

Applicability of *res judicata* in the Public Interest Litigation, Arbitration and Income Tax Proceedings

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Abstract

The article discusses the applicability of the rule of *res judicata* in the situations where Section 11 of the Code of Civil Procedure, 1908 does not apply. The article also discusses the applicability of *res judicata* in public interest litigation, arbitration and income tax proceedings. Apart from this, a catena of the judgements of the High Courts and the Supreme Court are discussed on the rule of *res judicata*.

Keywords: Suit, Res Judicata and Finality, Code of Civil Procedure, Public Interest Litigation, Arbitration, Income Tax Proceedings

1. Introduction

Res judicata is a Latin term and it derived from the words “*res*” and “*judicata*” which means a ‘property’ and ‘judicially decided or determined’ respectively. *Res judicata* actually means “a matter already judged”. The basic origin of the word *res judicata* is the Latin maxim “*res judicata pro veritate occipitur*”² which means is ‘a judicial decision must be accepted as correct’ and this maxim over the years has shrunk to mere ‘*res judicata*’. It is a principle of law, once a matter which has been litigated cannot be re-litigated between the same parties in the next stage of the case. Now, this principle has been accepted in all civilised legal systems of the society.³

Res judicata is a remedy available in civil proceedings within the purview of Section 11 of the Code of Civil Procedure, 1908. The rule of *res judicata* is based on the principle that one should not be vexed twice for the same cause and that there should be finality in litigation. The primary aim of this principle is to give finality to suit in original or in appellate proceedings. This principle does not allow an issue or a question which was adjudged and attaining finality, to be re-opened or re-agitated again. The principle of *res judicata* is entirely based on public policy and it has two primary aims; firstly, there should be finality to litigation and secondly, a person should not be harassed twice over the same litigation.⁴

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² Duhaime’s Law Dictionary, available at: <http://www.duhaime.org/LegalDictionary/I/InterestReipublicaeUtSitFinisLitium.aspx> (Visited on 06 May 2019).

³ Res Judicata in India, available at: <http://www.legalserviceindia.com/article/l454-Res-Judicata.html> (Visited on 20 June 2019).

⁴ Sir Dinshah Fardunji Mulla, *The Code of Civil Procedure* 184 (Lexis Nexis, Nagpur, 2011).

2. Section 11 Not Exhaustive

The provisions of Section 11 of the Code of Civil Procedure is mandatory and not directory. This section is not an exhaustive one but the principle of *res judicata* has been applied by the courts to give finality in litigation even where Section 11 does not apply. The amendment made in the Section 11 in 1976 by the Joint Committee,⁵ enhances its applicability and scope in various fields of the civil law. Before applying the principle of *res judicata*, the five conditions which are enshrined in Section 11 must be satisfied.⁶

The section does not cover the entire situation as to when a subject matter may be *res judicata*. In the case of *Kalipada v. Dwijapada*,⁷ passage from the judgement of Sir Lawrence Jenkins in *Sheoparsan v. Ramanandan*⁸ was referred by the Privy Council with approval where it was observed by the Lordship that while applying this rule of law the Indian Judiciary should be guided by the merit of the case within the limits permitted by the law and should not pay attention to its technical form.

Moreover in *Hook v. Administrator General*⁹ it was said by Judicial Committee that the application for *res judicata* prevails in spite of the limited provisions of the Code and referred to decision of board in *Ram Kirpal v. Rup Kuari*¹⁰ where it was held that in execution proceedings the binding force of an interlocutory judgement would depend upon general principle of law rather than the section of CPC. The Privy Council also said that the verdict on a dispute under section 31(2) of the Land Acquisition Act, 1894 regarding compensation deposited in a court would constitute *res judicata* in a later suit between the same parties.

Their Lordship observed that it will not make any difference whether a decision was or was not made in a former suit because it was recently highlighted by the Board in *Hook v. Administer General*¹¹ that the rule which forbidding the similar matter being litigated twice is of general application and is not confined by the specific wordings of the Code of Civil Procedure in this respect.

The Apex Court purported this view and pronounced that the fundamental principles behind Section 11 are the conclusiveness in legal disputes and that an individual should not be punished twice for the same cause and these principles are applicable irrespective of the fact that the case

⁵ Report of the Joint Committee, Gazette of India 804 (1976).

⁶ *Sheodan Singh v. Daryao Kunwar*, AIR 1966 SC 1332.

⁷ AIR 1930 PC 22.

⁸ (1916) ILR 43 Cal 694.

⁹ (1921) ILR 48 Cal 499.

¹⁰ (1884) ILR 6 All 269.

¹¹ *Supra* note 8.

falls under Section 11 or not. On this principle it has been observed that a judgement pronounced by the court at initial stage will have binding effect.¹²

3. *Res Judicata* in Public Interest Litigation

The issue of applicability of the rules of *res judicata* to the public interest litigations has overwhelmed the mind of jurists and judges. The issue of the applicability of rule of *res judicata* in public interest litigations is still not solved even though the judgements of the Supreme Court had not been accurate on this point. While few courts have found the rules to be applicable to public interest litigation and some others rule out its applicability. But after the study of a catena of judicial decisions of the Supreme Court, a balanced approach followed by the courts, i.e. it neither rule out the applicability of *res judicata* in public interest litigation nor allow it in all matters which hit the interest of the public.¹³

The Supreme Court stated with authorisation, the observation in its previous landmark judgement decided the most controversial issue of the applicability of *res judicata* in PIL wherein *Rural Litigation and Entitlement Kendra v. State of U.P.*¹⁴ case the court rules out the applicability of *res judicata* taking into consideration the social safety of the person where they have to live in a protective environment as enshrined in the constitution. In the matters of grave public importance, technical rule of the procedure do not apply.

In *R.S. Keluskar v. Union of India* case,¹⁵ the petitioner entertained repeated petitions representing compensation for victims of the railway accident. The petition was filed in personal capacity of the petitioner without taking any authorisation letter or consent from the injured individuals, in spite of the fact that the petition was represented in the public interest. The petitioner suppress the fact of refusal of his previous writ petition claiming the similar relief and it was quoted by the court that the record shows personal interest of the petitioner up to some extent and he cannot take the benefit of the *grave public importance* plea and the petition is strike by the rules of constructive *res judicata*.¹⁶

In *V. Purushotham Rao v. Union of India*¹⁷ case the comparison of personal interest and public interest was concluded i.e. the public interest should override. Rule of constructive *res judicata* cannot be applied in all

¹² *Daryo v. State of U.P.*, (1962) 1 SCJ 702.

¹³ *Supra* note 3 at 270.

¹⁴ (1989) SCC 1 Supp 504.

¹⁵ (2008) 3 Mah LJ 13.

¹⁶ *Ibid.*

¹⁷ (2001) 10 SCC 305.

public interest litigations; court has to see the interest of public and its impact on society at large, irrespective of the demand of the petitioner.

Explanation VI to Section 11 of Civil Procedure Code, 1908 mainly emphasis on bonafide litigation and is applicable to public interest litigation as well. For striking the rule of *res judicata* under this construction, petitioner must prove that the former writ petition is bonafide in regard of a respective right which was common and claimed by all and if the former writ petition was not bone fide then the rule of *res judicata* not attract. Similarly, in *Forward Construction Co. v. Prabhat Mandal* case,¹⁸ where explanation VI was applied by the Supreme Court, in which the court stated that before applying this construction, the petitioner has to show that the previous writ petition was bonafide filed for public interest, where all others have common interest and is not filed for personal or private grievances. The rule of constructive *res judicata* is applicable to the public interest litigation by virtue of explanation VI. Following are the glimpses upon the *res judicata* in public interest litigation:-

- i. The rule of *res judicata* does not strictly apply in the proceedings of public interest litigation.¹⁹
- ii. In public interest litigation proceedings, *res judicata* is applicable even though the parties in the subsequent petition are not the same.²⁰
- iii. In public interest litigation proceedings, while awarding a decision, court is not bound to follow the strict or procedural technicalities on various Acts, even though the statutory clauses of the law of land exists.²¹
- iv. The Supreme Court issues directions for environmental prevention and environment protection in setting up oil refinery in a previous public interest litigation - rule of constructive *res judicata* is attracted on the new writ petition connecting similar subject matter as agitated before, even though the petitioner was not party in previous public interest litigation.²²
- v. Fresh petition was not blocked by *res judicata* where in the previous public interest litigation the question involved or agitated was not finalised.²³

¹⁸ (1986) 1 SCC 100.

¹⁹ *Maharaji Kunwar v. Sheo Shankar*, second Appeal No. 2276 of 1977 (Allahabad High Court).

²⁰ *V. Subramanian v. Union of India*, (2004) 4 MLJ 380.

²¹ *Rural Litigation Entitlement Kendra v. State of Uttar Pradesh*, (1989) Supp 1 SCC 504.

²² *Gujarat Navodaya Mandal v. State Of Gujarat*, AIR 1998 Guj 141.

²³ *Sundargarh Citizen v. Orissa State Transport Authority*, AIR 2009 NOC 1690.

- vi. If the issue in the previous public interest litigation was in the interest of public in large and litigated bona fide, it presumed to be judgement in *rem*. Subsequent litigation filed involving same issue as were in the previous litigation would be barred by the rules of *res judicata*.²⁴

4. *Res Judicata* in Arbitration

Arbitration is a form of Alternative Dispute Resolution, in which people settle their dispute outside the premises of court with the help of third person (known as arbitrator, mediator, conciliator) with whom they agree to follow his decision. Arbitration law came to India with the arrival of East India Company. To diversify its business, they solve their dispute in a rapid manner by the way of arbitration. The term is normally used for solving commercial disputes, chiefly the international commercial transactions. For enforcing foreign awards, India is signatory of the New York Convention, 1958 and our arbitration act is generally based on the UNCITRAL Model Law, 1985. Arbitration proceeding is cheaper and faster than the civil court procedures even though non-public.²⁵

Doctrine of *res judicata* and provision of Civil Procedure Code, 1908 is applicable to the arbitration proceedings by virtue of the Arbitration Act, 1940 (now Arbitration and Conciliation Act, 1996). The contentions of *res judicata* are footed on the doctrine that there should not be multiplicity of proceedings and that there should be ending to proceedings. Decision of arbitrator is binding upon the parties to the agreement, as like a decree of court. Once arbitration award is pronounced by the arbitrator, then there is no provision in the law to challenge it except under section 34 of the act.²⁶ Previously, in *ex parte* cases or where gross negligence done by the arbitrator, court can remand the matter back to the arbitrator to cure the defect. Now in *Kinnari Mullick & Another v. Ghanshyam Das Damini* case,²⁷ the Supreme Court stated that there is no provision in the act to remand back the matter to the arbitrator and to judge the decided points again.

A decree on an award pronounced by the arbitrators is final as *res judicata* among the parties. But where applicant is not party to arbitration proceedings and files subsequent suit, rule of *res judicata* is not applicable.²⁸ *Res judicata* will not apply when the award is challenged under section 34 of

²⁴ *State of Karnataka v. All India Manufacturer Organisation*, (2006) 4 SCC 683.

²⁵ *Res Judicata in Arbitration*, available at:
<http://www.legalservicesindia.com/article/1339/Res-Judicata-in-Arbitration.html> 2/11
(Visited on 7th July 2018).

²⁶ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996) s.34.

²⁷ (2018) 11 SCC 328.

²⁸ *Bhai Hospital Trust v. Parvinder Singh*, AIR 2002 Delhi 311.

the act regarding invalidity of the agreement or clauses enshrined under the section.²⁹

In *Union of India v. Videocon Industries Ltd.* case³⁰ the Delhi High Court applies the principle of *res judicata* even in international arbitration. In this case the seat of arbitration was previously finalised by the Supreme Court of India *qua* Commercial Court of London. There was a clause in the agreement that the seat of arbitration is Kuala Lumpur and the agreement is governed by English law. Now the issue before the court is whether defendant can re-litigate the proceeding before Commercial Courts, London..? The Delhi High stated that defendant is restrained to pursuing any claim before the London Court which is severe, oppressive and abuse the process of principle of *res judicata*.

Now a day's Indian courts take positive steps and follow best practice in international arbitration by applying the principle of *res judicata*. In *Mauritius Holdings v. Unitech Limited* case,³¹ the Delhi High Court took a positive approach towards enforcement of foreign arbitral awards and rejects objection by applying the rule of *res judicata* and gives a robust approach for foreign investors that Indian courts will not permit judgement debtor to re-agitate the matter at enforcement stage.

In *Dolphin Drilling Ltd. v. Oil and Natural Gas Corporation Ltd.* case,³² dispute arose between the parties and the respondent failed to invoke the arbitration proceedings then appellant approached the Supreme Court to appoint an arbitrator to solve the dispute. The respondent (ONGC) took the plea that appellant cannot initiate the arbitration proceeding again in a single agreement in which the dispute was previously settled. But the Supreme Court rejected the plea of respondent and gave a finding that it is not easy to curtail the scope of arbitration act and it is not a onetime measure to settle a dispute; it cannot be held that if the arbitration clause is invoked once, the remedy of arbitration cannot be invoked again in the disputes which might arise in the future.

In *Indian Oil Corporation Ltd. v. SPS Engineering Ltd.* case,³³ the application filed under Section 11 of the Arbitration Act, 1996 before the High Court was barred by invoking *res judicata*. The Supreme Court set aside the impugned judgement of the High Court and stated that Section 11 of the arbitration act has a very limited scope; court has no power to reject the application by applying the rule of *res judicata* and has no power to

²⁹ Sudipto Sarkar and V.R. Manohar, *Sarkar's The Code of Civil Procedure* 177 (Lexis Nexis, Gurgaon, 2011).

³⁰ (2011) 6 SCC 161.

³¹ (2017) SCC OnLine Del 7810.

³² (2010) 3 SCC 267.

³³ (2011) 3 SCC 507.

comment on the maintainability of the claim either on fact or in law. The court further stated that it is the duty of the arbitral tribunal to check whether the claim is hit by the rule of res judicata or not.

In *Uttam Singh v. Union of India* case,³⁴ the Supreme Court held that all the rights and the claims of the parties, which are the subject matter of the suit, are made reference to the arbitrator and after the pronouncement of award, all the rights or the claims are deemed to merge in the arbitral award. Any subsequent questioning or reference to the rights which were claimed in the award would be strike by the rule of *res judicata*. Same position is settled in *Bhajahari Saha v. Behary Lal* case,³⁵ when the arbitration award was final between the parties is in fact or in law, any subsequent reference would be incompetent except the prescribed procedure of law.

4.1. Constructive Res judicata in Arbitration Proceeding

The rules of *res judicata* or the universal rules of constructive *res judicata* are applicable to arbitration proceedings as well as awards. All claims and issues of law which were referred to arbitration, deemed to be merge in that award and if any right or liability of the individual regarding any claim, can only be considered at the time of finality of award. Neither any subsequent action can be started on the initial claim which is the theme of the reference nor any issue in fact or in law raise after the award is awarded; any successive action is hit by the rules of constructive *res judicata*. Therefore, petitioner have to raise all claims simultaneously at the time of filing of plaint, subsequently if he raised any of the issue which was remaining in the previous suit, rules of constructive *res judicata* apply.³⁶

After signing an agreement, if one party filed a civil suit in District Court and other party filed the application under section 8 of the arbitration act *qua* to refer the dispute to arbitration proceedings, constructive *res judicata* would not be applicable when a claim petition is filed before the arbitrator.³⁷ The plea which the government cannot raise before but raised subsequently in execution at the time of implementation of the award would be barred by the rule of constructive *res judicata*.³⁸

³⁴ Civil Appeal No. 162 of 1962 (SC).

³⁵ ILR (1909) 33 Cal 881.

³⁶ *Himachal Sorang Power Pvt. Ltd. v. NCC Infrastructure Holdings Ltd.*, CS (COMM) 12/2019 (Delhi).

³⁷ *Charanjit Kaur v. S.R.Cable*, 2008 (4) MPLJ 221.

³⁸ A. N. Saha, *The Code of Civil Procedure, 1908* 215-216 (Premier Publishing Company, Allahabad, 2006).

5. *Res Judicata* in Income-Tax Proceedings

Generally, the rule of *res judicata* is applicable in almost all spheres of the jurisprudence. But, as a surprise, the rule of *res judicata* is not applicable to matters of taxation. In taxation proceeding, each and every assessment year is final and is not binding upon the successive assessment year. The explanation IV *qua might* and *ought* or general principles of constructive *res judicata* is also not applicable to the taxation proceeding. Omission to raise specific objection by an assessee, does not preclude him from taking the similar objection in a later proceeding which *might* and *ought* to have been taken in the previous assessment year.³⁹ Each assessment year have different tax rates, so it is not possible to cover under the single decision. It is settled position of the law that if fresh cause of action arises, previous adjudication could be opened by a later proceeding for another period of time which developed subsequently. Therefore, an income tax officer (ITO) is at liberty to resile from a previous year assessment order.⁴⁰

In income tax proceeding there is no bar to re-open the decision of previous assessment year in a following year. Office of income tax officer is not a court; ITO is not bound by the rules of *res judicata* while dealing with two different assessment years. The officer while ignoring the previous order, should not adjudge the case arbitrarily, must follow the rules of natural justice.⁴¹

According to Spencer Bower & Turner, in income tax proceedings, there is an exception to the basic rules of *res judicata*, decision of one assessment year only assigns respect to that year's rates and taxes, not binding upon the second assessment year by virtue of the fluctuation of every year's rates and taxes.⁴²

The views regarding the non-applicability of *res judicata* by the English, Indian and American Jurists is almost the same. But there are two conflicted decisions of the English authorities haunting the Indians even today. In *Hoystead v. Taxation Commissioner Case*,⁴³ *res judicata* is applicable if any court of competent jurisdiction pronounced a final decision then the party is restrained to re-agitate the issue in fresh or subsequent proceedings. But in another case of *Broken Hill Proprietary Co. Ltd. v. Broken Hill Municipal Council*⁴⁴ the rule of *res judicata* could not be

³⁹ *Radhasoami Satsang v. Commissioner of Income Tax*, (1992) 1 SCC 659.

⁴⁰ Solil Paul and Anupam Srivastava, *Mulla The Code of Civil Procedure* 335-336 (Butterworths India, New Delhi, 2001).

⁴¹ *Udayam Chinubhai v. Commissioner of Income Tax*, Gujarat, (1967) 1 SCR 917.

⁴² George Spencer Bower & Sir Alexander Kingcome Turner, *The Doctrine of Res Judicata* 260 (Butterworths, London, 2d edn., 1969).

⁴³ (1925) All E.R. 56.

⁴⁴ (1925) All E.R. 672.

applied in subsequent year with respect to fresh question and different assessment year even the issue was adjudged in the previous year.

Similarly, in India the view of two High Courts in regard to the applicability of the rules of *res judicata* in taxation is contradictory in the initial phase. In *C. L. T. v. Massey & Co. Ltd.*⁴⁵ the Madras High Court stated that *res judicata* did not apply to taxation proceedings. But in *Sankaralinga Nadar v. C.I.T.* case⁴⁶, after one year, the full bench of Madras High Court gave a contradictory judgement to previous one that where right of parties do not vary with the yearly income and are decided by the court; the same issue would be *res judicata* if challenged or re-opened in the later case.

5.1. Exception to the Rule of *Res Judicata*

Applicability of the rule of *res judicata* in income tax proceedings is very stringent. *Res judicata* would apply to the tax proceedings when the nature of the assessee on which their taxed rights are based or the nature of the property is not changed and year wise year income remains stable. For example, adjudication final on the issue of a Trust whether it is a Charitable Trust or not which has no relation to the fluctuation of the yearly income and if the same issue is adjudged again it would be *res judicata* in subsequent adjudication. Similarly, if the status of the party cannot be varied or changed every year, *res judicata* would be applicable in any infringement to the previous status.⁴⁷

In *H.A. Shah & Co. v. C.I.T* case,⁴⁸ the Bombay High Court implied certain limitations on the tax authorities by holding the rule of *res judicata* that successive year decision should not lead to injustice and must be fair and lawful. When the assessee loses an important benefit or advantage under the income tax proceedings then court may interfere to stop tax authorities from resiling the previous decision unless it leads to arbitrariness, injustice or is biased and inequitable.

In another case where the income is stable and assessment does not change yearly, any issue is adjudged or awarded by a court on reference, *res judicata* would strike and decision would not be re-challenged at any stage of the case.⁴⁹

In *C.I.T v. Belpahar Refractories Ltd* case,⁵⁰ the High Court held that generally the rules of *res judicata* did not apply to the income tax

⁴⁵ AIR 1929 Mad 453.

⁴⁶ AIR 1930 Mad 209.

⁴⁷ Principle of Res Judicata, available at: <https://taxguru.in/income-tax/principle-res-judicata-applicable-proceedings-income-tax-act.html> (Visited on 25 July, 2019).

⁴⁸ (1956) 30 ITR 618.

⁴⁹ *Kamlapat Motilal v. Commissioner of Income Tax*, AIR 1950 ALL 249.

⁵⁰ (1981) 128 ITR 610.

proceedings, but the principle have two exceptions; firstly any issue adjudged cannot be re-challenged or re-opened until and unless it is unlawful, arbitrary or without proper inquiry. Secondly, the rule of *res judicata* would be applicable if the result of the previous decision leads to injustice and do not follow the rules of natural justice.

In the landmark judgement in *Radhasoami Satsang v. C.I.T case*,⁵¹ the Supreme Court quoted that the rule of *res judicata* has no application in tax proceedings. Finding in one assement year could be re-opened in subsequent year with respect to different income or fluctuation in tax rates. But when no material change occurred in the subsequent year in the status of the party, tax authorities are barred by *res judicata* to take a separate view in regard to exemption granted in a previous year. When no fresh cause of action is raised, the authorities are bound by the previous decision, contrary stand would not be allowed by the prescribed principles of law. The income tax authorities are a quasi judicial body and cannot ignore the natural principles of law.

Similarly, in *Parshuram Pottery Works Co. Ltd. v. ITO case*,⁵² the Supreme Court held that basic principles of the rule should not be ignored; there should be finality in the litigations. *Res judicata* applied on the stale issues, must not be permitted by the law to re-challenge beyond a particular stage, when once attains finality after a lapse of time.

6. Conclusion

The basic theme of the rule of *res judicata* is to give finality to the litigation and nobody should be vexed twice for the same litigation. Generally, the applicability and scope of *res judicata* is ample and comprehensive but there are some exceptions in which the principle is not strictly applicable. Like in public interest litigation, there is a balanced approach followed by the Indian Judiciary i.e. neither the applicability is rule out nor applied strictly. *Res judicata* has made a prominent place in arbitration and principle is applied from the virtue of the Arbitration Act. International awards were also made enforceable in India by applying the golden rule. But the Income Tax Act is an exception to the general rule where *res judicata* is not applicable. The conclusion derived from the various judgments of the Supreme Court and High Courts is that *res judicata* is not applicable under the Act. The mere applicability of the rule is with respect to status of the assessee, gross profit of the business, charitable trust, etc. and arbitrary decision which leads to injustice. Apart from this, there is no provision under the Income Tax Act to follow a technical rule.

⁵¹ (1992) 193 ITR 321.

⁵² AIR 1977 SC 429.