सत्यमेव जयते

न्यायालय

सहायक कलक्टर/उपखण्ड अधिकारी

गुढामालानी—बाड़मेर

(पीठासीन अधिकारी —केशव कुमार मीना आर.ए.एस.)

वाद संख्याः— 2007/00022 दर्ज तिथिः— 03.12.2007

वादी		प्रतिवादी
मिश्राराम पुत्र रूपाराम वगैरह	बनाम	खुमाराम पुत्र रूपाराम वगैरह
जरिये अधिवक्ता श्री बाबूलाल विश्नोई		जरिये अधिवक्ता श्री हरिराम विश्नोई
जरिये अधिवक्ता श्री रामजीवन विश्नोई		जरिये अधिवक्ता श्री पूनमाराम विश्नोई

प्रार्थना पत्र अन्तर्गत धारा—144
सिविल प्रक्रिया संहिता—1908
निर्णय तिथिः—03.01.2025

—:निर्णयः—

1. आज यह पत्रावली प्रार्थना—पत्र सिविल प्रक्रिया संहिता—1908 की धारा—144 के अन्तर्गत बाबत् निर्णय प्रस्तुत हुई। प्रकरण का सुक्ष्म एवं सारतः वृतान्त इस प्रकार है कि प्रार्थी ने सिविल प्रक्रिया संहिता—1908 की धारा—144 के तहत हाजा न्यायालय में प्रार्थना पत्र प्रस्तुत किया। उक्त प्रार्थना पत्र का विवरण निम्न प्रकार हैः—

    - कि वादी द्वारा हाजा न्यायालय में एक दावा संख्या 2007/00022 बउनवान मिश्राराम बनाम खुमाराम बाबत् घोषणा प्रस्तुत किया गया। हाजा न्यायालय द्वारा उक्त दावे का दिनांक 07.01.2013 को निर्णय करते हुए डिक्री जारी की गई।
    - तत्पश्चात हाजा न्यायालय द्वारा उक्त दावा संख्या 2007/00022 बउनवान मिश्राराम बनाम खुमाराम में निर्णय दिनांक 07.01.2013 के विरूद्ध प्रतिवादीगण ने माननीय न्यायालय राजस्व अपील अधिकारी, बाड़मेर में अपील प्रस्तुत की गई। उक्त अपील संख्या 14/2013 में माननीय न्यायालय न्यायालय राजस्व अपील अधिकारी द्वारा बाद परीक्षण निर्णय दिनांक 11.03.2019 हाजा न्यायालय द्वारा उक्त दावा संख्या 2007/00022 बउनवान मिश्राराम बनाम खुमाराम के निर्णय दिनांक 07.01.2013 को निरस्त कर पत्रावली को हाजा न्यायालय को हितबद्ध पक्षकारों को सुनवाई व साक्ष्य सबूत का समुचित अवसर प्रदान कर विधिसम्मत निर्णय पारित करने का आदेश दिया।
    - इस दौरान अप्रार्थी ने हाजा न्यायालय द्वारा उक्त दावा संख्या 2007/00022 बउनवान मिश्राराम बनाम खुमाराम में निर्णय दिनांक 07.01.2013 के आधार पर ना[illegible] संख्या 279 दिनांक 28.01.2013 द्वारा राजस्व [illegible]
    - इस प्रकार हाजा न्यायालय [illegible] संख्या 2007/00022 बउनवान मिश्राराम बनाम खुमाराम में निर्णय दिनांक 07.01.2013 को विधिसम्मत नहीं होकर काबिल—ए—खारिज घोषित होने के पश्चात

अप्रार्थी ने हाजा न्यायालय द्वारा उक्त दावा संख्या 2007/00022 बउनवान मिश्राराम बनाम खुमाराम में निर्णय दिनांक 07.01.2013 के आधार पर नामांतकरण संख्या 279 दिनांक 28.01.2013 द्वारा राजस्व रिकॉर्ड में अंकन करवाने से प्रार्थी को अपूर्णनीय क्षति हुई है। सिविल प्रक्रिया संहिता—1908 की धारा—144 के अन्तर्गत किसी न्यायालय के आदेश के निरस्त होने की स्थिति में निरस्त आदेश की पालना से किसी पक्षकार को हुए नुकसान की क्षतिपूर्ति निरस्त आदेश की पालना से पूर्व की स्थिति बहाल करने के प्रावधान हैं। प्रार्थी का प्रकरण इसी श्रेणी में आता है।

- अतः हाजा न्यायालय के आदेश दिनांक 07.01.2013 की पालना में प्रार्थीगण की वादग्रस्त भूमि में राजस्व रिकॉर्ड में किये गये संशोधन को निरस्त करते हुए दिनांक 07.01.2013 एवं नामांतकरण संख्या 279 दिनांक 28.01.2013 द्वारा राजस्व रिकॉर्ड में परिवर्तित किये गये राजस्व इन्द्राज को निरस्त कर से पूर्व की स्थिति बहाल कर राजस्व रिकॉर्ड में पूर्व स्थिति किये जाने का निवेदन है।

2. प्रकरण दर्ज रजिस्टर किया जाकर वादीगण को तलब किया गया। वादीगण असालतन—वकालतन उपस्थित न्यायालय हुए। प्रकरण में वादी द्वारा सिविल प्रक्रिया संहिता—1908 की धारा—144 के अन्तर्गत प्रार्थना—पत्र का जवाब प्रस्तुत कर /जवाब प्रस्तुत नहीं कर सीधे बहस कर प्रार्थना—पत्र खारिज किये बाबत निम्न प्रकार निवेदन किया—
    - कि प्रकरण साक्ष्य स्तर पर विचाराधीन है। साथ ही अपीलीय न्यायालय द्वारा रिमाण्ड किये गये मामलों में धारा—144 लागू नहीं होती है। अतः प्रार्थना—पत्र खारिज किया जावे।

3. प्रकरण में उभयपक्षकारान की उक्त प्रार्थना पत्र पर बहस सुनी गई। दौराने बहस विद्वान अधिवक्ता प्रतिवादी/प्रार्थी ने दौराने जिरह प्रार्थना पत्र के तथ्यों को दौहराते हुये निवेदन किया कि हाजा न्यायलय के आदेश दिनांक 07.01.2013 के निर्णय के निरस्त होने एवं निरस्त आदेश के द्वारा राजस्व रिकॉर्ड में किय गये परिवर्तन के निरस्तनीय होने के कारण सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रार्थना—पत्र स्वीकार करते हुए स्थिति बहाल की जावे। दौराने बहस विद्वान अधिवक्ता वादी/अप्रार्थी ने दौराने जिरह जवाब प्रार्थना पत्र के तथ्यों को दौहराते हुये निवेदन किया कि उक्त अपीलीय न्यायालय द्वारा रिमाण्ड किये गये मामलों में धारा—144 लागू नहीं होने के कारण प्रार्थना पत्र काबिल—ए—खारिज है।

Provision

4. प्रकरण में पत्रावली का अवलोकन किया गया व बहस पर मनन किया गया है। प्रकरण में हाजा न्यायालय के आदेश दिनांक 07.01.2013 से पूर्व की राजस्व रिकॉर्ड की स्थिति बहाल हेतु सिविल प्रक्रिया संहिता—1908 की धारा—144 के तहत प्रार्थना पत्र प्रस्तुत किया गया है। प्रकरण में विश्लेषण से पूर्व सर्वप्रथम सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान का प्रकरण में अवलोकन किया जाना उचित प्रतीत होता है। अतः सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान का उद्धरण इस प्रकार हैः—

> ***144. Application for restitution.*** — *Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding, or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order* ***shall****, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or*

order or such part thereof as has been varied, reversed, set aside or modified; and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

***Explanation**.—For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,—*
(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;
(b) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order.
(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute, it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

Interpretation

5. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान की माननीय न्यायालयों द्वारा की गई व्याख्या के तहत मूल भावना को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील *8400/2019* उनवान *Bansidhar Sharma (Since Deceased) vs The State Of Rajasthan* में दिनांक 05.11.2019 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

17. It clearly transpires that Section 144 applies to a situation where a decree or order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. The principle of doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the decree which has been set aside or an order is varied or reversed and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position as they were in at the time when the Court by its action had displaced them.

6. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान की विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

25. In our opinion, the principle of restitution takes care of this submission. The word 'restitution' in its etymological sense means restoring to a party or person, modification, variation or reversal of a decree or order, what has been lost to him in execution or decree or order of the court or in direct consequence of a decree or order (see Zafar Khan and Ors. v. Board of Revenue, U.P., and Ors.). In law, the term 'restitution' is used in three senses; (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; (iii)

compensation or reparation for the loss caused to another. (See Black's Law Dictionary, Seventh Edition, p.1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that 'restitution' is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done.

> *"Often, the result in either meaning of the term would be the same. ..... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non-tortuous misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed."*

Principle

7. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के आधारभूत सिद्धांतों को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के आधार सिद्धांत (Principle) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *25. (....) <u>The principle of restitution</u> has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 of the C.P.C. speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with ail expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing, wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order had not existed.*

8. इसी प्रकार माननीय उच्चतम न्यायालय *1994 AIR SCW 1263* उनवान *Neelathupara Kummi Seethi Koya Phan (Dead) by LRs Vs. Montharapalla Padippua Attakoya & Ors.* में दिनांक 04.08.1993 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के आधार सिद्धांत (Principle) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *3.(....) A bare reading of Sub-section (1) does indicate that the application for restitution would lie when the decree executed is reversed or varied or modified. The doctrine of restitution is based upon the high cardinal principle that the acts of the Court should not be allowed to work in injury or injustice to the suitOrs. Section 144, therefore, contemplates restitution in a case where property has been received by the decree-holder under the decree, which was subsequently either reversed or varied wholly or partly in those proceedings or other proceedings. In those set of circumstances law raised an obligation on the party that received the benefit of such reversed Judgment to restitute the property to the person who had lost it. In that behalf in Sub-section (2) a right of suit was taken out and an application under Sub-section (1) was contemplated for execution of the decree by way of restitution. Sub-section (1) clearly indicates that it is a 'court of first instance' in which the proceedings in the suit had been initiated and a decree was passed or the suit was dismissed, but subsequently on appeal decreed or vice versa. The court of first instance would, therefore, mean the court which passed the decree or order. The transferee executing court is not the court that passed the decree or order, but the decree was transmitted to facilitate execution of that decree or order since the property sought to be executed or the person who is liable for execution is situated or residing within the jurisdiction of that executing court. Therefore, the court which is competent to entertain the application for restitution is the court of first instance i. e. Administrator's Court (Subordinate Judge) that decreed the suit, and not the court to which the decree was transmitted for execution.*

Legal Base

9. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के कानूनी आधार व पृष्ठभूमि को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1581/1993 उनवान *Kavita Trehan And Another vs Balsara Hygience Products Ltd.* में दिनांक 11.07.1994 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के कानूनी आधार (legal Base) पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *13. The Law of Restitution encompasses all claims founded upon the principle of unjust enrichment. 'Restitutionary claims are to be found in equity as well as at law'. Restitutionary law has many branches. The law of quasi-contract is "that part of restitution which stems from the common Inebriates counts for money had and received and for money paid, and from quantum meruit and quantum vale bat claims." [See 'The Law of Restitution" - Goff & Jones, 4th Edn. Page 3]. Halsburys Law of England, 4th Edn. Page 434 states :*
>
> > *Common Law. Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a fourth category of the common law which has been called quasi contract or restitution.*

> *For historical reasons, quasi contract has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed principles which are aimed at providing a remedy for unjustifiable enrichment. It may be that today these two strands are in the process of being woven into a single topic in the law, which may be termed "restitution".*

Recently the House of Lords had occasion to examine some of these principles in Woolwich Equitable Building Society v. Inland Revenue Commissioners [1993] A.C. 70.

14. In regard to the law of restoration of loss or damage caused pursuant to judicial orders, the Privy Council in Alexander Rozer Charles Carnie v. The Comptoir D'Escompte De Paris [1869-71] 3 AC 465 at 475 stated :

> *...one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression "the act of the Court" is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case.*

In Jai Berham and Ors. v. Kedar Nath Marwari and Ors. AIR (1922) P.C. 269 at 271, the Judicial Committee referring to the above passage with approval added :

> *It is the duty of the Court under Section 144 of the Civil Procedure Code to "Place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed.*
>
> *Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved.*

In Binayak Swain v. Ramesh Chandra Panigrahi and Anr. , this Court stated the principal thus :

> *...The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from....*

10. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के कानूनी आधार (legal Base) पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:

> *26. In our opinion, the principle of restitution takes care of this submission. The word 'restitution' in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution or decree or order or the court or in direct*

consequence of a decree or order (See : Zafar Khan and Ors. v. Board of Revenue, U.P., and Ors., . In law, the term 'restitution' is used in three senses; (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, Seventh Edition, p.1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that 'restitution' is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done.

> *"Often, the result in either meaning of the term would be the same. ..... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non-tortuous misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed."*

The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 of the C.P.C. speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with ail expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing, wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

27. Section 144 of the C.P.C. is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. In Jai Berham v. Kedar Nath Marwari (1922) 49 LA. 351, their Lordships of the Privy council said:

> *"It is the duty of the Court ... Section 144 of the Civil Procedure Code to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It*

> *is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved".*

Cairns, L.C., said in Rodger v. Comptoir d'Escompte de Paris, (1871) L.R. 3 P.C.:

> *"One of the first and highest duties of all Courts is to take cars that the act of the Court does no injury to any of the suitors and when the expression, the act of the Court is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole from the lowest court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case".*

This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it, A.A. Nadar v. S.P. Rathinasami, (1971) 1 MLJ 220. In the exercise of such inherent power the Courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise corned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the set of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding from the interim order even though the battle has been lost at the end. This cannot be countenanced, we are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.

Quantum of Restitution

11. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के तहत स्थिति की पुर्नबहाली की मात्रा को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान में पुनर्स्थापन के गुणक (Quantum of Restitution) पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *28. (....) The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict.*

Test

12. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के लागू होने हेतु आवश्यक परीक्षण को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के लागू करने हेतु परीक्षा (Test) पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *28. (....) the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise corned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the set of such party.*

Act of Court vs Act of Party

13. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के तहत स्थिति में हुए परिवर्तन के लिये न्यायालय के कार्यकरण एवं पक्षकार के कार्यकरण को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान में न्यायालय के निर्णय/पक्षकार के अभिवचन से उत्पन्न परिस्थितियों के पुनर्स्थापन (Act of Court vs Act of Party) पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise corned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the set of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into*

consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced, we are, therefore, or the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.

Interim Order

14. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के तहत अंतरिम आदेश से हुये स्थिति में परिवर्तन की पुर्नबहाली के संबंध में अनुप्रयोजन को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के तहत अंतरिम आदेश से हुये स्थिति में परिवर्तन की पुर्नबहाली के संबंध में अनुप्रयोजन पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

26.(...) The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 of the C.P.C. speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with ail expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to be put in restitution for what it has lost; and it is the duty of the Court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order

by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing, wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

Interlocutary Stage

15. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान की विचाराधीन कार्यवाही के दौरान ही अनुप्रयोज्यता के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्च न्यायालय, आंध्र प्रदेश द्वारा *2006 (5) ALD 606* उनवान *S. Prabhavathi vs Rohini Kilaru And Anr.* में दिनांक 03.08.2006 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के वाद के अंतर्वर्ती चरण में अनुप्रयोग (Interlocutary Stage) के संबंध में विवेचन करते हुए निम्न न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

11. A plain reading of Section 144 of CPC would show that the provision as it stood prior to CPC Amendment Act 66 of 1956, did not apply to the proceedings at interlocutory stage. When a decree is varied or reversed in appeal or revision, the Court, which passed the decree, can order restitution whenever an application is made by the party, who is entitled to any benefit by way of a restitution. By reason of the amendment, Section 144 of CPC was made applicable to a decree as well as an order. Section 2(2) of CPC defines "Decree" means the formal expression of an adjudication, which conclusively determines the right of the parties with regard to the matters in controversy in the suit. As per Section 2(14) of CPC, "Order" means the formal expression of any decision of the civil court, which is not a decree. Therefore, an order necessarily refers to the formal expression of a decision by the Court in incidental, supplemental and other interlocutory proceedings. Therefore, in the opinion of this Court, Section 144 of CPC is also applicable at interlocutory stage and restitution need not wait till the matters in the suit are conclusively determined by the Court.

Application

16. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान की अनुप्रयोज्यता को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के किसी प्रकरण में अनुप्रयोग (Application) पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

Section 144 applies to a situation where a decree or an order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. In that situation, the Court which has passed the decree may cause restitution to be made, on an application of any party entitled, so as to place the parties in the position which they would have occupied but for the decree or order or such part thereof as has been varied, reversed, set aside or modified. The court is empowered to pass orders which are consequential in nature to the decree or order by which varied or reversed.

Bonafide Purchaser / Third Party

17. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान की तृतीय पक्षकार द्वारा सम्पति में हित निहित होने की परिस्थिति में अनुप्रयोज्यता को

समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान की तृतीय पक्षकार द्वारा सम्पति में हित निहित होने की परिस्थिति में अनुप्रयोज्यता पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *14. Drawing the distinction between a decree holder who himself is the auction purchaser and a third-party auction purchaser, this Court in* ***Binayak Swain vs. Ramesh Chandra Panigrahi & Anr*** *approved an earlier judgment of Privy Council in the matter of* ***Zain-Ul- Abdin Khan vs. Muhammad Asghar Ali Khan*** *to reiterate that "great distinction between the decree-holders who came in and purchased under their own decree, which was afterwards reversed on appeal, and the bona fide purchasers who came in and bought at the sale in execution of the decree to which they were no parties, and at a time when that decree was a valid decree, and when the order for the sale was a valid order". It is categorically held that where the decree holder is himself the auction purchaser, the sale cannot stand, if the decree is subsequently set aside.*
>
> *15. In the matter of* ***Chinnamal & Ors. Vs. Arumugham & Anr****, this Court again dealt with the distinction between the decree holder who purchased the property in execution of his own decree, which is afterwards modified or reversed, and a person who is not a party to the decree. This Court held thus in paras 10 and 11:*
>
> > *"10. There is thus a distinction maintained between the decree holder who purchases the property in execution of his own decree, which is afterwards modified or reversed, and an auction purchaser who is not party to the decree. Where the purchaser is the decree holder, he is bound to restore the property to the judgment debtor by way of restitution but not a stranger auction purchaser. The latter remains unaffected and does not lose title to the property by subsequent reversal or modification of the decree. The courts have held that he could retain the property since he is a bona fide purchaser. This principle is also based on the premise that he is not bound to enquire into correctness of the judgment or decree sought to be executed. He is thus distinguished from an eo nomine party to the litigation.*
> >
> > *11. There cannot be any dispute on this proposition, and it is indeed based on a fair and proper classification. The innocent purchaser whether in voluntary transfer or judicial sale by or in execution of a decree or order would not be penalised. The property bona fide purchased ignorant of the litigation should be protected. The judicial sales in particular would not be robbed of all their sanctity if a bona fide purchased on legal and equitable considera[illegible] it is difficult to appreciate why such protection should be extended to a purchaser who knows about the pending litigation relating to the decree. If a person ventures to purchase the property being fully aware of the controversy between the decree*

holder and judgment debtor, it is difficult to regard him as a bona fide purchaser. The true question in each case, therefore, is whether the stranger auction purchaser had knowledge of the pending litigation about the decree under execution. If the evidence indicates that he had no such knowledge he would be entitled to retain the property purchased being a bona fide purchaser and his title to the property remains unaffected by subsequent reversal of the decree. The court by all means should protect his purchase. But if it is shown by evidence that he was aware of the pending appeal against the decree when he purchased the property, it would be inappropriate to term him as a bona fide purchaser. In such a case the court also cannot assume that he was a bona fide or innocent purchaser for giving him protection against restitution. No assumption could be made contrary to the facts and circumstances of the case and any such assumption would be wrong and uncalled for."

16. Whether a third-party auction purchaser who had the knowledge of the pending proceedings can resist restitution has been answered against such auction purchaser in paras 14, 16 & 17 of ***Chinnamal & Ors. Vs. Arumugham & Anr***

> *"14. This proposition, we are, however, unable to accept. In our opinion, the person who purchases the property in court auction with the knowledge of the pending appeal against the decree cannot resist restitution. His knowledge about the pending litigation would make all the difference in the case. He may be a stranger to the suit, but he must be held to have taken calculated risk in purchasing the property. Indeed, he is evidently a speculative purchaser, and, in that respect, he is in no better position than the decree holder purchaser. The need to protect him against restitution, therefore, seems to be unjustified. Similarly, the auction purchaser who was a name lender to the decree holder or who has colluded with the decree holder to purchase the property could not also be protected to retain the property if the decree is subsequently reversed.*
>
> *16. This is also the principle underlying Section 144 of the Code of Civil Procedure. It is the duty of all the courts as observed by the Privy Council "as aggregate of those tribunals" to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court. The ratio [illegible] followed in the majority judgment of this Court in A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] . Mukharji, J. , as he then was, after referring to the said observation of Lord Cairns, said: (SCC p. 672, para 83)*

> *"No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied."*

It is well to remember that the Code of Civil Procedure is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishments and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. It is in our opinion, not unreasonable to demand restitution from a person who has purchased the property in court auction being aware of the pending appeal against the decree."

17.In the matter of Padanathil Ruqmini Amma (supra), this Court while dealing with somewhat similar fact situation (as in the case in hand) wherein a decree holder himself became the auction purchaser and later on leased out the property to a third party who in turn sold to another one and then this man again sold out to a fourth person, held thus in paras 10, 11, 14, 15,16 and 17:

> *"10. It is, however, contended by the respondent that he is a lessee from the decree-holder auction-purchaser. The appellant cannot seek restitution of properties leased to him by the decree-holder auction-purchaser. The lease in his favour is protected, he being a third party to the court proceedings and the auction sale. This contention has been upheld by the Kerala High Court and is challenged before us. Now, under Section 144 of the Civil Procedure Code where and insofar as a decree or an order is varied or reversed or is set aside, the court which passed the decree or order, shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order. For this purpose, the court may make such orders including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.*
>
> *11. In the present case, the ex parte decree was set aside, the judgment-debtor was entitled to seek restitution after the property was sold in court auction in execution of the ex parte decree. There is no doubt that when the decree-holder himself is the auction-purchaser in a court auction*

sale held in execution of a decree which is subsequently set aside, restitution of the property can be ordered in favour of the judgment-debtor. The decree-holder auction-purchaser is bound to return the property. It is equally well settled that if at a court auction sale in execution of a decree, the properties are purchased by a bona fide purchaser who is a stranger to the court proceedings, the sale in his favour is protected and he cannot be asked to restitute the property to the judgment- debtor if the decree is set aside. The ratio behind this distinction between a sale to a decree-holder and a sale to a stranger is that the court, as a matter of policy, will protect honest outsider purchasers at sales held in the execution of its decrees, although the sales may be subsequently set aside, when such purchasers are not parties to the suit. But for such protection, the properties which are sold in court auctions would not fetch a proper price and the decree- holder himself would suffer. The same consideration does not apply when the decree-holder is himself the purchaser and the decree in his favour is set aside. He is a party to the litigation and is very much aware of the vicissitudes of litigation and needs no protection.

14. In the case of Satis Chandra Ghose v. Rameswari Dasi [AIR 1915 Cal 363: 20 CWN 665], the Calcutta High Court relied upon these observations of the Privy Council and held that the decree-holders and those who claim under decree-holders will form one class as against strangers to the decree who purchase in a court auction sale. The title of a purchaser from one who has bought at the sale in execution of his own decree is liable to be defeated when the decree is subsequently set aside. The Calcutta High Court said:

> *"The Court as a matter of policy has a tender regard for honest purchasers at sales held in execution of its decrees though the sales may be subsequently set aside, where those purchasers are not parties to the suit and the decree has not been passed without jurisdiction. But the same measure of protection is not extended to purchasers who are themselves the decree- holders; nor can the purchasers from such decree- holders claim that the Court owes them any duty."*

The policy which prompts the extension of protection to the stranger who purchase at court auctions is based on a need to ensure that proper price is fetched at a court auction. This policy has no application to sales outside the

court. The purchasers from a decree-holder auction-purchaser have bought from one whose title is liable to be defeated. The title acquired by the purchaser from the decree-holder is similarly defeasible. The Court further observed: "... the defeasibility of a decree-holder's title where the decree is ex parte is of such common occurrence that the plea of a purchaser for value without notice hardly applies"

15. The same view has been reaffirmed by the Calcutta High Court in the case of Abdul Rahman v. Sarat Ali [AIR 1916 Cal 710: 20 CWN 667] where it has been held that the assignee of a decree-holder auction-purchaser stands in no better position than his assignor. The special protection afforded to a stranger who purchases at an execution sale is not extended to an assignee of the decree-holder auction- purchaser.

16. The distinction between a stranger who purchases at an auction sale and an assignee from a decree-holder purchaser at an auction sale is quite clear. Persons who purchase at a court auction who are strangers to the decree are afforded protection by the court because they are not in any way connected with the decree. Unless they are assured of title; the court auction would not fetch a good price and would be detrimental to the decree-holder. The policy, therefore, is to protect such purchasers. This policy cannot extend to those outsiders who do not purchase at a court auction. When outsiders purchase from a decree-holder who is an auction-purchaser clearly their title is dependent upon the title of decree-holder auction-purchaser. It is a defeasible title liable to be defeated if the decree is set aside. A person who takes an assignment of the property from such a purchaser is expected to be aware of the defeasibility of the title of his assignor. He has not purchased the property through the court at all. There is, therefore, no question of the court extending any protection to him. The doctrine of a bona fide purchaser for value also cannot extend to such an outsider who derives his title through a decree-holder auction-purchaser. He is aware or is expected to be aware of the nature of the title derived by his seller who is a decree-holder auction-purchaser.

17. The High Courts of Patna, Madras and Kerala, however, appear to have taken a different view. They have extended an assignee from a decree-holder auction-purchaser with a stranger auction-purchaser on the basis that an assignee from a decree-holder auction-

purchaser has to be considered as a bona fide purchaser for value who should not be allowed to suffer on account of the mistakes or irregularities committed in a court of law. It is difficult to see how an assignee from a decree-holder auction-purchaser can be equated with a bona fide purchaser for value without notice. He is aware of the nature of the title of his seller or assignor. He is also aware that the title of his assignor or seller is subject to the doctrine of restitution if the decree is ultimately set aside particularly in a case where the decree is an ex parte decree and there is a greater possibility of such a decree being set aside. The reasons which prompt the courts to protect strangers who purchase at court auction sales also do not apply to assignees or purchasers from a decree-holder auction purchaser. They purchase outside the court system and cannot expect any protection from the court. Their title is liable to be defeated if the title of their seller or assignor is defeated. The view, therefore, expressed by the Patna High Court in the case of Gopi Lal v. Jamuna Prasad [AIR 1954 Pat 36:1 BLJ 406] , the Madras High Court in S. Chokalingam Asari v. N.S. Krishna Iyer [AIR 1964 Mad 404 : ILR (1964) 1 Mad 923] and the cases cited therein as also by the Kerala High Court in the case of Parameswaran Pillai Kumara Pillai v. Chinna Lakshmi [1970 Ker LJ 450] is not the correct view. The High Court, therefore, was not right in protecting the lease created in favour of the respondent by Mohammed Haji who was a decree-holder auction-purchaser at the sale in execution of the ex parte decree which was subsequently set aside."

Court of First Instace

18. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के तहत प्रावधान का क्रियान्वित करने वाले न्यायालय के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा *1994 AIR SCW 1263* उनवान *Neelathupara Kummi Seethi Koya Phangal(Dead) by LRs Vs. Montharapalla Padippua Attakoya & Ors* में दिनांक 04.08.1993 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के तहत प्रार्थना पत्र को प्रस्तुत करने वाले न्यायालय (Court of First Instace) पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

The unamended Section 144 C.P.C. reads as under:

Section 144(1) Where and in so far as a decree is varied or reversed, 'the court of first instance' shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position in which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential of such variation or reversal.

3. In 1976 Amendment Act suitable amendment was made and explanations (a) to (c) were added but they have no relevance for the purpose of the case. The question, therefore, is whether the transferee executing court is a 'Court of first instance' within the meaning of Section 144(1), C.P.C. A bare reading of Sub-section (1) does indicate that the application for restitution would lie when the decree executed is reversed or varied or modified. The doctrine of restitution is based upon the high cardinal principle that the acts of the Court should not be allowed to work in injury or injustice to the suitOrs. Section 144, therefore, contemplates restitution in a case where property has been received by the decree-holder under the decree, which was subsequently either reversed or varied wholly or partly in those proceedings or other proceedings. In those set of circumstances law raised an obligation on the party that received the benefit of such reversed Judgment to restitute the property to the person who had lost it. In that behalf in Sub-section (2) a right of suit was taken out and an application under Sub-section (1) was contemplated for execution of the decree by way of restitution. Sub-section (1) clearly indicates that it is a 'court of first instance' in which the proceedings in the suit had been initiated and a decree was passed or the suit was dismissed, but subsequently on appeal decreed or vice versa. The court of first instance would, therefore, mean the court which passed the decree or order. The transferee executing court is not the court that passed the decree or order, but the decree was transmitted to facilitate execution of that decree or order since the property sought to be executed or the person who is liable for execution is situated or residing within the jurisdiction of that executing court. Therefore, the court which is competent to entertain the application for restitution is the court of first instance i. e. Administrator's Court (Subordinate Judge) that decreed the suit, and not the court to which the decree was transmitted for execution.

Role/Power of Court

19. प्रकरण में सिविल प्रक्रिया संहिता—1908 की धारा—144 के प्रावधान के तहत न्यायालय की भूमिका एवं दृष्टिकोण को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1581 / 1993 उनवान *Kavita Trehan And Another vs Balsara Hygience Products Ltd.* में दिनांक 11.07.1994 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के तहत न्यायालय की भूमिका एवं शक्तियों (Role/Power of Court) को स्पष्ट करते हुए निम्न दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

15. Section 144 CPC incorporates only a part of the general law of restitution. It is not exhaustive. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,..." The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.

20. इसी प्रकार माननीय उच्च न्यायालय, अ[illegible] द्वारा *2006 (5) ALD 606* उनवान *S. Prabhavathi vs Rohini Kilaru Anil* [illegible] 3.08.2006 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—1[illegible] के तहत न्यायालय की भूमिका एवं शक्तियों (Role/Power of Court) को स्पष्ट करते हुए निम्न दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

12. It is now well settled that in the matter of restitution, Section 144 of CPC is not exhaustive. There could be other situations where the Court is required to exercise its inherent power to cause restitution to be made to place the parties in the position, which they would have occupied, but for an interlocutory order. Secondly, the maxim "Actus Curiae Neminem Gravabit' casts duty on the Court to ensure that no party gets undue advantage by its orders or no party is grossly prejudiced by its proceedings/orders. This view is also supported by the precedents cited at the Bar.

13. In Arunachalam v. Pratapasimha Rajah (supra), a Division Bench of Madras High Court considered this aspect of the matter and held as under:

> *As to the technical argument that the order is erroneous because it purports to have been passed under Section 144 and that that section will not apply because no decree has been varied or reversed, we are not satisfied that the principle of Section 144 is confined exclusively to matters in execution. The Privy Council has in Jai Barham v. Kedarnath Marwari AIR 1922 PC 269 : 69 IC 278 : 49 IA 351 : 2 Pat. 10 (PC) laid down that the power of restitution is inherent in the Court and should be exercised when necessary in order to do justice, This Court has so exercised that principle in a suit at a stage between preliminary decree and the final decree in a case, Cunnaiah Mudaly v. Rangaswami Mudaly (1918) 48 IC 7.*

14. In Cheni Chenchaiah v. Shaik Ali Saheb (supra), the facts noticed by this Court are as follows. The petitioner therein filed suit on the file of the Court of the District Munsif for permanent injunction. He also filed an interlocutory application for temporary injunction, which was dismissed. The plaintiff filed interlocutory application along with miscellaneous Appeal and the appellate Court granted an order of injunction in the said application. In the meanwhile the defendants forcibly thrown out the belongings of the plaintiff and evicted him from the suit premises. Thereafter the defendants filed a Civil Revision Petition before this Court, aggrieved by the order of injunction granted by the appellate Court namely, the Court of Subordinate Judge. The said C. R. P. was disposed of by this Court ordering status quo with a direction to the Sub-Court to dispose of the C.M.A. itself. The C.M.A. was allowed and, therefore, the plaintiff filed an application under Section 144 read with 151 of CPC for restitution. The same was dismissed by the learned Subordinate Judge. Aggrieved by which the plaintiff filed CRP. A contention was raised before this Court that as the plaintiff was not dispossessed by virtue of any order of Court, restitution cannot be claimed under Section 144 of CPC and that the plaintiff should have recast a suit and not application under Section 144 of CPC. This Court rejected these contentions ordered restitution to the plaintiff as he was forcibly and unauthorisedly evicted by the defendants during the pendency of the proceedings. It was observed as under:

> *... on a consideration of the decisions referred to above, it can be seen that in the absence of specific provision in the Code which deals with particular situation, unless there is an prohibition either express or implied, the Court is entitled to exercise its inherent powers under Section 151 of Code of Civil Procedure. In this case as I stated above, Section 144 of CPC is not applicable to the facts of the case because possession was not taken by any*

> *order of the Court. There is no other provision, which applies to the facts of the case i.e., where the possession has been taken forcibly by a party during the pendency of the proceedings i.e., when the application is dismissed by the trial Court and before filing the appeal. In these circumstances, I agree with the contention of the learned Counsel for the petitioner that in such circumstances, the Court would be justified to do justice and put back the parties in the same position in which they were, but for the order of the trial Court by invoking the inherent jurisdiction. Therefore, I agree with the contention that the Court in exercise of its jurisdiction under Section 151 can grant restitution, even though Section 144 CPC may not strictly apply. That view of mine, as I have stated above, is supported by the two Division Bench decisions stated supra in State Government v. M. Jeevraj & Co. and P. Lingeswararao v. Venkata Subbarao 1966(2) An.W.R. 144.*

15. The High Courts of Bombay and Rajasthan also took similar view in the decisions referred to supra. It is not necessary to refer to these decisions in detail. But a reference to Kavita Trehan v. Balsar Hygiene Products (supra) may be made. In this decision, the Supreme Court considered the question as to the scope of restitutionary jurisdiction of the Courts. The appellant firm was clearing and forwarding agents to the respondent. The principal terminated the agreement due to non-payment of large sums of commission amount. The appellant filed suit for declaration of the appellant's lien to an extent of about Rs. 16,00,000/- and obtained ex parte injunction directing the respondent not to interfere in the disposal of the stock by the plaintiff. The appellant then sold away the bulk of stocks under the authority of the Court's interim order and recovered a sum of Rs. 23,00,000/- when the goods were worth about Rs. 32,00,000/-. The suit was later transferred to Delhi High Court by order of the Supreme Court. The learned single Judge of Delhi High Court dismissed the suit as hit by Section 69(2) of Indian Partnership Act, 1932. The learned single Judge also considered the question of restitution of goods to the respondent or their money value. On that question, the learned single Judge directed the plaintiff to furnish security by way of an F.D.R. from a Nationalised Bank in the name of the Registrar of the Court. The view was confirmed by Division Bench. Before the Supreme Court, it was urged that Section 144 of CPC did not apply as no transfer of possession of any property pursuant to any order of the Court had taken place. It was also contended that Section 151 of CPC cannot be invoked in aid of jurisdiction that manifestly exist and cannot in itself be seen as a source of jurisdiction. The Supreme Court while observing that Section 144 of CPC incorporates only a part of the general law of restitution and not exhaustive, laid down as under:

> *The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144, Section 144 opens with the words "and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose." The instant case may not strictly fall within the terms of Section 144 but the aggrieved party in such a case can appeal to the larger and*

general powers of restitution inherent in every court....

... We have considered this submission of Sri Grover relying on Sakamma v. Eregowda (1974) 2 Kant. L.J. 357, that the mere fact that the suit for permanent injunction was dismissed resulting in the vacation of the interim order of injunction granted during its pendency, would not entitle the successful defendant to seek restitution under Section 144, C.P.C. That principle has no application in this case. In the case before us the injunction granted by the learned Senior Sub-Judge, Chandigarh, was not merely negative in terms interdicting interference from the respondent with the custody of the goods by the appellants; it went much further and expressly enabled the appellants to sell the goods, pursuant to this order, the appellants disturbed the status quo as on the date of the suit and sold away respondent's goods and converted them into money. The High Court while declining the prayer for payment of the sale proceeds to the respondent, however, sought to relegate the parties to the extent practicable, to the same position as obtained on the date of the suit. This the High Court did by directing furnishment of security to the extent of the value of the goods sold away under the cover of the interlocutory order. That an appeal filed against the said interlocutory order was withdrawn, does not, in our opinion make any difference. Upon dismissal of the suit, the interlocutory order stood set aside and that whatever was done to upset the status quo, was required to be undone to the extent possible. It is unfortunate that the learned Sub-Judge, Ist Class made an order which, we think, ought not to have been made. If the Trial Judge, felt that it was in the interest of justice that the goods required to be disposed of, he should have ordered the sale by or under the supervision of a Commissioner of the court ensuring that the sale proceeds were under the court's control.

16. Restitutionary law has many branches. When restitutionary claims are to be found in equity as well as in law in many situations and in many areas, an attempt to trace power of restitution only to Section 144 of CPC is to ignore the inherent power of the Court to do complete justice between the parties. This power can be exercised even in interlocutory matters. When a party to the proceedings in the guise of an ex parte order gets an undue advantage to which he was not entitled to when the case was not filed, it is the duty of the Court to place the parties in the decision (sic. position) which they would have occupied but for the order of the Court.

21. इसी प्रकार माननीय उच्च न्यायालय, आंध्र प्रदेश द्वारा *1966 AIR 948* उनवान *Binayak Swain vs Ramesh Chandra Panigrahi And Another* में दिनांक 10.12.1965 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के तहत न्यायालय की भूमिका एवं शक्तियों (Role/Power of Court) को स्पष्ट करते हुए निम्न दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

(....) The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been taken under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from.(....)

22. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा *AIR 2003 SC 4482* उनवान *South Eastern Coalfields Ltd. vs State Of M.P. And Ors.* में दिनांक 13.12.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता—1908 की धारा—144 के तहत न्यायालय की भूमिका एवं शक्तियों (Role/Power of Court) को स्पष्ट करते हुए निम्न दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *27. Section 144 of the C.P.C. is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. In Jai Berham v. Kedar Nath Marwari (1922) 49 LA. 351, their Lordships of the Privy council said:*
>
> > *"It is the duty of the Court under Section 144 of the Civil Procedure Code to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved.*
>
> *Cairns, L.C., said in Rodger v. Comptoir d'Escompte de Paris, (1871) L.R. 3 P.C.:*
>
> > *"One of the first and highest duties of all Courts is to take cars that the act of the Court does no injury to any of the suitors and when the expression, the act of the Court is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole from the lowest court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case".*
>
> *This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it, A.A. Nadar v. S.P. Rathinasami, (1971) 1 MLJ 220.*

23. उपरोक्त विधिक प्रावधान एवं न्यायिक दृष्टांतों के संदर्भ में सिविल प्रक्रिया संहिता—1908 की धारा—144 के अवलोकन से ज्ञात होता है कि किसी न्यायालय द्वारा किसी न्यायिक प्रक्रिया के तहत दिये गये आदेशों की पालना में किसी एक पक्षकार के लाभकारी अवस्थिति तथा किसी दूसरे पक्षकार के अलाभकारी अवस्थिति में प्रतिस्थापित होने की दशा में न्यायालय के उक्त आदेश के अपीलीय न्यायालय द्वारा निरस्त, संशोधित, परिवर्धित व प्रतिफलित किये जाने की दशा में प्रथम न्यायालय को पक्षकारों को पुनः समान स्थिति में प्रतिस्थापित किये जाने हेतु प्रावधान बनाये गये हैं। उक्त कानूनी प्रावधानों न्यायिक दृष्टांतों के संदर्भ में सिविल प्रक्रिया संहिता—1908 की धारा—144 के तहत प्रस्तुत प्रार्थना—पत्र उक्त प्रावधान व न्यायिक दृष्टांतों द्वारा प्रतिपादित परीक्षण पर जांच किया जाना आवश्यक है।

24. प्रकरण में उक्त कानूनी प्रावधानों न्यायिक दृष्टांतों के संदर्भ में सिविल प्रक्रिया संहिता—1908 की धारा—144 के तहत प्रस्तुत प्रार्थना—पत्र की उक्त प्रावधान व न्यायिक दृष्टांतों द्वारा प्रतिपादित परीक्षण पर जांच व विश्लेषण किया जाना आवश्यक है। इस हेतु हाजा न्यायालय के आदेश एवं अपीलीय न्यायालय के आदेश की तुलना निम्न प्रकार हैः—

प्रथम न्यायालय का आदेश	अपील/निगरानी का आदेश
वादीगण का वाद स्वीकार किया जाकर [illegible] गोलिया गर्वा तहसील गंगाशहर की [illegible] आराजी खसरा संख्या 123 [illegible] 124/3 कुल रकबा 287—17 बीघा भूमि में	[illegible] आंशिक स्वीकार की [illegible] है तथा अधीनस्थ न्यायालय ने राजस्व [illegible] संख्या 394/2007 आदेश व डिक्री दिनांक 07.01.2013 को अपास्त किया जाकर

प्रतिवादी संख्या 03 को वादीगण व प्रतिवादी संख्या 01 व 02 के साथ सहकाश्तकार करार देते हुए 1/5—1/5 हिस्सा प्रत्येक की खातेदारी में घोषित किया जाता है।	मामला अधीनस्थ न्यायालय को इस निर्देश के साथ प्रतिप्रेषित किया जाता है कि अपीलांट को समुचित सुनवाई का मौका दिया जाकर अपीलांट द्वारा पेश काउंटर क्लेम को ध्यान में रखते हुए विधिसम्मत गुणावगुण पर तीन माह में निर्णय पारित करें।

25. उक्त तुलना से स्पष्ट है कि हाजा न्यायालय के डिक्री दिनांक 07.01.2013 को अपीलीय न्यायालय द्वारा निरस्त कर मामला पुनः सुनवाई हेतु प्रतिप्रेषित किया गया है। इस दौरान हाजा न्यायालय के डिक्री दिनांक 07.01.2013 की पालना से पूर्व राजस्व इन्द्राज का विवरण निम्न प्रकार हैः—

पूर्व का राजस्व इन्द्राज			
खाता संख्या	खसरा संख्या	रकबा	खातेदार
———	124/3	280—16 बीघा	खुमा भंवरा मिश्रा पिसराम रूपा, दला वल्द रूपा कौम सुथार साकिन देह मोहनलाल वल्द मोबताराम जगदीशचंद्र वल्द मोबताराम कौम विश्नोई साकिन नयाकुआं
	124	0.09 बीघा	खुमा भंवरा मिश्रा पिसराम रूपा, दला वल्द रूपा कौम सुथार साकिन देह
	124/1	6—12 बीघा	

26. साथ ही हाजा न्यायालय के डिक्री दिनांक 07.01.2013 को अपीलीय न्यायालय द्वारा निरस्त कर मामला पुनः सुनवाई हेतु प्रतिप्रेषित किया गया है। इस दौरान हाजा न्यायालय के डिक्री दिनांक 07.01.2013 की पालना के पश्चात् राजस्व रिकॉर्ड में नामांतरकरण संख्या 279 दिनांक 28.01.2013 द्वारा हुए परिवर्तित इन्द्राज का विवरण निम्न प्रकार हैः—

पश्चात का राजस्व इन्द्राज			
संख्या	खसरा संख्या	रकबा	खातेदार
279	124/3	280—16 बीघा	खुमा भंवरा मिश्रा पिसराम रूपा, दला वल्द रूपा कौम सुथार साकिन देह मोहनलाल वल्द मोबताराम जगदीशचंद्र वल्द मोबताराम कौम विश्नोई साकिन नयाकुआं **<u>रूखमों पत्नी रूपाराम हिस्सा 1/5</u>** कौम सुथार साकिन देह
	124	0.09 बीघा	खुमा भंवरा मिश्रा पिसराम रूपा दला वल्द रूपा हिस्सा 4/5 **<u>रूखमों पत्नी रूपाराम हिस्सा 1/5</u>** कौम सुथार साकिन देह
	124/1	6—12 बीघा	

27. उक्त तुलनात्मक अवलोकन से स्पष्ट है कि हाजा न्यायालय के डिक्री दिनांक 07.01.2013 की पालना के पश्चात् राजस्व रिकॉर्ड में नामांतरकरण संख्या 279 दिनांक 28.01.2013 द्वारा हुए परिवर्तित इन्द्राज में <u>रूखमों पत्नी रूपाराम हिस्सा 1/5</u> अंकन किया जाकर इन्द्राज किया गया है। इस प्रकार स्पष्ट है कि हाजा न्यायालय के डिक्री दिनांक 07.01.2013 की पालना के पश्चात् राजस्व रिकॉर्ड

में नामांतरकरण संख्या 279 दिनांक 28.01.2013 द्वारा हुए परिवर्तित इन्द्राज से रूखमों पत्नी रूपाराम को लाभकारी स्थिति प्राप्त हुई है। चूंकि हाजा न्यायालय के डिक्री दिनांक 07.01.2013 को अपीलीय न्यायालय द्वारा निरस्त किया जा चुका है। उस स्थिति में निरस्त हाजा न्यायालय के डिक्री दिनांक 07.01.2013 के द्वारा रूखमों पत्नी रूपाराम हिस्सा 1/5 को प्राप्त लाभ व नुकसान प्रदान करने वाले कार्य का कारण पक्षकारों के द्वारा किये गये कार्य ना होकर न्यायालय द्वारा किया गया आदेश है। उक्त निरस्त हाजा न्यायालय के डिक्री दिनांक 07.01.2013 के द्वारा रूखमों पत्नी रूपाराम हिस्सा 1/5 को प्राप्त लाभ व नुकसान को समाप्त कर सभी पक्षकारों को पुनः मूल स्थिति में बहाल किया जाना उक्त दावा पर सुनवाई करने से पूर्व आवश्यक है। इस प्रकार स्पष्ट है कि निरस्त हाजा न्यायालय के डिक्री दिनांक 07.01.2013 के द्वारा रूखमों पत्नी रूपाराम हिस्सा 1/5 को प्राप्त लाभ व नुकसान को समाप्त कर सभी पक्षकारों को पुनः मूल स्थिति में बहाल की जानी है। चूंकि निरस्त हाजा न्यायालय के डिक्री दिनांक 07.01.2013 के द्वारा रूखमों पत्नी रूपाराम हिस्सा 1/5 को प्राप्त लाभ व नुकसान को समाप्त कर सभी पक्षकारों को पुनः मूल स्थिति में बहाल किये जाने का आदेश हाजा न्यायालय का है एवं वर्तमान में उक्त आराजी का क्षैत्राधिकार भी हाजा न्यायालय का है। अतः इस स्थिति में निरस्त हाजा न्यायालय के डिक्री दिनांक 07.01.2013 के द्वारा रूखमों पत्नी रूपाराम हिस्सा 1/5 को प्राप्त लाभ व नुकसान को समाप्त कर सभी पक्षकारों को पुनः मूल स्थिति में बहाल करने के आदेश देने एवं क्रियान्विति करने की जिम्मेदारी भी हाजा न्यायालय की है। अतः

आदेश है कि

वादी का उक्त सिविल प्रक्रिया संहिता–1908 की धारा–144 के तहत प्रस्तुत प्रार्थना–पत्र स्वीकार किया जाकर विवादग्रस्त आराजी के राजस्व इन्द्राज की दिनांक 07.01.2013 के आदेश की पालना में दर्ज नामांतरकरण संख्या 279 दिनांक 28.01.2013 से परिवर्तित राजस्व इन्द्राज को समाप्त करते हुए पूर्व की स्थिति के राजस्व इन्द्राज बहाल करने के आदेश दिये जाते हैं।

यह निर्णय मेरे द्वारा आज दिनांक 03.01.2025 को लिखवाया जाकर हस्ताक्षर एवं मोहर युक्त जारी किया जाकर सरे इजलास सुनाया गया।

(केशव कुमार मीना आर.ए.एस)
सहायक कलक्टर
गुढ़ामालानी–बाड़मेर

Signature Not Verified

Digitally signed by Keshav Kumar Meena
Date: 2025.01.09 20:06:44 IST
Reason: SelfAttested