

RES JUDICATA

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The Civil Judges and newly promoted SCJ having a pressure to meet the required progress specified by the concern High Court usually dismissed the suits or reject it without proper appreciation of principles of Res Judicata. I felt that it would be convenient for them to give them general information based upon the verdicts and authorities passed by Hon'ble Supreme Courts.

The doctrine of Res Judicata is based on maxim.

“nemo debet bis vexari eadem causa”

(No man ought to be put to trouble, if it appears to the court, that it is for one and the same cause)

A final judicial discussion of a court of competent jurisdiction once pronounced between parties/litigants, cannot be contradicted by anyone, as against any other of such parties in any subsequent litigation between the same parties respecting the same subject matter. It is found in the principal that there should be an end to the litigation as to any issue between the same parties when once that issue has been directly and substantially determined between them by a court of competent jurisdiction. It sorts fresh litigation at the outset. Res-Judicata not only ousts the jurisdiction of the court but a person cannot be harassed again and again upon the same question. A judgement delivered by a court of competent jurisdiction operates as a bar as regards all findings which are essential to sustain the judgement.

The object of the principle of Res-Judicata as suggested by the expression itself is that finally should impart to judicial decision and if a case is Res-judicata, it may not be reopened so as to be adjudged again. In other words once a matter between parties to a suit or proceeding is decided and the decision has become final either (a) because no appeal lies (b) or an appeal was taken or (c) if taken it was dismissed, none of the parties shall be allowed to canvas the same matter again in a subsequent suit or proceedings between the same parties.[1]

The applicability of section 11 is not restricted only to suits but its principle apply to the proceeding, which may not be provided in the former suit or proceeding the same were heard and the same dispute between them was agitated and decided by court of competent jurisdiction. It is not necessary that the former proceedings should be only a suit. Section 11 of C.P.C is not exhaustive and the principle of the Res Judicata can be invoked in respect of proceedings to which it does not strictly apply.

For example, in Mirza Muhammad Yaqoob verses Chief Commissioner and another[2], it was observed that

“Petitioner is not entitled to take different pleas at different times so as to file more than one writ petition on the same facts. For a further plea, the proper cause would be to file petition for review of such a petition is maintainable. The general principle of Res-judicata is applicable to writ petition also.”

The principle of section 11 have also been applied to the orders and decision made in execution proceedings.[3] Similarly if an application for amendment of a decree has been heard and finally decided it will debar a subsequent application for the same purpose upon general principle of Law analogous to those of Res-judicata.

It was highlighted in Ms. Shahzad Bibi and another verses Gulzar Khan[4] that

“the principle that a party is not to be vexed out for the same course is acknowledged in section 10 and 11 of the code of Civil procedure and even where section 11 does not in term apply, the general principle of Res – Judicata have always been invoked by Courts of Law to achieve finality in litigation. An issue decided in one way at an earlier stage is not allowed to be reconvened at a subsequent stage.”

From the above observation it has been subtracted that if a court having decided a preliminary issue is entitled reconsider its decision, it might go on altering and altering its decision any number of time at the invitation of the parties. If the Hon’ble Superior Court has delivered its judgement upon particular issue and has signed the same

than as far as the trial courts are concerned, that issue cannot be re-agitated.

There are certain circumstances where the principle of res-judicata does not apply. For example where the suit has been withdrawn with permission to file afresh on same cause of action, where the plaint is rejected for want of court fee, where the parties to earlier suit are different, where the cause of action of former suit is different, dismissal of former suit for non-prosecution, later suit for possession and mesne profits whereas former suits for declaration, subject matter in both suits different, former suit for possession subsequent for partition, when wrong decision on jurisdiction, and many more as per circumstances and facts of each case.

A case came before Hon’ble Supreme Court,[5] where the plaint was rejected under order VII Rule 11 C.P.C for want of court Fee, it was held that “ It is also a settled Law that rejection of plaint has not an adjudication on merits. It is a decree only by fiction, therefore, there is no bar to file fresh suit.

The principle of Res judicata also applies in family suit, the illustration of above proposition is that if a suit for restitution of conjugal right filed by the husband, the wife being respondent agitated and stated before the court that she is not prepared to live with her husband at any cost and the court came to the conclusion that the husband is not entitled to get relief of conjugal right then the wife can file a suit for dissolution of marriage.

Constructive Res-Judicata

A party cannot sue for any portion of a claim which it has either omitted to sue or has relinquished in the earlier suit, it cannot assert his right to sue for such claim at a later stage and the court would not grant leave to bring a fresh suit for such omitted or relinquished claim. The principle of Res-judicata being mandatory has to be applied against the parties and even an agreement between the parties cannot operate against this principle. Similarly Order 2, Rule 2 C.P.C provides that every suit shall include the whole of the claim to which the plaintiff is entitled and where a plaintiff omitted to sue in respect of or intentionally relinquishes any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

In case of Anwar-ul-Mulk verses Mian Ghafoor—ur-Rehman and others [6], the August Supreme Court has observed as under: -

“ Doctrine of constructive res judicata is embodied in Explanation IV to section 11, C.P.C and is an essential constituent of doctrine of Res judicata. It is because of principle of res judicata that the doctrine of res judicata is rendered fully effective. The aim to the doctrine is to compel both the parties to the suit to raise before the Court in support of their contentions all the grounds of attack and defence available to them. By force of this doctrine, the parties have to bring their whole case to the Court and cannot reserve for the purpose of a second suit grounds available to them in support of their case. The rationale behind the constructive res judicata is that if the parties have had an opportunity of asserting a ground in support of their claim or defence in a former suit and have not done so, they shall be deemed to have raised such grounds in the former suit and it shall be further deemed that these grounds had been heard and decided as if these matters had been actually in issue. As such, such parties shall be precluded from raising these grounds in a subsequent suit. Such matters will by virtue of this legal fiction be construed to be res judicata.”

In the end I would like to add that all the principles to be interpreted strictly and doors of Justice not be slammed because Law is not what is termed as a technical knock out leaning aggrieved person with a bitter mouth but presenting a party who has had a fair fight on merits to drag his opponent back to court a second time over same dispute. Procedural Law was not meant to frustrate but advance cause of Justice and should not be interpreted to make it a sort of trap.

[1] PLD 1977 SC 220, PLJ 1977 SC 392

[2] PLD 1965 SC 254

[3] PLR 6 All 269

[4] PLD 1973 Lah 878

[5] PLJ 2007 SC 650

[6] 1997 SCMR 1796