SUMMARY OF PAPERS

Subject in Civil Law

Subject : Law of Precedents

- Law declared by Hon'ble Supreme Court under Art. 141 of Constitution - Binding effect
- Ratio decidendi
- Obiter dicta

- Appropriate use of Case-laws / Decisions of Superior Courts in day-to-day Court working

A CONCEPT OF PRECEDENT

01. Introduction : Law declared by Supreme Court is the law of land. Origin in Indian context is in Art. 141 (Supreme Court) and Art. 215 (High Court) of Constitution of India. Precedent is source of law. Article 141 of Indian Constitution lays that, the law laid down by Supreme Court of India is binding upon
all Courts in the country and numerous cases all over the country are decided in accordance with the view taken by Supreme Court.

02. **Scope and sanctity of the law of precedent**: Supreme Court in *Mumbai Kamgar Sabha, Bombay Vs. M/s. Abdulbhai Faizullabhai and others [AIR 1976 SC 1455 : (1976)3 SCC 832]* spoke over the scope and sanctity of the law of precedent as under.

“A ruling of a superior Court is a binding law. It is not of scriptural sanctity but is of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu eternal vernal value to the decision, exalting the doctrine of precedents in to a prison-house of bigotry, regardless of varying circumstances and myriad developments can not be imparted. Realism dictates that a judgment has to be read subject to the facts directly presented for consideration and not affecting those matters which may lurk in the record”.

03. A precedent means anything said or done by a Court which furnishes a rule for subsequent conduct. Salmond says, precedents are judicial decisions followed in subsequent cases. Precedents are of two kinds. One is authoritative precedent which has to be followed. Second is persuasive precedent. Court is not bound to follow persuasive precedent eg. judgments of foreign Courts. Though in India the precedents of other High Courts are having persuasive value, however in absence of any precedent of parent High Court, subordinate Court should follow the precedent of other High Court as an authoritative precedent.
04. Precedents not only have great importance but are required to be followed. This practice is necessary to secure certainty of law. Predictability of decisions is more important than approximation to an ideal. Authoritative precedent has to be followed by Judge as it is legal source of law while persuasive precedent could be considered.

05. In Oxford Dictionary, 'Precedent' is defined as a previous instance or case which is or may be taken as an example of rule for subsequent cases or by which some similar set of circumstances may be supposed or justified. In judicial field, it means guidance or authority of past decisions which lays down some new rule or principle are called judicial precedent. These principles are called as doctrine of precedent.

06. According to Dicey, precedent is Judge made law. According to Salmond, it is an interpretation of law done by Superior Court. Law of precedent has taken very deep roots in the judicial system. Consistency is the corner stone of administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved rule of precedent. These rules and principles are based on public polity and if these are not followed by Courts, then there will be chaos in the administration of justice.
B    TYPES OF PRECEDENTS

01. There are different kinds of precedents depending upon nature of precedent. However, precedents could be broadly divided in to two categories. First category is original precedent while second category is of subsequent or secondary precedent.

02. **Original Precedents**: It refers to the decisions of such a case having a point of law which has never been decided ever before. In such a case, the Judge has to draw his conclusion by analogy and by applying principles of natural justice.

03. **Subsequent or Secondary Precedents**: Many a times, it may happen that already established precedent may not prove effective or efficient because of certain factors such as changed circumstances, change in social and economic conditions, development of techniques etc. In such a situation, though the original decision would be perfectly legal, it may need some further addition or subtraction so as to meet the need of changed circumstances. Whenever such addition, subtraction or new interpretation is attached to already established precedent, it is called as subsequent or secondary precedent.

04. **Authoritative Or Binding Precedent**: As name suggests, authoritative precedent or decision is one which Judges must follow whether they approve it or not. It is also known as
mandatory precedent or binding authority. As per doctrine of stare decisis, a Court lower in the hierarchy follows and honours the findings of law made by Court higher in the hierarchy. The decisions of lower Courts are not binding on Court higher in the system.

05. **Conditionally Authoritative Precedents**: This is another category of precedents. They are generally binding on the Courts before which they are cited, but in certain circumstances, they can be disregarded. Thus, the decision of a Single Judge of a High Court is absolutely authoritative or binding on its subordinate Court, but it is conditionally authoritative if cited before a Division Bench of same High court. This disregard can be expressed by two ways; either by over-ruling such decision or by dissenting such decision. Thus, the decision of a Single Judge of the High Court is only conditionally authoritative and may be dissented from by another Single Judge or over-ruled by a Division Bench. However, a Division Bench can't dissent from another Division Bench decision and in that case, the only option before Division Bench is to refer the matter to Full Bench.

06. **Persuasive Precedents**: Persuasive decision or precedent is one which the Judges are under no obligation to follow but which they shall take it in to consideration and attach as much weightage as it deserves. It is a precedent that the Court need not follow, but may consider when a decision is being made as it is relevant and might be useful. Persuasive precedent comes from
many places. Courts lower in the hierarchy can create a persuasive precedent. The decision of one High Court is only persuasive precedent in other High Courts. These cases could be cases that are decided by lower Courts, or Courts equivalent in the hierarchy or in some exceptional circumstances, cases of other nations, judicial bodies of the world etc. Once a persuasive precedent has been adopted by higher Court, it becomes a binding precedent for all the lower Courts.

C  ART. 141 OF CONSTITUTION

01. In order to know exact meaning of the precedent, it is necessary to know as to what is meant by 'law declared by the Supreme Court' appearing in Article 141 of Constitution. Authority of the Supreme Court as precedent is found in Article 141 of the Constitution of India. It reads as under.

141. The law declared by the Supreme Court shall be binding on all Courts within the territory of India.

02. Binding effect: All Courts in India are bound to follow the decisions of the Supreme Court even though they are contrary to decisions of the House of Lords or of the Privy council. Supreme Court decisions are binding on all States and their officers, and all persons, whether they are parties thereto or not; and to all pending proceedings.

03. Hon'ble Supreme Court in the case of Director of
Settlements, A. P. Vs. M. R. Apparao (AIR 2002 SC 1598) has ruled that, the statements of Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole in the light of questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision is 'declared law', it can not be said to be a law when a point is disposed of an concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. The law which will be binding under Article 141 would, therefore, extend to all observations on points raised and decided by the Court in a given case.

04. Law declared by Supreme Court cannot be assailed on ground that certain aspects were not considered or relevant provision were not brought to notice of Court. But the Supreme Court itself is not bound by its own decision and is free to depart from a previous decision if the Court is satisfied of its error and its baneful effect on the general interest of the public. In reviewing an earlier decision, however, the Court would take in to consideration the fact if the said decision has been followed in a large number of cases. It would be particularly slow to disturb an unanimous decision of a Bench of five Judges.
05. The Hon'ble Supreme Court in case of *Central Board of Dawoodi Bohra Community and another Vs. State of Maharashtra and another [(2005)2 SCC 673] has summed up the legal position in the following terms.

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt, all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law correctness of which is doubted.

(3) The above rules are subject to two exceptions: (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down here in above, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous
decisions in question dispensing with the need of specific reference or the order of the Chief Justice constituting the Bench and such listing.

In a recent decision (circulated to all Courts in the State) Hon'ble Aurangabad Bench of Bombay High Court had an occasion to deal with this topic in the case of Mahindra & Mahindra Financial Services Ltd. V/s. Manik Vitthal Kawale and others (W. P.No.300/2014) decided on 25-09-2014.

While discussing the applicability or otherwise of S.5 of Limitation Act to an application under U/S. 34(3) of Arbitration Act, 1996, it was sought to be canvassed before the Hon'ble High Court that the decision of Hon'ble Apex Court in the case of Union of India V/s Hanuman Prasad & brothers (2000 A.I.R. SCW 3934) was not brought to the notice of a three Judge Bench of Hon'ble Apex Court in the case of Consolidated Engineering Enterprises V/s Principal Secretary, Irrigation Department (2009 Supplement) A.I.R. SC 396) therefore, it was argued that Hon'ble High Court was not bound by the ratio of the decision in the case of Consolidated Engineering (Supra) and should follow the view taken by the Apex Court in the case of Hanuman Prasad (Supra).

After discussing the entire scenario regarding binding effect of Article 141 of of Constitution, Hon'ble Aurangabad Bench of Bombay High Court has referred to and relied upon the decision of Hon'ble Supreme Court in the case of Central Board of Dawoodi V/s State of Maharashtra (2005) 2 SCC 673 and has held that the
view taken by three Judge Bench of Hon'ble Apex Court in the case of Consolidated Engineering (Supra) was applicable as a precedent to the legal issue involved in the case. These observations of Hon'ble Aurangabad Bench of Bombay High Court are fortified by the ratio of decision of Hon'ble Apex Court in the case of (1) State of Karnataka Vs. Umadevi & Others (2006)4 SCC 1; (2) Official Liquidator Vs. Dayanand (2008) 10 SCC 1; and (3) Siddharam Mhetre Vs. State of Maharashtra (2011) 1 SCC 694.

06. Above provision contained in Article 141 of the Constitution read with Article 142 of the Constitution are important because these provisions provide for constitutional scheme of "Law making" by the Hon'ble Supreme Court. The very basis of these Constitutional provisions can be found in the Law of Precedent. The Law declared by the Hon'ble Supreme Court is binding on all the Courts in the country and the Law of Precedent ensures consistency in the decision making by the Courts of Law. These constitutional provisions highlights the special jurisdiction of the Hon'ble Supreme Court which enable the Supreme Court to pass such necessary orders and decrees for "doing complete justice" in the case. Binding effect of the law declared by the Supreme Court on all the Courts in country, including High Courts in India, is not only a matter of discipline, but it is the mandate as provided in Article 141 of the Constitution. [Suganthi Suresh Kumar Vs. Jagdeeshan (2002)2 SCC 420 : AIR 2002 SC 681]

07. Now the question arises as to what is binding in the
decisions of the Supreme Court. It is the "ratio of the decision" and not any "findings on facts" or "opinion" of the Court on any question which was not required to be decided in a particular case. It is the principle which is to be found from the decision of the Court reading the judgment as a whole in the light of questions raised before the Court and not any particular words or sentences from the judgment. Therefore, it is said that the later Court will not be bound by those reasons and propositions of law which were not necessary for deciding the previous case. [Krishena Vs. Union of India (1990)4 SCC 207 : AIR 1990 SC 1782]

08. Therefore, as per the Law of Precedent, it is well known that a decision is an authority for what it decides and not for what can be logically deduced from it. It is also well settled that, a little difference in the facts or additional facts may make lot of difference in the value of a decision as a precedent [Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd AIR 2003 SC 511 : (2003)2 SCC 111]. A decision is binding as a Precedent if it decides a question of law. Judgments which are rendered "sub-silentio" or "per incuriam" are exceptions to the rule of binding effect of precedent which is not dependent upon whether a particular argument was advanced and considered therein or not.

**Doctrine of Merger and Precedent-as Law declared U/Article 141 of the Constitution:**

As per observations made and conclusion drawn by Hon’ble Apex Court in the case of Kunhayammed Vs. State of Kerala
decided on 19/07/2000 while deciding the question whether a
review petition before the Kerala High Court was maintainable
after the Supreme Court had dismissed the S.L.P. on merits ,it is
held that-

(a) The doctrine of merger is neither the doctrine of
constitutional law nor a doctrine statutorily recognized.
It is a common law doctrine founded on principles of
propriety in hierarchy of judiciary. If appeal is provided,
the decision of appellate Authority becomes operative.
Thus, original decision merges in appellate decision.
Logic in doctrine of merger is that, there can't be more
than one decree or order governing same subject matter
at a given point of time.

(b) Doctrine of merger is not a doctrine of universal and
unlimited application. If SLP order is speaking and
reasoned for refusing the leave, it has two implications.
Firstly, statement of law contained in such order is
certainly a declaration of law within the meaning of
Article 141 of Constitution. Secondly, findings recorded
in such order binds the parties as well as Lower Court,
Tribunal or Authority by way of judicial discipline.
However, this doesn't mean that, impugned order has
stood merged in the order of SLP rejection order.
Similarly, it doesn't mean that SLP rejection order
operates as res-judicata. Thus, decision taken by High
Court of Kerala to keep the review petition for hearing
was kept intact.

JUDGMENTS OF THE HIGH COURT AND ITS
BINDING FORCE.

01. Like Article 141 which empowers the Supreme Court
to declare the law and making it's precedents binding on all the
Courts, there are similar provisions in Articles 215,226 and 227 of
the Constitution which empowers the High Court to have
superintendence over all subordinate Courts making it's decision binding on the subordinate Courts within the State where High Court is situated. Therefore, the Subordinate Courts in the State are bound by decision and orders passed by High Court in exercise of powers under Articles 226 and 227 read with Article 215 of the Constitution.

02. Law declared by Hon'ble High Courts: In case of East India Commercial Co. Ltd. Vs. Collector of Customs (AIR 1962 SC 1893), Hon'ble Supreme Court held that, an administrative tribunal cannot ignore law declared by highest Court in the State. Taking in to consideration the provisions of Arts. 215, 226 and 227 of the Constitution of India, it would be anomalous to suggest that, a Tribunal over which the High Court has superintendence can ignore the law declared by Court and start proceedings in direct violation of it. It was thus held that, law declared by the Highest Court in the State is binding on authorities or tribunals under it's superintendence and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding.

03. Law declared by Hon'ble High Court applicable to class of person binds entire class although some individuals of class are not parties. [Bharat Bhushan Vs. State : 2008(4) Mh.L.J. 278]

D. RATIO DECIDENDI

01. There are three sources of law. One is legislation,
second is customs and usages and third is precedent. Law of precedents came in existence while cases were decided by the Courts. *Ratio decidendi* means reasons for deciding or grounds for deciding on particular point. According to the provisions of Sec. 3 of the Indian Law Reports Act 1875, Court is not bound to cite any citation or judgment unless the said book i.e. law reporter is published as per the authority of the Government.

02. In case of *State of Punjab and others Vs. Surinder Kumar and others (AIR 1992 SC 1593)*, it has been held that, a decision is available as a precedent only if it decides a question of law. Thus the temporary lecturers in writ petition before High Court would not be entitled to rely upon an order of the Supreme Court which directs a temporary employee to be regularized in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted merely because grounds are not mentioned in a judgment of the Supreme Court, it can not be understood to have been passed without an adequate legal basis therefor. It is therefore, not proper to suggest that if the Supreme Court has issued an order in the circumstances the similar order can also be issued by the High Court. There is still another reason why the High Court can not be equated with the Supreme Court. Constitution has by Article 142 empowered the Supreme Court to make such orders as may be necessary “for doing complete justice in any case or matter pending before it,” which authority the High Court does not enjoy.
Therefore, the High Court was not entitled to pass any order which it thought fit in the interest of justice.

03. In case of *Brijesh Kumar and others Vs. State of Haryana and others* (AIR 2014 SC 1612), Hon'ble Supreme Court has observed as under.

"The Courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However, the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Sec. 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. In the present case, after considering the facts and circumstances and the reasons for inordinate delay of 10 years 2 months and 29 days in filing appeal under S. 54 of the Land Acquisition Act the High Court did not find sufficient grounds to condone the delay."

04. In case of *Umakant & Anr. Vs. State of Chhattisgarh* (AIR 2014 SC 2943), Hon'ble Supreme Court has held as under.

"The philosophy of law which signifies the importance of a dying declaration is based on the maxim *nemo mortitusus prasumitus memnre* which means, no one at the time of death is presumed to lie and he will not meet his maker with a lie in his mouth. Though a dying declaration is not recorded in the Court in the presence of accused nor it is put to strict proof of cross-examination by the accused, still it is admitted in
evidence against the general rule that hearsay evidence is not admissible in evidence. The dying declaration does not even require any corroboration as long as it inspires confidence in the mind of the Court and that it is free from any form of tutoring.

05. In case of *Sidramappa and others Vs. State of Karnataka* ([AIR 2014 Kant. 100]) it is held that, according to Art. 141 of the Constitution of India, law declared by the Supreme Court shall be binding on all Courts within the territory of India. Expression 'all Courts' means Courts other than the Supreme Court. Decision of Supreme Court is binding on all the High Courts. Even the directions issued by the Supreme Court in a decision constitute binding law under Article 141 (relied on *Vishakha Vs. State of Rajasthan* : [AIR 1997 SC 3011]). In the academic interest, it is pertinent to state that, Supreme Court is not bound by it's own decision and may over-ride it's previous decision (relied on *Dwarka Das Shrinivas Vs. Sholapur Spinning and Weaving Company Ltd.* : [AIR 1954 SC 119]). It is also pertinent to state that, Supreme Court may over-rule the previous decision either by expressly saying so or impliedly by not following them in subsequent case (relied on *C. N. Rudramurthy Vs. K. Barkathulla Khan* : (1998) 8 SCC 275).

06. It is in order to guard against the possibility of inconsistent decisions on points of law by different benches that the rule has been evolved, in order to promote consistency and certainly in the development of law and contemporary status, that
the statement of law by one Bench is binding on another of the same or lesser number of Judges. This principle was evolved in India by several generations of Judges. While confronted with two conflicting decisions of the Supreme Court rendered by Benches of equal strength, the High Court would have to prefer one to the other and is not necessarily obliged as a matter of course to follow either the former or the later in point of time but must follow the one which according to it, is better in point of law.

In case of The Special Land Acquisition Officer (I) Bombay and another claimants Vs. The Municipal Corporation of Greater Bombay (AIR 1988 Bom. 9), it has been observed in para no. 9 as follows.

"9. Whilst I have referred to the various cases decided by the various High courts on the point, it is the decision of the Apex Court that must prevail, but then, in the two cases referred to hereinabove, viz., (1) Himalaya Title and Marble (Pvt.) Ltd. Vs. Francis Victor Coutinho (AIR 1980 SC 118) and (2) The Municipal Corporation of the City of Ahmedabad Vs. Chandulal Shamaldas Patel, there appears to be a divergence of views. The question must now arise as to which needs to be accepted. This very question pertaining to these very two judgments arose before the Punjab and Haryana High Court in the case of Indo Swiss Time Limited Vs. Umrao. AIR 1981 Pun and Har 213. In dealing with the question as to which of the two decisions of the Supreme Court should the lower Court follow, the majority of the judges of the Full Bench held that if there was a direct conflict between two decisions of co-equal benches and which cannot possibly be reconciled, the Courts must follow the judgment which appears to them to state the law accurately. Since
the case law covering on all these points has been extensively dealt with by the Full Bench, it is unnecessary to dwell upon this case law herein, suffice to state that I have considered the case law referred to in this decision at some length and I am in respectful agreement with the views taken by the majority of the Judges of the Full Bench.”

09. Earlier decision on the same point by a Division Bench of the High Court will at least be a binding precedent when the matter is re-agitated 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 on the point by the Supreme Court.

10. A judgment of the Constitution Bench of five Judges could not be considered as over-ruled with the expressions employed or with the same strength of the Bench.

11. Ratio decidendi is the principle upon which case is decided. Everything said by Judge doesn't constitute precedent. Only thing which binds is the principle upon which case is decided. Therefore, analysis of decision and isolation of ratio from it becomes important.

12. Three essential features of ratio decidendi are viz. (i) direct or inferential findings of facts; (ii) statement of law applicable to legal problem disclosed by facts; and, (iii) judgment
13. Requirements of *ratio decidendi* are that, issue involved must be directly and substantially in issue; issue was required to be decided; and, there are reasons given while deciding the case. [*K. Jain Vs. Pratap* : 2005(3) Mh.L.J. 779]

14. While elaborating the doctrine of precedent, the principle of a *ratio decidendi* must be taken into consideration as it is a indispensable part of law of precedent. *Ratio decidendi* means the reason or principle upon which the case has been decided by the higher courts and only this much is binding on the subordinate courts while applying the earlier decision. There is difference between the *ratio decidendi* or the basis of reasons or the principles underlying a decision and the ultimate relief granted or manner of disposal adopted in a given case.

15. In [*Rajiv Singh Dalal (Dr.) Vs. Chaudhari Devilal University, Sirsa and another* [(2008) 9 SCC 284]], The Hon'ble Supreme Court, after referring to its earlier decisions, has observed as follows.

"The decision of a Court is a precedent, if it lays down some principle of law supported by reasons. Mere casual observations or directions without laying down any principle of law and without giving reasons does not amount to a precedent."
16. A reference is required to be made to the Full Bench decision of our High court in Rajeshwar s/o Hiraman Mohurle (in Jial) Vs. State of Maharashtra [2009 (4) Mh. L. J. 483] to clarify as to what is meant by the rule of precedent. Our High Court has held in para 1 as under:

"The dictum of the Supreme Court in the case of Honda Siel Power Products Ltd. Vs. CIT, (2007)12 SCC 596, that "Rule of precedent is an important aspect of legal certainty in the rule of law", is a principle of great significance in the system of administration of justice. One of the essential rudiments of law of precedent is consistency in the judicial decision making.

E. **OBITER DICTA**

01. Obiter dicta is another latin maxim meaning 'other things said'. It is very similar to ratio decidendi except it does not form a binding precedent. Instead, it becomes what is known as persuasive precedent and a judge in a later case does not have to follow it. However, they may decide to consider it when making their decision.

02. In other words, obiter dicta are judicial proceedings said in a case that are not directly relevant to the outcome of the case but that have the potential to inform or guide future decision making.

03. Full Bench of Hon'ble Bombay High Court considered
binding effect of obiter dicta in the case of State of Maharashtra &
Ors. Vs. Shri. Murarao Malojirao Ghorpade & Ors. [2009(6) ALL MR
706]. It has been ruled in para no. 11 as under.

"Obiter dictum" is a mere saying by the way, a chance remark, which is not binding on the future Courts, though it may be respected according to reputation of the Judge, the eminence of the Court and the circumstances in which it came to be pronounced. The reason for not regarding an "obiter dictum" as binding is that it was probably made without a full consideration of the case on the point, and that, if very broad in its terms, it was probably made without a full consideration of all the consequences that may follow from it; or the judge may not have expressed a concluded opinion.

04. Hon'ble Supreme Court in case of Oriental Insurance Co.
Ltd. Vs. Meena Varival & Ors. [2007 ALL SCR 1697] has held in
para No. 23 as under.

" 23. ....An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority....".

05. Obiter of Supreme Court: In a case where though not required to be answered, Hon'ble Supreme Court has pronounced or declared the law, such obiter will be binding. Such pronouncement of law may not be necessary for disposal of case. Even then, in such a situation, obiter dictum of Hon'ble Supreme
Court is binding. [MHADA Vs. P V. Anturkar : 2009(3) Mh.L.J. 266]

06. An *obiter dictum* means an observation made on a legal point in a decision but not arising in such manner as to require decision. Such *obiter* is not binding precedent but the observations made by the Supreme Court will have considerable weight. [Director of Settlements, A. P. and others Vs. M. R. Apparao and another. (2002) 4 SCC 638]. But, mere casual expressions carry no weight at all and cannot be treated as an ex-cathedra statement having the weight of authority. Statements which are not part of the *ratio decidendi* are distinguished as *obiter dicta* and are not authoritative. [Divisional Controller, KSRTC Vs. Mahadeva Shetty and another (2003) 7 SCC 197].

**F. Appropriate use of case laws / Decisions of the Superior Courts in day-to-day Court working:**

01. The *ratio decidendi* of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out of the entire
ratio decidenti of the judgment. [*Islamic Academy of Education V/s. State of Karnataka: 2014 All SCR(O.C.C.) 161*].

02. Principles of interpretation of judgments are common irrespective of the jurisdiction exercised to deliver the judgment and there can be no different principles for interpretation of the judgment delivered in exercise of jurisdiction under Article 226 and / or Article 227 of the Constitution and the one delivered in advisory or consultative jurisdiction. What binds the Court is the ratio which is the reasoning of decision on the abstract proposition of law [*Sharda Laxman Nandeshwar V/s. Shri Kavi Kalidas Shikshan Sanstha: 2014 (5) All MR 345*].

03. **Binding force of precedent in criminal cases**: A decision has to be considered in the background of the factual scenario. In criminal cases, question of precedent particularly relating to appreciation of evidence is really of no consequence [*Lalliram & Anr. V/s. State of M.P.: 2008 ALL MR(Cri) 3282 (S.C.*)].

04. Doctrine of precedent relates to following of previous decision. It introduces concept of finality and adherence to the previous decision. It creates consistency in application of law. Finding out ratio is not a mechanical process but an art which one gradually acquires through practice. Finding out ratio means process of abstraction of legal principle involved in judgment. [*Emkay Exports V/s. Madhusudan: 2008(4) Mh.L.J. 843*].
05. Facts in former case although identical with later case can't be used as precedent to determine the conclusion on facts in later case. However similar the circumstances may be, facts in one case can't be used as a precedent to determine conclusion on the facts in another [*Ramdas Vs. State of Maha. : (2007)2 SCC 170*].

06. Law of precedent must be examined in true spirit. Facts in previous decision (precedent) are to be examined not to find out similarity in facts but because previous facts are relevant for applying exact legal principle to the case at hands. Mere saying that 'facts of precedent are different from case before me' is not the correct way. Courts are not expected to brush aside judgment of High Court in such a casual manner [*Nandini Vs. LIC : 2008(4) Mh.L.J. 106*].

**G CONCLUSION**

While concluding this paper, following words of Lord Denning can be reiterated for better understanding of the doctrine of and it's applicability in the day today working of the Court as under:

"Each case depends on it's own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by"
matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.”

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