be amended by the North- Eastern Areas (Re-organisation) and Other Related Laws (Amendment) Act, 2012 (for brevity 'the Amendment Act'). It established separate High Courts for the States of Meghalaya, Manipur and Tripura. Accordingly, the definition of "common High Court" in section 2(d) of the 1971 Act was amended. Apart from insertion of sections 28A to 28K between sections 28 and 29, the Amendment Act, *inter alia*, also introduced a proviso in sub-section (1) of section 28, reading as follows:

> "Provided that on and from the commencement of the North-Eastern Areas (Reorganisation) and Other Related Laws (Amendment) Act, 2012, the common High Court shall be the High Court for the States of Assam, Arunachal Pradesh, Mizoram and Nagaland and shall cease to have its jurisdiction, powers and authority for the States of Meghalaya, Manipur and Tripura."

24. Hence, today, the Gauhati High Court is the common High Court exercising jurisdiction throughout Assam, Nagaland, Mizoram and Arunachal Pradesh; a *fortiori*, all Civil Courts in these four States are subordinate to the same High Court, i.e., the Gauhati High Court. Thus, it is a High Court which earlier exercised its jurisdiction over seven different States and is presently exercising jurisdiction over four different States. This, by itself, is a unique feature which stands unmatched in the judicial annals of the country post-independence.

25. We can take judicial notice that Judges of the Gauhati High Court in the past have been elevated from amongst advocates and judicial officers hailing from the aforesaid States.

26. Therefore, so far as judicial administration is concerned, in terms of Article 231 of the Constitution, the Gauhati High Court is the High Court, *inter alia*, for the State of Assam as well as for the State of Nagaland.

PRE-AMENDED SECTION 25, CPC

27. Before proceeding further, we may now refer to the pre- amended section 25 of the Code for the purpose of understanding what was the mischief

that the Parliament intended to address by radically altering its relevant terms resulting in its substantial substitution. Bare perusal of the pre-amended provision clearly reflects that its scope and applicability were rather limited. Unless the State Governments were *ad idem*, a transfer of a suit, appeal or other proceeding from a Civil Court in one State to a Civil Court in another State was not a permissible option. That apart, such transfer of a suit, appeal or other proceeding instead of being effected by a judicial act was left to an administrative act and, that too, only if the two State Governments were in agreement. The Law Commission having recommended an amendment, section 25 of the CPC came to be amended by the Amendment Act 104 of 1976. A contrast of the pre-amended and present version of section 25 is clearly suggestive of the distinctive variance *qua* the authority to exercise the power of transfer. At this juncture, the Statement of Objects and Reasons (for brevity 'the SOR') for amending section 25 may also be noted:

"*Clause 12*.—Section 25 of the Code empowers the State Government to transfer suits, etc. in certain circumstances from the High Court exercising jurisdiction in the State to another High Court. This section is very narrow in scope as it provides only for the transfer of suit, appeal or other proceeding pending in a High Court presided over by a Single Judge. Besides, the State Government, does not seem to be an appropriate agency for exercising the power of transfer. Section 25 is, therefore, being substituted by a new section which provides for the transfer to the Supreme Court the existing power vested with the State Government and to confer on the Supreme Court such wide powers of transfer as it has in criminal cases under Section 406 of the Code of Criminal Procedure, 1973. Further, the new section covers transfer of cases from or to the Original Side of a High Court to or from any other civil court. The new section is thus wider in scope than Section 406 of the Code of Criminal Procedure, 1973."

28. Thus, with the amendment of section 25, a serious impediment in administration of justice by the courts of law was remedied by conferment of power on this Court to decide on inter-State transfer of any suit, appeal or other proceeding pending in a Civil Court of one State to a Civil Court of another State. Since under the pre-amended section 25, such a transfer could be made by the transferor State only if the transferee State were to consent to it, it was rightly observed in the SOR that it was not the function of the States to decide on such transfer. Though

advisedly, we presume, that there is absence of any reference in the SOR about the uncertainty centering around cooperation or the lack of it between the relevant States prior to a transfer of the nature referred to in section 25 being effected, it does not take too long to comprehend that Parliament did proceed in the right direction and sought to address the mischief that could ensue if the two States were not on the same page resulting in depriving a litigant of having his cause vindicated. Be that as it may.

CONSIDERATION OF THE DECISIONS

29. Having surveyed the provisions of the Constitution relating to the High Courts in general and how the Gauhati High Court has taken shape as the common High Court for, *inter alia*, the States of Assam and Nagaland, it is time to look into the decision in **Durgesh Sharma** (supra), cited by Mr. Balgopal and by Mr. Goswami as well as the other decisions cited by him for the appellants.

30. In **Durgesh Sharma** (supra), this Court was seized of the question as to whether the High Court of Madhya Pradesh was justified, on an application under section 23 of the Code, in ordering transfer of a petition under section 13 of the Hindu Marriage Act, 1955, instituted by the appellant-husband in a court in Ujjain, Madhya Pradesh, to a court in Malegaon, District Nashik, Maharashtra to be tried along with a petition under section 9 of the said Act instituted by the respondent-wife. Considering the provisions of law, this Court held as follows:

"46. Having considered the scheme of the Code as amended from time to time, in our judgment, the law relating to transfer of cases (suits, appeals and other proceedings) is well settled. It is found in Sections 22 to 25 of the Code and those provisions are *exhaustive* in nature. Whereas Sections 22, 24 and 25 deal with *power* of transfer, Section 23 merely provides *forum* and specifies the court in which an application for transfer may be made. Section 23 is not a substantive provision vesting power in a particular court to order transfer.

47. In our considered opinion, where several courts having jurisdiction are subordinate to one appellate court, an application for transfer may be made to such appellate court and the court may transfer a case from one court subordinate to it to another court subordinate to it. Likewise, where such courts are subordinate to the same High Court, an application may be made and action may be taken by the High Court transferring

a case from one court subordinate to it to any other court subordinate to that High Court. But where such courts are subordinate to different High Courts, it is only the Supreme Court (this Court) which may pass an order of transfer. In other words, if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to that High Court to a court subordinate to other High Court. It is only the Supreme Court (this Court) which may order the transfer.

48. Section 25, as originally enacted in the Code of 1908 and the decisions prior to the Amendment Act of 1976, have no application after substitution of Section 25 as it stands today. To us, Section 23 has no application to such cases and the only provision attracted is Section 25.

49. The language of Section 25 also supports the view which we are inclined to take. Sub-section (1) of Section 25 of the Code enacts that 'On the application of a party', this Court may pass an appropriate order of transfer. Thus, Section 25 is 'self-contained code' and comprises *substantive* as well as *procedural* law on the point. It allows a party to move the Court by making an application as also it empowers the Court to make an order of transfer.

50. The matter can be examined from another angle also. Every court has its own local or territorial limits beyond which it cannot exercise the jurisdiction. So far as this Court is concerned, its jurisdiction is not circumscribed by any territorial limitation and it extends over any person or authority within the territory of India. But, it has no jurisdiction outside the country. So far as a High Court is concerned, its jurisdiction is limited to territory within which it exercises jurisdiction and not beyond it. On that analogy also, a High Court cannot pass an order transferring a case pending in a court subordinate to it to a court subordinate to another High Court. It would be inconsistent with the limitation as to territorial jurisdiction of the Court.

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54. After the commencement of the Constitution and establishment of the Supreme Court (this Court), Parliament thought it proper to amend Section 25 of the Code and accordingly, it was substituted by empowering this Court to order transfer from one High Court to another High Court or to one civil court in one State to another civil court in any other State.

55. It is no doubt true that even when Section 25 in the present form was substituted by the Amendment Act of 1976, sub-section (3) of Section 23 of the Code has neither been deleted nor amended. That, however, is not relevant. Since in our considered view, Section 23 is merely a procedural provision, no order of transfer can be made under the said provision. If the case is covered by Section 25 of the Code, it is only that section which will apply for both the purposes, namely, for the purpose of making application and also for the purpose of effecting transfer. ***"

31. **Durgesh Sharma** (supra) is an authority having the effect of a binding precedent for deciding cases where the High Court for a State seeks to transfer a suit, appeal or proceeding from a court subordinate to it to a court subordinate to the High Court for another State. We share the views expressed therein. However, having regard to the fundamental factual dissimilarities present in this case, the *ratio decidendi* of **Durgesh Sharma** (supra) while answering the core issue may not apply here.

32. The decision in **Megha Jain** (supra) was rendered on a reference being made to a larger Bench by another single Judge of the Gauhati High Court, who was not persuaded to agree with the view taken by the coordinate bench in **Pomi Sengupta** (supra). A matrimonial proceeding instituted by the respondent, pending in a court in Aizawl, Mizoram was sought to be transferred to a court in Kamrup, Guwahati, Assam by the petitioner by pursuing the remedy provided by section 24 of the CPC. This is what the Division Bench, speaking through the Chief Justice, held:

"9. The constitution of the High Court with its Principal Seat and the Permanent Benches in the manner, as taken note *supra*, would indicate that all the courts in all the said four States are subordinate to the Gauhati High Court and since no separate High Courts are established in respect of Nagaland, Mizoram and Arunachal Pradesh, a provision under the Notification dated 22.6.1990 is made for the establishment of the Permanent Bench at Aizawl. Similar Notifications had been issued in respect of other two States. These aspects would leave no room for doubt that the Gauhati High Court can exercise its power and jurisdiction over all Courts in all the four States. If in that light, the provision as contained in section 24 of the CPC, extracted above, is taken note, sub-section (1)(a) would indicate that the High Court or the District Court may, at any stage, transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same. If the said provision is kept

in view and the above noted discussion relating to the establishment of the High Court and the Permanent Bench is taken note and in that circumstance, when the subordinate court in the State of Mizoram as also the subordinate court in the State of Assam is subordinate to the Gauhati High Court, a transfer petition filed under section 24 of the CPC before this court, namely, the Gauhati High Court, even for transfer of a case from the subordinate court in any of the four States, as indicated above, to the other State would be maintainable from the very provision as contained in section 24 itself. In such circumstance, the question of filing a petition under section 25 of the CPC would not arise since there are no separate High Courts exercising jurisdiction over the States referred to above. If in that background, the observation, as contained in *Smt. Pomi Sengupta (supra)* is taken note, the learned Single Judge was not justified in arriving at the conclusion that if a petition under section 24 of the CPC is entertained, it would amount to adding words to the provision."

33. **Chalasani Deepthi** (supra) arose out of an application filed by the petitioner-wife seeking withdrawal and transfer of a suit for restitution of conjugal rights, instituted by the respondent-husband in the Family Court, Ranga Reddy District, Telengana to the court of the Judge, Family Court, Vijaywada, Andhra Pradesh. A learned Judge of the (undivided) Andhra Pradesh High Court having heard the parties and the Advocates General of the States of Telengana and Andhra Pradesh and upon consideration of the provisions of the Andhra Pradesh Reorganisation Act, more particularly sections 30 and 31 thereof, together with sections 24 and 25 of the CPC as well as the decision in **Durgesh Sharma** (supra), held that both the courts being subordinate to the Andhra Pradesh High Court, which was till then the common High Court for the States of Telangana and Andhra Pradesh, the application for transfer under section 24 was maintainable.

34. A learned Judge of the Bombay High Court, while following the decision in **Chalasani Deepthi** (supra) allowed the application under section 24 of the CPC filed by the petitioner- wife seeking transfer of a matrimonial petition pending on the file of the Civil Judge in the court at Mapusa, North Goa, instituted by the respondent-husband, to the Family Court at Bandra, Mumbai, Maharashtra. Incidentally, the Bombay High Court is the common High Court for the States of Maharashtra and Goa as well as the Union territories of Dadra & Nagar Haveli and Daman & Diu. The

learned Judge spurned the objection of the respondent-husband that the transfer application ought to have been filed in the Bombay High Court at Goa and not at its principal seat in Mumbai, for the reasons recorded in the decision. Significantly, no objection was raised in this case that transfer ought to have been prayed by filing an application before this Court under section 25 of the CPC.

35. There is, therefore, a host of judicial authorities at the level of the High Courts that section 25 of the CPC would not bar entertainment of an application under section 24 thereof by a High Court, even for an inter-State transfer, if such High Court is the common High Court for two or more States and transfer, as prayed, is not to a civil court beyond the said High Court's jurisdiction.

ANALYSIS AND DECISION

36. As noted, the appellants as plaintiffs have instituted the civil suit in the court of the District Judge, Dimapur, Nagaland and now seek transfer of such suit to the court of the District Judge, Guwahati, Assam. Such a transfer, if allowed, no doubt would constitute an inter-State transfer. Insofar as inter-State transfer of any suit, appeal or other proceeding is concerned, a plain and literal reading of section 25 of the CPC does suggest that the power to so transfer lies with the Supreme Court only. Paragraph 54 of **Durgesh Sharma** (supra), heavily relied upon by Mr. Balgopal, lends support to his contentions. Having regard to the scheme of section 25 of the CPC and on its plain terms, read with **Durgesh Sharma** (supra), Mr. Balgopal seems to have a point that such an inter-State transfer of the nature prayed by the appellants cannot be ordered under section 24. However, something more seems to be visible when we put on our judicial lens to resolve the issue.

37. Section 24 of the CPC is a general power of 'transfer and withdrawal' capable of being invoked by the High Courts at any stage either *suo motu* without notice or on the application of any of the parties after notice, whereas section 25 confers exclusive power on the Supreme Court, on the application of either of the parties and after notice, to transfer suits, etc. from the Courts stated therein. While section 24 is part of the general law, section 25 is the special law. Clause (b) of sub-section (1) of section 24, which is relevant for the present case, opens up an avenue for the High Court, upon reaching a satisfaction that a case for transfer has been made out, to withdraw any suit, appeal or

other proceeding pending in any court subordinate to it and (i) to try and dispose of the same; or (ii) to transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or (iii) to retransfer the same for trial or disposal to the court from which it is withdrawn; whereas, section 25 empowers the Supreme Court on a satisfaction being recorded that an order is expedient for the ends of justice to direct that any suit, appeal or other proceeding be transferred (i) from one High Court to a High Court; and (ii) from other Civil Court in one State to other Civil Court in any other State. The text of the two sections, therefore, makes the position clear about the powers reserved for the High Courts and the Supreme Court to transfer suits, appeal or other proceedings. Law is well-settled, and we may profitably refer to the decision in **Amarendra Pratap Singh vs. Tej Bahadur Prajapati**[8], that a general law cannot defeat the provisions of a special law to the extent to which they are in conflict; else, an effort has to be made at reconciling the two provisions by homogenous reading. What, therefore, needs to be seen and appreciated is whether there is any conflict or inconsistency between the general law (section 24) and the special law (section 25) for the former to yield to the latter, and ascertain whether the High Court still has the jurisdiction under the general law to order an inter-State transfer notwithstanding the special law vesting the Supreme Court with such power of transfer. There has to be an inconsistency between the two so as to apply the maxim *generalia specialibus non derogant*. The jurisdiction conferred on the Supreme Court pursuant to the amendment of section 25 of the CPC in 1976 though special, invocation of the jurisdiction of the High Court under section 24 may not come in conflict and defeat section 25, if jurisdiction is still found available to be exercised in a given case under the former without doing violence to the latter.

38. In our considered opinion, section 25 of the CPC would operate as a bar in cases like the one in **Durgesh Sharma** (supra); however, section 25 of the CPC ~ notwithstanding the scheme envisaged in it ~ does not operate as a complete bar to denude a common High Court, like the Gauhati High Court, to entertain an application under section 24 thereof even for an order to transfer a suit, appeal or other proceeding from one State to another State, provided the States concerned are two

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of the four States in relation to which such High Court still exercises jurisdiction. This is an opinion formed by us, for the reasons, which we venture to assign now.

39. From the factual matrix vis-à-vis the Constitutional and statutory provisions, there can be no cavil that the courts and tribunals in the States of Assam, Nagaland, Mizoram and Arunachal Pradesh are not only under the superintendence of the Gauhati High Court in terms of Article 227, all district courts and courts subordinate thereto in such States are subject to the control of the Gauhati High Court under Article 235 as well as subordinate to the same High Court in terms of section 3 of the CPC. Section 25 has been inserted in the CPC with a definite purpose of ensuring that no High Court transfers a suit, appeal or other proceeding pending in a Civil Court in one State to a Civil Court in another State. The reason for this is that the High Court to which the application for transfer is made does have the power in law to transfer a suit, appeal or other proceeding to a Civil Court subordinate to it but it does not have any power in law to transfer any of the above to a Civil Court which is subordinate to another High Court. The same situation that **Durgesh Sharma** (supra) had to deal with, where the Civil Courts subordinate to the High Court of Madhya Pradesh and the Bombay High Court were involved. This Court had the occasion to hold that if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to that High Court to a court subordinate to another High Court and it is only the Supreme Court which may order the transfer. The reason for such conclusion seems to be obvious that the High Court, to which an application for transfer is made, does neither enjoy any power of superintendence under Article 227 over the Civil Court to which the transfer is sought nor can such Civil Court be said to be a court over which the High Court exercises any control of the nature referred to in Article 235. Also, in such a case, the Civil Court beyond the territory in relation to which the High Court exercises jurisdiction cannot be considered to be a court subordinate to such High Court in the sense section 3 of the CPC is to be understood.

40. The creases that were sought to be ironed out by radically altering section 25 of the CPC and presenting it in an altogether new avatar have to be given due consideration in the light of the SOR and the provisions of Chapter V of the Constitution. Bestowing such consideration, we hold that

what is of primordial importance to attract section 25 is the involvement of two civil courts (transferor and transferee) in the proceedings for transfer, which are not only situate in two different States, but are also subject to the power of judicial superintendence and administrative control of the High Courts of each such State.

41. While focusing on section 25, one cannot be completely oblivious of the terms of section 24(1)(b)(ii). As and when it is approached with an application under section 24 for transfer, the High Court, subject to its satisfaction that the facts and circumstances do warrant an order to be made, is empowered to *"transfer … to any Court subordinate to it".* These words are of immense significance. In directing a transfer, the High Court can transfer a suit, appeal or other proceeding to "any Court" but bearing in mind the fetter that any such court, to which the relevant case or matter is proposed or sought to be transferred, must be subordinate to it and otherwise competent to deal with the subject matter; if such court is either not subordinate or not competent, the power is not available to be exercised. However, there is no such fetter in section 24 that power under sub-clause (ii) of clause (b) of sub-section (1) thereof cannot be exercised if the transferee court, though subordinate to the High Court, is situate in a different State. Similar is the case with clause (a) of sub-section (1) of section 24. The power is available so long the Civil Court continues to remain subordinate to it under Article 227 read with Article 235 and under section 3 of the CPC. To this extent, the High Court enjoys a supreme power which is not even subject to the power of the Supreme Court under section 25. The only caveat is that this power of transfer under section 24(1)(a) and 24(1)(b)(ii), however, cannot be exercised by the Gauhati High Court, say for transfer of a civil suit from a court in Assam or Nagaland to a Civil Court in Tripura or Manipur or Meghalaya because the said States, from 2012, are no longer part of the Gauhati High Court and are since having High Courts of their own.

42. It is time all concerned realize that a High Court ~ howsoever big or small, old or new ~ is as much a Constitutional Court as this Court is and enjoys wide ranging powers vested in it by law. No doubt, the power under section 25 is a special power, but the common High Courts of the country ought not to read section 24 of the CPC in a manner as if the power of the Supreme Court under section 25 to order an inter-State transfer is available to be exclusively exercised by it in all cases of inter-State transfer, thereby denuding the common High Courts of

the country of their jurisdiction by mere reference to involvement of an inter-State transfer and without anything more being looked at.

43. The States of Assam and Nagaland by reason of the provisions of the 1962 Act, then the 1971 Act and finally the Amendment Act have the Gauhati High Court as their common High Court and it is the Gauhati High Court that enjoys power of judicial superintendence over all courts within the territories of these two States. Gauhati High Court also exercises administrative control over all district courts and courts subordinate to them. Although the States of Assam and Nagaland in the political map of India have well demarcated areas, for the purpose of administration of justice, both States are mandatorily subject to the jurisdiction of the Gauhati High Court. Having regard to the special nature of jurisdiction that is vested in a common High Court like the Gauhati High Court, there cannot be a truncation of the power available under clauses (a) and (b) of section 24(1), which includes *suo motu* power.

44. Secondly, we are inclined to the view that should the contention advanced by Mr. Balgopal be accepted, the same is bound to lead to anomalous and incongruous results. If a common High Court, such as the Gauhati High Court, is satisfied that a situation for withdrawing a civil suit from a court, say in Nagaland, does exist, section 24(1)(b)(i) of the CPC confers power on the Gauhati High Court to withdraw such suit and dispose of the same itself. We are conscious that the verb employed in the first part of section 24(1)(b(i) is 'withdraw' and not 'transfer'; also, that clause (b) of sub- section (1) of section 24 employs the verbs 'withdraw', 'transfer' and 'retransfer' in the three sub-clauses for achieving the specified ends. However, would it mean that withdrawal of a case does never involve a transfer? The verb 'transfer', *inter alia*, means to move, or to make somebody/something move, from one place to another. Once, for whatever reason, the movement of a file from one place to another is involved, may be by reason of withdrawal, a transfer in the broader sense does take place. Now, the principal seat of the Gauhati High Court being at Guwahati, in the State of Assam, were to exercise the power conferred by section 24(1)(b(i), the effect thereof upon such a withdrawal is that the suit would stand transferred to the principal seat at Guwahati from the Civil Court in Nagaland and, possibly, assigned a separate registration number for the purpose of administrative convenience, whereafter three options in terms of section 24(1) (b) are open to the High Court for further course of action for taking the suit to its logical conclusion. Once

the suit is withdrawn from the court in Nagaland and placed before the High Court at its principal seat in Guwahati, Assam, would not that be a case of an inter-State transfer? The answer cannot possibly but be in the affirmative. The other aspect requiring consideration in this regard is whether disposal of the civil suit by the Gauhati High Court, if the same were withdrawn from the subordinate court, constitute a transfer from one Civil Court to another Civil Court. The High Courts are Constitutional Courts and not a 'Civil Court' in the sense the term is understood, so to encompass a transfer from one Civil Court to another Civil Court. However, if at all such a suit were withdrawn and finally disposed of by the Gauhati High Court at its principal seat, it would necessarily be in the exercise of its ordinary civil jurisdiction and the procedure to be followed would undoubtedly be guided by the provisions of the CPC. In a sense, the High Court would step into the shoes of the Civil Court from which the suit has been withdrawn. Could the provisions in section 25 of the CPC, in such circumstances, be cited to abrogate the Constitutional and statutory power of the Gauhati High Court to withdraw a civil suit from a Civil Court in Nagaland and to decide the same? In course of hearing, we had invited the attention of Mr. Balgopal to this situation and sought his response. He could not have and rightly did not dispute that in such a situation, the power vested in the Gauhati High Court by the Constitution as well as the CPC cannot be abrogated. Thus, exercise of the power that section 24(1)(b)(i) confers on the Gauhati High Court in a given case, would ultimately entail a transfer of the civil suit from the State of Nagaland to the High Court, having its principal seat at Guwahati in the State of Assam. Such a situation is not and cannot be controlled by section 25, and on a harmonious reading of sections 24 and 25, it has to be held that section 25 does not in all cases fetter the power of a common High Court to order inter-State transfer of a suit, appeal or other proceeding. Otherwise, it would be a fallacy to believe that while an inter-State transfer would be permissible in terms of sub-clause (i) but not sub-clause (ii) of clause (b) of sub-section (1) of section 24. We reiterate, section 25 would essentially have to be read as barring transfer of any suit, appeal or other proceeding from a Civil Court in one State to a Civil Court in another State if such States have their own High Courts but not in the case of a common High Court like the Gauhati High Court.

45. A similar power of withdrawal of any case involving, *inter alia*, a substantial question of law as to interpretation of the Constitution is conferred on the Gauhati High Court by Article 228 of the Constitution. If a situation of

the nature contemplated by Article 228 does exist, the principal seat of the Gauhati High Court at Guwahati may withdraw such case from any of the three States of Nagaland, Mizoram and Arunachal Pradesh and decide which of the two courses of action is to be opted. That would also constitute an inter-State transfer. Obviously, section 25 cannot operate as a bar for the Gauhati High Court to exercise a power conferred on it by the Constitution.

46. Finally, in our opinion, an approach to construe section 25 of the CPC has to be fair, pragmatic, reasonable and realistic. Any construction of section 25 which would impede "access to justice", considered to be a Fundamental Right, has to be eschewed. A narrow interpretation of section 25 imposing a bar for entertainment of an application under section 24 for transfer of a suit, appeal or other proceeding by a common High Court like the Gauhati High Court *inter-se* the four States in relation to which it exercises jurisdiction could place a heavy burden and might pose an insurmountable obstacle for litigants of the far-flung areas of the North-East, if they were made to approach this Court for such transfer on the specious ground that the Civil Court to which the same is proposed to be transferred is in a State other than the State in which the suit has been instituted. An interpretation of the law that seeks to address the mischief, that is consistent with the Constitution and promotes constitutional objectives and that which responds to the needs of the nation must be adopted. If "access to justice" has to be real, it becomes the moral responsibility of the Supreme Court, the supreme guardians/protectors of the rights of people guaranteed by the Constitution and the laws, not to construe the substantive part in section 25 of the Code in a pedantic manner to bring about a situation that would thwart the initiative of making "access to justice" real.

47. What remains is the contention advanced by Mr. Sharma. We are not impressed, to say the least. Although sections 22 to 25 of the CPC deal with transfers, sections 22 and 23 can be invoked in situations of the nature contemplated in section 22 by a defendant, and by none else, and the court which is empowered to entertain such an application is the court referred to in section 23. Section 22, in our view, permits transfer on application of the doctrine of *forum conveniens* and it has no applicability on facts and in the circumstances where the application for transfer is at the instance of the plaintiffs.

CONCLUSION

48. In view of the aforesaid discussions, the issue is answered by concluding that:

(I) a true and proper interpretation of section 25 of the CPC leads us to the conclusion that the same applies to inter-State transfer of a suit, appeal or other proceeding where both States have a High Court in terms of Article 214 of the Constitution and not to a transfer where both States have a common High Court under Article 231 thereof; and

(II) the power under section 24 of the CPC can be exercised by the High Court even for inter-State transfer of a suit, appeal or other proceeding, if it is the common High Court for two or more States under Article 231 of the Constitution and both the Civil Courts (transferor and transferee) are subordinate to it.

The questions framed at the beginning of this judgment are answered accordingly.

RELIEF

49. The sequitur of this discussion, with respect, is that the Gauhati High Court while rendering the judgment and order under challenge proceeded on an erroneous approach, and such approach has also been found to be flawed in **Megha Jain** (supra). The impugned judgment and order being unsustainable in law has to be and is, accordingly, set aside and the civil appeal stands allowed. The Gauhati High Court shall now proceed to decide the application under section 24 of the CPC afresh, on its own merits.

50. In view of the aforesaid order, the transfer petition under section 25 of the CPC is rendered infructuous; hence, it stands dismissed.

51. We request the Gauhati High Court to assign reasonable priority to the application under section 24 of the CPC and to dispose of the same as early as possible, subject to its convenience.

52. Parties shall bear their own costs.

Headnotes prepared by: Ankit Gyan (*Assisted by:* Aarsh Choudhary, LCRA)

Result of the case: Appeal allowed.