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RES JUDICATA

A Res Judicata-Layman Language

1 The word Res Judicata has been derived from two Latin words namely Res and Judicata. Res means "subject matter" and judicata means "adjudged" or decided and together it means "a matter adjudged".

2 In simpler words, when an issue before a court has already been decided by another court and between the same parties, the court before which the issue has been presented will dismiss the same as it has been decided by another court.

3 Res judicata applies to both civil and criminal proceedings. The doctrine serves the purpose of public interest, which requires that all litigation must, sooner than later, come to an end and reagitating of already decided issues would waste Court's time and resources.

B Brief History and Origin of Res Judicata

1 The concept of res judicata has evolved from the English Common Law System.

2 Earlier res judicata was termed as Purva Nyaya or former judgment by the Hindu lawyers and Muslim jurists according to ancient Hindu Law.

3 The countries of the Commonwealth and the European Continent have accepted that once the matter has been brought to trial, it must not be tried again.

C Legislative Framework with regard to Res Judicata

1 Section 11 of the Code of Civil Procedure, 1908 (for short "CPC") contains the rule of finality of judgment, and acts as a statutory recognition to the principle of res judicata.

2 In the case of ***Sheodan Singh v. Daryao Kunwar***, AIR 1966 SC 1332, the conditions of res judicata as contained in Section 11 were explained as follows:

a The matter directly and substantially in issue in the subsequent suit or issue must be the same matter, which was directly and substantially in issue either actually (Explanation III) or constructively (Explanation IV) in the former suit (Explanation I). (Explanation VII is to be read with this condition).

b The former suit must have been a suit between the same parties or between parties under whom they or any of them claim. (Explanation VI is to be read with this condition).

c Such parties must have been litigating under the same title in the former suit.

d The Court which decided the former suit must be a Court competent to try the subsequent suit or the suit in which such issue is subsequently raised. (Explanations II and VIII are to be read with this condition).

e The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the former suit. (Explanation V is to be read with this condition).

3 In the case of ***Mathura Prasad vs. Dossibai NB Jeejeebhoy***, (1970) 1 SCC 613, the Court explained the term "matter in issue" means:

a The rights litigated between the parties, i.e., the facts on which the right is claimed and the law applicable to the determination of that issue.

b Such issue may be an issue of fact, issue of law or mixed issue of law and fact.

c The matter directly and substantially in issue may be so either actually or constructively.

d According to Explanation III, a matter is actually in issue when it is alleged by one party and denied or admitted by the other expressly or impliedly.

e As per Explanation IV, it is constructively in issue when it might or ought to have been made a ground of attack or defence in the former suit. The word 'might' presuppose the party affected had knowledge of the ground of attack or defence at the time of the previous suit. A party is bound to bring forward his whole case in respect of the matter in issue and cannot abstain from relying or giving up any ground which is in controversy and for consideration before a Court and afterwards make it a cause of action for a fresh suit. Constructive res judicata is an 'artificial form of res judicata'

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4 In the case of ***Mahboon Sahab vs. Syed Ismail***, (1995)3 SCC 693, the Supreme Court held that the principle of res judicata is applicable to both necessary and proper parties. The Apex Court laid down the following principles:

a If a previous decision can operate as res judicata between the Co-defendants under certain conditions, there is no reason why a previous decision should not operate as res judicata between the co-Plaintiffs if the same conditions are mutatis mutandis satisfied.

b It is not necessary to attract the doctrine of res judicata that there should be relief sought against each of such Defendant. Even a proforma Defendant if he was a proper party, is bound by the principle of res judicata in subsequent proceedings.

5 Matter in issue and subject matter of the suit

a The "matter in issue" and not the subject-matter of the suit forms the essential part of res judicata

b In the case of ***Nanda Lal Roy vs. Pramatha Nath Roy*** AIR 1933 Cal 222 the Court held the rule of res judicata does not depend on the identity of subject-matter but on the identity of issue.

c Matter in issue thus is distinct from the subject-matter and the object of the suit and also from the relief that may be asked for in the suit and the cause of action on which the suit is based and therefore, even if in a case where a subject-matter, the object, the relief claimed and the cause of action are different, the rule of res judicata can apply

d In the case of ***Deva Ram v Ishwar Chand***, (1995) 6 SCC 733 the Supreme Court held if the parties in two suits are the same and the subject matter is also the same. But the issues and cause of action are different. In such a case, in the absence of pleadings issues and finding on those issues, the rule of res judicata cannot be invoked.

e In the case of ***State of Rajasthan vs. Jeev Raj*** (2011)12 SCC 252 the Supreme Court held that subject-matter of the two suits may be different, the object of the suits, the reliefs asked and the causes of action may also be different; but if the matter in issue in them is identical (i.e. if same title had been litigated before) res judicata will apply.

D Constructive Res Judicata

1 The doctrine of constructive res judicata emanates from the following Explanation to Section 11 of CPC:

Explanation IV – Any matter which might and ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

2 The above explanation governs please which ought to have been taken in the former suit, but not actually taken.

3 To invoke this doctrine, it will be necessary to show not only that the party could have raised defence in the former suit, but it must also be shown that it was bound to raise the defence in the earlier litigation (***Rajah Chattar Singh vs. Diwan Roshansingh*** AIR 1946 Nag 277).

4 In the case of ***State of UP vs. Nawab Hussain*** AIR 1977 SC 1680, the Supreme Court was examining a case where a sub-inspector of police was dismissed from service. The said sub-inspector unsuccessfully challenged the dismissal by filing a writ petition before High Court on the ground that he was not afforded a reasonable opportunity of being heard before passing the dismissal order. Thereafter, the sub-inspector filed a suit and, in such suit, he had raised an additional ground that the D.I.G who dismissed him did not have the authority to do so since he was appointed by I.G.P. The Supreme Court held that this new plea raised by the sub-inspector was barred by constructive res judicata, since the plea was within his knowledge and could have been taken in the earlier writ petition.

E Res Judicata in Arbitration

1 The principles of CPC are not strictly applicable to an arbitration by virtue of Section 18 of the Arbitration & Conciliation Act, 1996.

2 However, judicial precedents have held that the principle of res judicata would apply to arbitration proceedings also (***K. V. George vs. Secretary Water & Power Development***, AIR 1990 SC 53 & ***Nirmaljit Singh vs. Harnam Singh*** AIR 1996 SC 2252).

3 The principle of res judicata becomes particularly relevant in arbitrations arising out of long-term contracts, where parties are compelled to arbitrate on issues such as price fixation etc., repeatedly over a long period of time. In such situations, it is expected that the arbitral tribunal takes into account its previous decisions on the subject and maintains a consistent interpretation of the contract so that parties can be assured of commercial certainty.

4 The principle of res judicata will also apply in court proceedings arising out of arbitration. For instance, in the case of ***Union of India vs. Videocon Industries Limited*** the Delhi High Court passed a permanent anti-suit injunction restraining the defendant from pursuing its claim before Commercial Court, London since doing so would amount to reexamination of an issue concerning juridical seat of arbitration, which issue was already adjudicated between the same parties by the Supreme Court of India.

F Conclusion

1 The doctrine of res judicata is a fundamental concept based on public policy.

2 The following checklist may be adhered to ascertain whether res judicata to apply:

a There must be two suits/proceedings, one former (previously decided) and the other subsequent.

b Parties of the former and subsequent suit/proceeding or the parties under whom they or any of them claim should be the same.

c The subject matter of the subsequent suit/proceeding should be identical or related to the Former suit either actually or constructively

d The matter directly and substantially in issue must have been heard and finally decided in the former suit/proceeding.

e The former suit/proceeding has been decided by the court of competent jurisdiction

f Parties in the former as well as in subsequent suit/proceeding must have litigated under the same title.

3 In the case of constructive res judicata the following conditions should be satisfied:

a Constructive res judicata is a subset of the doctrine of res judicata.

b Constructive res judicata sets to bar any issues being raised in a later proceeding, if, the issue should/ought to have been raised and decided in an earlier proceeding.

c The principle underlying Constructive res judicata is that, if, a party had an opportunity to raise a matter in a suit that should be considered to have been raised and decided, irrespective of the fact, if it was actually raised or not.

d Thus, a plea which might and ought to have been taken in the earlier suit, shall be deemed to have been taken and decided against the person raising the plea in the subsequent suit.