Daryao and Others v. State of Uttar Pradesh: A Case Analysis

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ABSTRACT

In the leading case of Daryao & Others v. State of UP & Others, the Supreme Court has placed the doctrine of Res Judicata on a high pedestal, considering the binding character of judgments pronounced by competent courts as an essential part of the rule of law. Gajendragadhkar, J. rightly observed: " it is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction." If this principle form the foundation of the general rule of Res Judicata it cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under article 32.The court, in these circumstances, held that if a petition filed by a party under article 226 is considered on merits and is dismissed, the decision thus pronounced would constitute Res Judicata and bind the parties unless it is otherwise modified or reversed in appeal to other appropriate proceedings permissible under the constitution. It would not be open to a party to ignore the said judgment and move to the Supreme Court under article 32 by an original petition made on the same facts and for obtaining the same or similar orders.

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INTRODUCTION

The present case, *Daryo & Ors. v State of Uttar Pradesh*[2] debated as to when would the dismissal of writ petition by the High Court be a bar to the petition in Supreme Court in relevance to Res Judicata. The relevant laws which were used are as follows ---- Articles 32 and 226 of the Constitution of India along with the relevant sections of the Code of Civil Procedure, 1908 related to Res Judicata which are Section 11 and Order XLVII, Rule 1. The two main cases which were also referred to in this case were *M.S.M. Sharma v. Shree Krishna Sinha; Raj Lakshmi Dasi v. Banamali Sen*[3].

It has been settled since long that though section 11 of the code explaining the principle of Res Judicata does not, in terms, apply to writ petitions, there are no good grounds to preclude decisions in matters in controversy in writ proceedings under article 32 or article 226 of the constitution from operating as Res Judicata in subsequent petitions or regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of finality of the decision after full contest. Thus this assignment deals with different cases in which the doctrine of Res Judicata has been applied by the Courts of Justice and their implications on the process of justice.

[2] [1962] 1 SCR 574
[3] [1953] 4 SCR 154

FACTS OF THE CASE

The petitioners and their ancestors had been the tenants of the land described in Annexure A attached to the petition and that respondents are the proprietors of the said land for the past fifty years.

Owing to communal disturbances in the Western District of Uttar Pradesh in 1947, the petitioners left their village in July, 1947; later on their return in November, 1947 they found that during their temporary absence respondents had entered in unlawful possession of the said land.

Since the said respondents refused to deliver possession of the land to the petitioners the petitioners had to file suits for ejectment under s. 180 of the U.P. Tenancy Act, 1939. These suits were filed in June, 1948. In the trial court the petitioners succeeded and a decree was passed in their favor. The said decree was confirmed in appeal which was taken by respondents before the learned Additional Commissioner. In pursuance of the appellate decree the petitioners obtained possession of the land through Court.

Respondents then preferred a second appeal before the Board of Revenue under s. 267 of the U.P. Tenancy Act, 1939. On March 29, 1954, the Board allowed the appeal preferred by respondents and dismissed the petitioner's suit with respect to the land, whereas the said respondents' appeals with regard to other lands were dismissed. The decision of the Board was based on the ground that by virtue of the U.P. Zamindari Abolition and Land Reforms (Amendment) Act XVI of 1953 respondents 3 to 5 had become entitled to the possession of the land.

Aggrieved by this decision the petitioners moved the High Court at Allahabad under Art. 226 of the Constitution for the issue of a writ of certiorari to quash the said judgment. Before the said petition was filed a Full Bench of the Allahabad High Court had already interpreted s. 20 of the U.P. Land Reforms Act as amended by Act XVI of 1953. The effect of the said decision was plainly against the petitioners' contentions, and so the learned advocate who appeared for the petitioners had no alternative but not to press the petition before the High Court. In consequence the said petition was dismissed on March 29, 1955. It appears that s. 20 has again been amended by s. 4 of Act XX of 1954.

It was under these circumstances that the petitioners filed the petition under Art. 32 on March 14, 1956 in the Supreme Court. It was plain that at the time when the present petition had been filed the period of limitation prescribed for an appeal under Art. 136 against the dismissal of the petitioners' petition before the Allahabad High Court had already expired. It was also clear that the grounds of attack against the decision of the Board which the petitioners seek to raise by their present petition are exactly the same as the grounds which they had raised before the Allahabad High Court; and so it is urged by the respondents that the present petition is barred by Res Judicata.

LEGAL ISSUES RAISED AND DECIDED

The petitioners moved to the Supreme Court even after judgment passed by the Allahabad High Court claiming that under 32(1) it was a Fundamental right and thus the issue of Res Judicata will not be considered in the case.

It was held that there was no substance in the plea that the judgment of the High Court could not be treated as Res Judicata because under Article 226 of the Constitution of India.

DOCTRINE OF RES JUDICATA

RES JUDICATA means *"a thing decided"* in Latin. It is a common law doctrine meant to bar re-litigation of cases between the same parties in Court. Once a final judgment has been handed down in a lawsuit subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one will apply res judicata to preserve the effect of the first judgment. This is to prevent injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources in the court system. Res judicata does not merely prevent future judgments from contradicting earlier ones, but also prevents them from multiplying judgments, so a prevailing plaintiff could not recover damages from the defendant twice for the same injury[4].

Res judicata includes two related concepts: claim preclusion, and issue preclusion (also called collateral estoppel), though sometimes res judicata is used more narrowly to mean only claim preclusion. Claim preclusion focuses on barring a suit from being brought again on a legal cause of action that has already been finally decided between the parties. Issue preclusion bars the re-litigation of factual issues that have already been necessarily determined by a judge or jury as part of an earlier claim. It is often difficult to determine which, if either, of these apply to later lawsuits that are seemingly related, because many causes of action can apply to the same factual situation and vice versa. The scope of an earlier judgment is probably the most difficult question that judges must resolve in applying

[4] *Mulla Code of Civil Procedure*, Vinay Kumar Gupta,14th Edition,LexisNexis Butterworths, New Delhi

res judicata. Sometimes merely part of a subsequent lawsuit will be affected, such as a single claim being struck from a complaint, or a single factual issue being removed from reconsideration in the new trial.

Res judicata does not restrict the appeals process, which is considered a linear extension of the same lawsuit as it travels up (and back down) the appellate court ladder. Appeals are considered the appropriate manner by which to challenge a judgment rather than trying to start a new trial, and once the appeals process is exhausted or waived, res judicata will apply even to a judgment that is contrary to law.

However, there are limited exceptions to res judicata that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions--usually called collateral attacks--are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or competence to issue it. A collateral attack is more likely to be available (and to succeed) in judicial systems with multiple jurisdictions, such as under federal governments, or when a domestic court is asked to enforce or recognize the judgment of a foreign court.

Or in other words, **this doctrine is based on the following three maxims:**

1. *Nemo debet lis vaxari pro una eteadem* which means none should be vexed twice for the same cause;
2. *Interest reipublicae ut sit finis litium* which means that it is the interest of the state that there should be an end to litigation;

3. *Res Judicata pro verita occipitur* which means that a judicial decision must be accepted as correct,

The first ground is based on private interest whereas the other two take care of public policy and larger interest of the society[5]

The doctrine of Res Judicata is founded on the principles of justice, equity and good conscience[4].The doctrine apples to all judicial proceedings and equally to all quasi judicial proceedings before tribunals. Section 11 of CPC operates against both the parties to a suit and not against the defendant alone. The principle of Res Judicata is an inhibition against the court and is a mixed question of fact and law and has to be specifically pleaded. In determining the application of the rule of Res Judicata, the court is not concerned with the correctness or otherwise of the earlier judgment. A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and it may be superseded only by an appeal or revision to a higher court or tribunal or other procedure known to law.

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[5] *Civil Procedure* C.K.Takwani, , Eastern Book Company, New Delhi, Sixth Edition, 2009.

WRIT PETITIONS

It has been settled since long that though Section 11 of the Code does not, in terms, apply to writ petitions, there is no good ground to preclude decisions in matters in controversy in writ proceedings under Article 32 or Article 226 of the Constitution from operating as Res Judicata in subsequent petitions or regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of finality of decision after full contest. In Sharma v. Krishna Sinha[6], for the first time, the Supreme Court held that the general principle of Res Judicata applies even to writ petitions filed under Article 32 of the Constitution of India. Thus, if once the petition filed under Article 32 of the Constitution is dismissed by the Court, subsequent petition is barred. Similarly, if a writ petition filed by a party under Article 226 is considered on merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed in appeal or in other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and again move the High Court under Article 226 or the Supreme Court under Article 32 on the same facts and for obtaining the same or similar orders or writs.[6]

CONTENTIONS

[6] [1961] 1 SCR 96

BY PETITIONER

Mr. Agarwal who addressed the principal arguments on behalf of the petitioners in this group contends that the principle of Res Judicata which is no more than a technical rule similar to the rule of estoppel cannot be pleaded against a petition which seeks to enforce the fundamental rights guaranteed by the Constitution. He argues that the right to move the Supreme Court for the enforcement of the fundamental rights which is guaranteed by Art. 32(1) is itself a fundamental right and it would be singularly inappropriate to whittle down the said fundamental right by putting it in the straight jacket of the technical rule of Res Judicata.

The argument that Art. 32 does not confer upon a citizen the right to move this Court by an original petition but merely gives him the right to move this Court by an appropriate proceeding according to the nature of the case seems to us to be unsound. It is urged that in a case where the petitioner has moved the High Court by a writ petition under Art. 226 all that he is entitled to do under Art. 32(1) is to move this Court by an application for special leave under Art. 136; that, it is contended, is the effect of the expression "appropriate proceedings" used in Art. 32(1). In our opinion, on a fair construction of Art. 32(1) the expression "appropriate proceedings" has reference to proceedings which may be appropriate having regard to the nature of the order, direction or writ which the petitioner seeks to obtain from this Court. The appropriateness of the proceedings would depend upon the particular writ or order which he claims and it is in that sense that the right has been conferred on the citizen to move this Court by appropriate proceedings. That is why we must

proceed to deal with the question of Res Judicata on the basis that a fundamental right has been guaranteed to the citizen to move this Court by an original petition wherever his grievance is that his fundamental rights have been illegally contrive

BY RESPONDENTS

On the other hand it is urged by the learned Advocate-General of Punjab, who led the respondents, that Art. 32(1) does not guarantee to every citizen the right to make a petition under the said article but it merely gives him the right to move this Court by appropriate proceedings, and he contends that the appropriate proceedings in cases like the present would be proceedings by way of an application for special leave under Art. 136 or by way of appeal under the appropriate article of the Constitution. It is also suggested that the right to move which is guaranteed by Art. 32(1) does not impose on this Court an obligation to grant the relief, because as in the case of Art. 226 so in the case of Art. 32 also the granting of leave is discretionary.

There can be no doubt that the fundamental right guaranteed by Art. 32(1) is a very important safeguard for the protection of the fundamental rights of the citizens, and as a result of the said guarantee this Court has been entrusted with the solemn task of upholding the fundamental rights of the citizens of this country. The right given to the citizen to move this Court by a petition under Art. 32 and claim an appropriate writ against the unconstitutional infringement of his fundamental rights itself is a matter of

fundamental right, and in dealing with the objection based on the application of the rule of Res Judicata this aspect of the matter had no doubt to be borne in mind.

But, is the rule of Res Judicata merely a technical rule or is it based on high public policy? If the rule of Res Judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of Res Judicata as indicated in s. 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive Res Judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of Res Judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Art. 32.

In support of this decision Sinha, C.J., who spoke for the Court, referred to the earlier decision of this Court in Raj Lakshmi Dasi v. Banamali Sen[7] and observed that the principle underlying Res Judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter

[7] *[MANU/SC/0063/1952 : [1953]4SCR154]

of the dispute was not exactly the same in the two proceedings. We may add incidentally that the Court which tried the earlier proceedings in the case of Raj Lakshmi Dasi[8], was a Court of exclusive jurisdiction. Thus this decision establishes the principle that the rule of Res Judicata can be invoked even against a petition filed under Art. 32.

The scope of the writs, orders or directions which the High Court can issue in appropriate cases under Art. 226 are concurrent with the scope of similar writs, orders or directions which may be issued by this Court under Art. 32. The cause of action for the two applications would be the same. It is the assertion of the existence of a fundamental right and its illegal contravention in both cases and the relief claimed in both the cases is also of the same character. Article 226 confers jurisdiction on the High Court to entertain a suitable writ petition, whereas Art. 32 provides for moving this Court for a similar writ petition for the same purpose. Therefore, the argument that a petition under Art. 32 cannot be entertained by a High Court under Art. 226 is without any substance; and so the plea that the judgment of the High Court cannot be treated as Res Judicata on the ground that it cannot entertain a petition under Art. 32 must be rejected.

if a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Art. 32 by an original petition made on the

[8] Supra 5

same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Art. 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order.

DECISION

The Court is satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same. Therefore the decision of the High Court pronounced by it on the merits of the petitioner's writ petition under

Art. 226 is a bar to the making of the present petition under Art. 32. In the result this writ petition fails and is dismissed. There would be no order as to costs. Petition dismissed.

PRINCIPLES LAID DOWN

-BY THE SUPREME COURT

In the leading case of Daryao v. State of U.P, the Supreme Court has exhaustively dealt with question of applicability of the principle of Res Judicata in writ proceedings and laid down certain principles which may be summarized thus:

1. If a petition under Article 226 is considered on merits as a contested matter and is dismissed, the decision would continue to bind the parties unless it is otherwise modified or reversed in appeal or other appropriate proceedings permissible under the Constitution.
2. It would not be open to a party to ignore the said judgment and move the Supreme Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs.
3. If a petition under Article 226 in a High Court is dismissed not on merits but because of latches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32.
4. Such a dismissal may, however, constitute a bar to a subsequent application under Article 32 where and if the facts thus found by the High Court by themselves relevant even under Article 32.
5. If a writ petition is dismissed ***in limine*** and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend on the nature of the order. If the order is on merits, it would be a bar.
6. If a petition is dismissed ***in limine*** without a speaking order, such dismissal cannot be treated as creating a bar of ***Res Judicata***.
7. If a petition is dismissed as withdrawn, it cannot be a bar to a subsequent petition under Article 32 because in such a case, there had been no decision on merits by the court.

To the above principles, few more may be added:

8. The doctrine of constructive Res Judicata applies to writ proceedings and when any point which might and ought to have been taken but was not taken in an earlier proceeding cannot be taken in a subsequent proceeding.
9. The rule of constructive Res Judicata however does not apply to a writ of habeas corpus. Therefore, even after the dismissal of one petition of habeas corpus, a second petition is maintainable if fresh, new or additional grounds are available.
10. The general principles of Res Judicata apply to different stages of the same suit or proceeding
11. If a petitioner withdraws the petition without the leave of the court to institute a fresh petition on the same subject-matter, the fresh petition is not maintainable.

ANALYSIS

In Daryao, the Supreme Court has placed the doctrine of Res Judicata on a higher footing, considering and treating the binding character of judgments pronounced by competent courts as an essential part of the rule of law. Gajendragadkar, J. rightly observed:

“It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of Res Judicata they cannot be treated as irrelevant or inadmissible even in dealing with Fundamental Rights in petition filed under Article 32.”

Again, there is no good reason to preclude the decisions on matters in controversy in writ proceedings under Article 226 or 32 of the Constitution from operating as Res Judicata in subsequent regular suits on

the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest.

Thus in this case it was rightly decided by the Supreme Court, in favor of the respondents that Res Judicata does apply even when it comes to matters of writ petitions when the subject matter that is being dealt with remains the same and therefore the decision of the Allahabad High Court was held valid and rightly so. The general principles laid down by the Supreme Court in this case has been taken as a benchmark for deciding application of Res Judicata in subsequent cases and Daryao v. State of Uttar Pradesh has been termed a landmark judgment in the purview of section 11 of the Code of Civil Procedure 1908 in relation to writ petitions under section 32 and 226 of the Constitution of India.

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