OWNERS AND PARTIES INTERESTED IN M.V. "VALI PERO" ETC.ETC.

v.

FERNANDEO LOPEZ & ORS.

SEPTEMBER 19, 1989

[M.N. VENKATACHALIAH, N.D. OJHA AND J.S. VERMA, JJ.]

Calcutta High Court Rules, 1914: Chapter XXII Rule 4—Omission of Signature of witness on his deposition recorded on Commission—Defect whether fatal—Whether entire evidence excluded.

When the foreign vessel M.V. "Vali Pero" arrived at the port of Calcutta, 10 non-Greek seamen on board that ship filed a suit in the admiralty jurisdiction of the Calcutta High Court for recovery of their dues. During the trial, depositions of the defendants' witnesses were recorded on commission. Objection was raised on behalf of the plaintiffs to reception in evidence of these depositions on the ground of absence of witness' signature of the deposition as required in Rule 4 of chapter XXII of the Calcutta High Court Rules, 1914, applicable to the Original Side. The objection was upheld by the learned Single Judge as also by the Division Bench.

The learned Single Judge then decreed the suit on the unrebutted evidence of the plaintiffs. One Special Leave Petition has been filed against the judgment of Division Bench affirming the order of the learned Single Judge excluding the defendants' evidence. The other Special Leave Petition has been filed against the judgment of the learned Single Judge decreeing the plaintiff's suit after excluding the defendants' entire oral evidence.

On behalf of the appellants it was contended that omission of witness' signature on the deposition recorded by the Commissioner did not invalidate the deposition atleast in a case like the present where the correctness and authenticity of the deposition was undisputed; that in this sense the requirement of the witness' signature on the deposition was not a mandatory requirement; that the defect was curable by obtaining the witness' signature even now; that the respondents' counsel had admitted the correctness of the depositions; and that the respondents had omitted to raise any objection will after the suit was closed for judgment. In reply, the respondent relied on the reasons

A given in the Division Bench's judgment construing the requirement in Rule 4 as mandatory. It was also urged that the argument of curing the defect by obtaining signatures even now was not advanced in the High Court and should not be permitted at this stage.

Allowing the appeals and remanding the suit to the learned Single
B Judge to be decided afresh, this Court,

HELD: (1) The requirement of witness' signature on the deposition in Rule 4 is directory even though the requirement of the deposition being recorded, read over to him and corrected wherever necessary is mandatory. Mere omission of the witness' signature on the deposition
C does not render the deposition invalid when the correctness and authenticity thereof is undisputed. [196F]

(2) The essential requirement of Rule 4 is that the deposition of a witness examined on commission shall be taken down in writing, read over, and where necessary, translated to the witness in order that mis-
D takes or omissions, if any, may be rectified or supplied. The mandate in Rule 4 to this extent must be complied strictly in order to ensure a correct record of the deposition. [196B-C]

(3) The signature of the witness is not a part of the deposition and apart from acknowledging the correctness of his deposition on
E the deposition itself, it is not essential for any other purpose in this context. [196D]

(4) While the essential requirements of Rule 4 are no doubt mandatory requiring strict compliance, the requirement of witness' signature therein is directory of which substantial compliance is
F sufficient. [196G]

(5) There is substantial compliance of this directory requirement where the correctness and authenticity of the deposition is undisputed. Compliance can be had of this requirement even by subsequent admission of correctness of the deposition by the witness,
G in case of dispute. [196H; 197A]

(6) Under the Code of Civil Procedure a deposition recorded in a Court, except that under Order 18, Rule 16 C.P.C., does not require the witness' signature on the deposition. The requirement of signature is not court's assurance since the witness is not examined in court.
H Accordingly, it cannot be said reasonably that the omission of witness'

signature on the deposition renders the deposition incomplete. [196E] A

(7) Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. [197B]

B

(8) Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. [197B-C] C

(9) Ordinarily, the word 'shall' used at several places in Rule 4 must be given the same meaning at all places. However, it is also settled that this is not an invariable rule and even though the word 'shall' is ordinarily mandatory but in the context or if the intention is otherwise it may be construed to be merely directory. In short, the construction ultimately depends on the provision itself keeping in view the intendment of the enactment and the context in which the word 'shall' has been used. [197H; 198A] D E

Ganesh Prasad Sah Desari & Anr. **v.** *Lakshmi Narayan Gupta,* **[1985] 3 SCR 825;** *Govindlal Chagganlal Patel* **v.** *The Agricultural Produce Market Committee, Godhra & Ors.*, **[1976] 1 SCR 451, referred to.** F

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3986-3987 of 1989.

From the Judgment and Order dated 23.3.1989 and 6.4.1989 of the Calcutta High Court in Appeal No. 691 of 1988 and Admiralty Suit No. 6 of 1985 respectively. G

Dr. Shanker Ghosh, C.R. Addy, A.K. Sil, G. Joshi and Mrs. Urmila Narang for the Appellants.

M.K. Ramamurthi, H.L. Tiku and Ashok Grover for the Respondents. H

A The Judgment of the Court was delivered by

VERMA, J. Is omission of the witness' signature on his deposition recorded on commission, as required by Rule 4 of Chapter XXII of the Calcutta High Court Rules, 1914, applicable to the Original Side, a defect fatal to the reception of the deposition in evidence even when the correctness and authenticity of the deposition is undisputed? Subject to the preliminary objection raised by Shri M.K. Ramamurthi, learned counsel for the respondents, this is the main point for decision on merits to be answered with reference to Rule 4 of Chapter XXII of the Calcutta High Court Rules, 1914, applicable to the Original Side. The Calcutta High Court has held this defect to be fatal and accordingly excluded the entire oral evidence of the defendants recorded on comission resulting in the suit being decreed in plaintiffs' favour on the unrebutted testimony of the plaintiffs. Correctness of this view is assailed before us.

A foreign vessel M.V. "Vali Pero" sailing under the Greek flag arrived at the port of Calcutta on April 20, 1985; 10 non-Greek seamen on board that ship filed a suit on August 2, 1985 in the admiralty jurisdiction of the Calcutta High Court for recovery of approximately Rs.15.40 lacs claimed as their dues from the owners of the vessel; depositions of the defendants' witnesses were recorded on commission and submitted to the learned single Judge trying the suit who closed the case on 24.12.1987 for pronouncing judgment on 12.1.1988; before delivery of judgment on 10.8.1988 objection was raised on behalf of the plaintiffs to reception in evidence of the depositions of the defendants' witnesses examined on commission on the ground of absence of witness' signature on the deposition; the objection was upheld by the learned single Judge as also by a Division Bench in a Letters Patent Appeal; and the suit has been decreed on 6.4.1989 on the unrebutted evidence of plaintiffs. In the meantime, one of the plaintiffs is stated to have died while another is alleged to be critically ill; and on the other hand, the vessel continues to be detained at the Calcutta Port even after the owners have furnished the security demanded from them by interim orders in the suit.

Even at the risk of this description being labelled as oversimplification, this is the scenario of the forensic battle in which the point raised has to be decided. We may add that this is not the first journey to this Court of this litigation by special leave during the trial of the suit.

Both the Special Leave Petitions are by the defendants, owners of the vessel. One Special Leave Petition is against the judgment dated 23.3.1989 of the Division Bench of the High Court affirming the order dated 10.8.1988 of the learned single Judge excluding the defendants' oral evidence recorded on commission for the above defect. The other Special Leave Petition is directed against the judgment and decree dated 6.4.1989 of the learned single Judge decreeing the plaintiffs' suit after exclusion of defendants' entire oral evidence. Petitioners urged that filing of an appeal under the Letters Patent against the judgment and decree in the suit was futile in view of the earlier Division Bench judgment dated 23.3.1989 on the main point in controversy even in respect of the final decision.

The preliminary objection of Shri Ramamurthi is that the first Special Leave Petition, apart from arising out of an interlocutory order which does not justify its entertainment, is also now infructuous after decision of the suit itself in which that interlocutory order was made. The other Special Leave Petition should not be entertained, according to Shri Ramamurthi, because it circumvents the statutory internal appeal under the Letters Patent to the Division Bench of the High Court. Shri Ramamurthi contended that this Court should not, therefore, entertain either of these petitions for grant of special leave under Article 136 of the Constitution, even though the powers are fairly wide on account of which he does not contend that they are not maintainable.

We shall first dispose of the preliminary objection of Shri Ramamurthi. He has very fairly stated that he does not challenge the maintainability of these petitions but only assails their entertainability under Article 136. In our considered opinion pragmatism and assurance of shortening this unduly protracted litigation are by themselves sufficient and eloquent reasons to grant leave in these matters and to decide the above question on merits forthwith instead of deferring that decision to a later date. Technically, Shri Ramamurthi is right that ordinarily special leave need not be granted where remedy of a statutory appeal being available has not been exhausted. However, in the particular facts of this case when the decision in Letters Patent Appeal appears to be a forgone conclusion, the appropriate course which commends to us is to grant leave and decide the matter straightaway instead of deferring that decision to a later stage after exhaustion of the futile remedy of Letters Patent Appeal in the High Court.

We may at this stage also mention the argument based on *res*

A *judicata* addressed to us. The point raised is: whether the decision by a Division Bench of the High Court affirming the learned single Judge's order excluding the depositions from evidence will bar a fresh adjudication of that point in the Letters Patent Appeal filed against the final decision in the suit? In our opinion, this academic exercise is unnecessary in the present case since it cannot be doubted that irrespective of B the question of *res judicata*, earlier decision on the same point by a Division Bench of the High Court will atleast be a binding precedent when the matter is reagitated before the Division Bench hearing the appeal against the final decision in the suit. In such a situation directing the resort to the remedy of an appeal under the Letters Patent against the final decision in the suit will needlessly delay decision of C the point by this Court. We are, therefore, of the opinion that, in the present case, it is neither necessary to decide the question of *res judicata* argued before us nor would it be appropriate to refuse leave and direct the petitioner to first exhaust the remedy of an appeal under the Letters Patent in the High Court. We, accordingly, proceed to decide the point involved on merits.

D

Leave granted.

Having heard learned counsel for the parties, we have formed the opinion that the High Court was in error in excluding from evidence the depositions of the appellants' witnesses recorded on com- E mission and in proceeding to decide the suit on that basis. The matter will, therefore, have to go back to the High Court for a fresh decision of the suit treating these depositions as evidence in the suit. In view of this conclusion reached by us, we shall mention only the facts necessary for deciding the main controversy at this stage relating to the construction of Rule 4 of Chapter XXII of the Calcutta High Court F Rules, 1914, applicable to the Original Side.

In the above Admiralty Suit No. 6 of 1985, the appellants (defendants in the suit) filed an application on February 6, 1987 for examining their two witnesses, Mr. A. Kappos and Mr. Parakis, on commission at the Greek Embassy in New Delhi. The respondents' G (plaintiffs in the suit) evidence was concluded on February 23, 1987. On February 25, 1987, the learned single Judge trying the suit directed issue of a commission for examination of the appellants' two witnesses on commission at the Greek Embassy at New Delhi and Mr. B.C. Kundu, Advocate of the Alipore Bar was appointed the Commissioner for this purpose. The Commissioner commenced recording the depositions of these witnesses at New Delhi on May 1, 1987 and concluded it H

on May 4, 1987. The deposition of each witness was signed by the Commissioner after being read over to the witness who admitted it to be correct. However, the signature of the witness was not taken on the deposition. The Commissioner settled the minutes in a meeting with counsel for parties in which the depositions recorded on commission were admitted to be correct and counsel for the parties signed the minutes in token of their acceptance. The minutes are as under:

> "A meeting was held this afternoon dated 15th May, 1987 at 4.15 P.M. at 1B, Old Post Office St., Calcutta-1 to furnish the report of the Commission.
>
> Members present:
>
> Mr. Taimur Hossain — Advocate on behalf of the plaintiffs
>
> Mr. A.K. Auddy — Advocate (Sandersons & Morgans) on behalf of the defendant
>
> Mr. B.C. Kundu
>
> A list of Exhibits as also copies of depositions recorded at Greek Embassy, New Delhi were given to the parties. No amendment or correction was suggested in the deposition by either of the parties.
>
> The Report of the Commissioner would be submitted on Monday, the 15th May, 1987.
>
> sig. Illegible
> Commissioner
> Appointed by the Hon'ble
> High Court *vide* order
> dated 25.2.87
>
> sd/- Md. Taimur Hossain
> Advocate for the plaintiffs

A sd/- A.K. Auddy
Advocate 15.5.87

Received a copy
Sig. Illegible
Recd. a copy of the minutes.

B sd/- A.K. Auddy."

The Commissioner then submitted his report along with the depositions recorded by him in a sealed cover to the Registrar (Original Side) of the High Court. The parties also filed written submissions in the court treating these depositions as evidence in the suit and on December, 1987 the learned trial Judge recorded the proceedings C as under:

> "The Court: Deposition including the documents taken on commission are formally tendered in Court by the learned Advocate appearing for the defendant (in a sealed cover). D Both the parties have submitted their written argument in Court earlier. Let this suit appear in the List on 12.1.1988 at 3 P.M. marked "For Judgment"."

It is clear that till closing of the suit for judgment, no objection was raised on behalf of the respondents to inclusion of the depositions E of appellants' witnesses examined on commission in evidence of the suit. Somehow the judgment was not delivered on 12.1.1988 and even thereafter for quite some time and the learned single Judge then made an order releasing the suit. This led to a special leave petition in this Court by the respondents and an order was made by this Court requesting the learned single Judge trying the suit to dispose of the suit F on merits instead of releasing it.

It was then on 10.8.1988 that respondents' (plaintiffs in the suit) counsel raised the objection to inclusion of the depositions of appellants' witnesses examined on commission in evidence of the suit on the ground that the depositions were not signed by the witnesses as G required by Rule 4 *ibid*. That objection was upheld by the learned single Judge as well as a Division Bench of the High Court in L.P.A. against that order. The High Court has held this defect to be fatal on its view that even the requirement of witness' signature in Rule 4 *ibid* is mandatory. S.L.P. No. 4074 of 1989 is against this order. On this view, the learned single Judge has proceeded to decree the suit on the H basis of respondents' unrebutted evidence and S.L.P. No. 9318 of 1989

is against the judgment and decree in the suit. A

The controversy on merits depends ultimately on the correct construction of Rule 4 of Chapter XXII of the Calcutta High Court Rules, 1914 applicable to the Original Side with reads as under:

> "4. *Deposition to be read over, signed etc.* After the deposition of any witness shall have been taken down, and before it is signed by him, it shall be distinctly read over, and, where necessary, translated to the witness in order that mistakes or omissions may be rectified. The deposition shall be signed by the witness and left with the Commissioner who shall subscribe his name and date of the examination." B C

Dr. Shanker Ghosh, learned counsel for the appellants contended that the omission of witness' signature on the deposition recorded by the Commissioner does not invalidate the deposition atleast in a case like the present where the conrrectness and authenticity of the deposition is undisputed. He argued that in this sense requirement of the witness' signature on the deposition is not a mandatory requirement, the absence of which may invalidate the deposition. He also contended that the defect, if any, was curable by obtaining the witness' signature even now for which the appellants are prepared. He added that in order to put the matter further beyond controversy, the affidavits of the witnesses examined on commission were filed in the High Court during pendency of the appeal before the Division Bench admitting correctness of their depositions. He also placed strong reliance on admission of the respondents' counsel to the correctness of the depositions, in the minutes recorded by the Commissioner on 15.5.1987 as well as the omission to raise any such objection till 10.8.1988 much after the suit was closed for judgment on 24.12.1987. He finally urged that the mistake, if any, was of the Commissioner in not taking the signatures of the witnesses and no party should be prejudiced by an act or omission of the Commissioner who was an officer of the Court. In reply, Shri M.K. Ramamurthi, relied on the reasons given in the Division Bench's judgment dated March 23, 1989 for construing this requirement in Rule 4 *ibid* as mandatory and on that basis excluding from evidence in the suit of these depositions. He also contended that copies of affidavits of the witnesses filed in the High Court were not supplied to the respondents. He added that the argument of curing the defect by obtaining signatures of the witnesses on the depositions was not advanced in the High Court due to which it D E F G H

A should not be permitted now. Shri Ramamurthi also made the grievance that belated pleas of the appellants have caused needless harassment to the respondents. Since we have come to the conclusion that these appeals should be allowed on the construction of Rule 4 *ibid*, we need not decide the other points urged.

B It is needless to burden our decision with the several well-known authorities cited at the Bar indicating the test to be applied to decide whether a provision is mandatory or directory. The real difficulty arises only in the application of the well-settled principles. The essential requirement of Rule 4 is that the deposition of a witness examined on commission shall be taken down in wirting, read over, and, where C necessary, translated to the witness in order that mistakes or omissions, if any, may be rectified or supplied. The mandate in Rule 4 to this extent must be complied strictly in order to ensure a correct record of the deposition. The further requirement of signature of Commssioner with the date of examination and deposition being left with the Commissioner to enable its production in court is to ensure its authen- D ticity. The only remaining requirement in Rule 4 of the witness' signature on the deposition has relevance to the admission of the witness of its correctness. The signature of the witness is not a part of the deposition and apart from acknowledging the correctness of his deposition on the deposition itself, it is not essential for any other purpose in this context. It is well-known that under the Code of Civil Procedure a E deposition recored in a Court, except that under Order 18, Rule 16 C.P.C., does not require the witness' signature on the deposition. It appears that witness' signature on the deposition recorded on commission is only required for court's assurance since the witness is not examined in court. Accordingly, it cannot be said reasonably that the omission of witness' signature on the deposition renders the deposition F incomplete. If this be the true import of the witness' signature on the deposition recorded on commission, the deposition cannot be treated as incomplete, much less, invalid merely due to omission of witness' signature when correctness or authenticity of the deposition is undisputed.

G It appears to us that while the essential requirements of Rule 4 indicated above are no doubt mandatory requiring strict compliance, the requirement of witness' signature therein is directory of which substantial compliance is sufficient. There is substantial compliance of this directory requirement where the correctness and authenticity of the deposition is undisputed. Compliance can be had of this require- H ment even by subsequent admission of correctness of the deposition by

the witness, in case of dispute. This construction of Rule 4 made by us also promotes the object of its enactment instead of negativing it. A

Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system. B C D

In this case, none disputes the correctness and authenticity of the depositions recorded on commission but there is omission of witness' signature thereon. The question is: does reception of these depositions in evidence violate rule 3 *ibid* in a manner which is impermissible or this omission can be overlooked as insignificant since correctness and authenticity of the depositions is undisputed? We have no doubt that cause of justice would be served instead of being thwarted and the avowed object of Rule 4 *ibid* achieved by treating it to be an insignificant omission in the present case. E F

The consequence of failure to comply with any requirement of Rule 4 *ibid* is not provided by the statute itself. Accordingly, the consequence has to be determined with reference to the nature of the provision, the purpose of its enactment and the effect of the non-compliance. Rule 4 uses the word 'shall' even while requiring the signature of the witness as it uses the word 'shall' in respect of the other requirements of the Rule. Ordinarily, the word 'shall' used at several places in Rule 4 must be given the same meaning at all places. However, it is also settled that this is not an invariable rule and even though the word 'shall' is ordinarily mandatory but in the context or if the intention is otherwise it may be construed to be merely directory. G H

A In short, the construction ultimately depends on the provision itself keeping in view the intendment of the enactment and the context in which the word 'shall' has been used.

It would suffice to refer only to the decision in *Ganesh Prasad Sah Desari & Anr.* v. *Lakshmi Narayan Gupta,* [1985] 3 S.C.R. 825. B The word 'shall' was used therein in connection with the Court's power to strike off the defence against ejectment in a suit for eviction of tenant in case of default in payment of rent. This Court construed the word 'shall' in that context as directory and not mandatory since such a construction would advance the purpose of enactment and prevent miscarriage of justice. In taking this view, this Court was impressed by the fact that the default attracting the drastic consequence of striking C out defence may be only formal or technical and unless the provision was treated as directory, it would render the court powerless even where striking out the defence may result in miscarriage of justice. We may refer to a passage from Crawford on 'Statutory Construction' which was quoted with approval in *Govindlal Chagganlal Patel* v. *The* D *Agricultural Produce Market Committee, Godhra and Others,* [1976] 1 S.C.R. 451 and relied on in this decision. The quotation is as under:

> "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The E meaning and intention of the legislature must govern and these are to be ascertained, not only from the phraseology of the provision, but also while considering its nature, its design and the consequences which would follow from construing it the one way or the other."

F It cannot, therefore, be doubted that the word 'shall' used in the expression 'deposition shall be signed by witness' in Rule 4 *ibid* has to be given the meaning keeping in view the intention of the legislature, the purpose of the enactment and the consequence which would follow from construing it as mandatory or directory.

G If the word 'shall' used in this expression is construed as mandatory, non-compliance of which nullifies the deposition, drastic consequence of miscarriage of justice would ensue even where omission of the witness' signature is by inadvertence and correctness of the deposition as well as its authenticity is undisputed. On the other hand, if the word 'shall' used in this expression is treated as directory, the court H will have power to prevent miscarriage of justice where the omission

does not cause any prejudice and the defect is only technical. The object of the provision being merely to obtain acceptance of the witness to the correctness of the deposition, that object would be advanced by taking this view and thereby empowering the court to avoid the drastic consequence of nullifying the deposition where the correctness and authenticity is undisputed. In a case where the correctness has been disputed, it would be permissible for the court to examine the effect of omission of the witness' signature and to reject the deposition only if it does not accept the correctness and authenticity thereof on the available material.

We do not find any cogent reason to take the view that the word 'shall' occurring in the expression 'deposition shall be signed by the witness' in Rule 4 *ibid* is mandatory which requires strict compliance and mere omission of which renders the deposition invalid and incapable of being read as evidence. Various facets discussed above lead unerringly to this conclusion.

In view of the above discussion, we are of the opinion that the requirement of witness' signature on the deposition in Rule 4 *ibid* is directory even though the requirement of the deposition being recorded, read over to him and corrected wherever necessary is mandatory. Mere omission of the witness' signature on the deposition does not render the deposition invalid when the correctness and authenticity thereof is undisputed. In the present case, correctness and authenticity of the deposition of the appellants' witnesses being undisputed and the technical objection of omission of the witness' signature on the deposition being raised as an after-thought much after the learned single Judge had closed the suit for delivery of judgment, the objection is untenable. With respect, the High Court was in error in upholding this objection and excluding the deposition of the appellants' witnesses examined on commission from the evidence in the suit. The result of exclusion of the appellants' oral evidence on this untenable technical ground is that the suit has been decreed treating respondents' evidence to be unrebutted. Exclusion of appellants' entire oral evidence has undoubtedly resulted in miscarriage of justice. The judgment and decree passed by the learned single Judge is vitiated for this reason alone.

We end on a melancholy note for the past with hope for a better future. At a time when the minds of all of us are rightly exercised by the proverbial laws delays and innovations are being made and suggested to prevent the apprehended collapse of the existing system, the

course of this litigation leaves us sad. No degree of thought can help unless translated into action. A more pragmatic appreciation and interpretation of the rules of procedure with due despatch would certainly have considerably shortened the litigation so far. With both sides appearing equally keen for a quick resolution of the dispute and this being obviously welcome to the Court we see no reason why the ultimate decision of the suit cannot now be reached early. We leave the matter with the fervent hope that the dispute will now be resolved expeditiously without any avoidable delay. We contribute the first step in that direction by hastening to pronounce our judgment on conclusion of the elaborate arguments on September 8, 1989, illuminating the penumbral zone.

Consequently, these appeals are allowed. The order dated 10.8.1988 passed by the learned single Judge, the judgment dated 23.3.1989 passed by the Division Bench of the High Court affirming that order; and the judgment and decree dated 6.4.1989 passed by the learned single Judge are all set aside. The suit shall be decided afresh by the learned single Judge treating the depositions of appellants' witnesses recorded on commission as evidence in the suit, after hearing the arguments of parties on merits. The respondents alone cannot be blamed for this situation and, therefore, we direct the parties to bear their own costs.

R.S.S. Appeals allowed.