That *Tirlok Singh Jain* v. *State of Haryana and another* (supra) does not lay down the law correctly and is hereby overruled.

S. S. Sandhawalia, C.J.
Prem Chand Jain, J.
S. C. Mital, J.

H. S. B.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and S. C. Mital, JJ.

PRITAM KAUR,—*Appellant.*

versus

SURJIT SINGH,—*Respondent.*

First Appeal from Order No. 106-*M of* 1978.

October 31, 1983.

Judicial precedents—Binding nature of—Judgment of a larger Bench—When could be referred by a smaller Bench for reconsideration.

Held, that the law specifically laid down by the Full Bench is binding upon the High Court within which it is rendered and any and every veiled doubt with regard thereto does not justify the reconsideration thereof by a larger Bench and thus put the law in a ferment afresh. The ratios of the Full Benches are and should be rested on surer foundations and are not to be blown away by every side wind. It is only within the narrowest field that a judgment of a larger Bench can be questioned for re-consideration. One of the obvious reasons is, where it is unequivocally manifest that its ratio has been impliedly overruled or whittled down by a subsequent judgment of the superior Court or a larger Bench of the same Court. Secondly, where it can be held with certainty that a co-equal Bench has laid the law directly contrary to the same. And, thirdly, where it can be conclusively said that the judgment of the larger Bench was rendered *per incuriam* by altogether failing to take notice of a clear-cut statutory provision or an earlier binding precedent. It is normally within these constricted parameters that a smaller Bench may suggest a reconsideration of the earlier view and not otherwise. However, it is best in these matters to be

neither dogmatic nor exhaustive, yet the aforesaid categories are admittedly the well-accepted ones in which an otherwise binding precedent may be suggested for reconsideration. It is equally apt to elaborate what cannot be a valid ground for questioning or reconsidering the law settled by a larger Bench. The very use of the word 'binding' would indicate that it would hold the field despite the fact that the Bench obliged to follow the same may not itself be in agreement at all with the view. It is a necessary discipline of the law that the judgments of the superior Courts and of larger Benches have to be followed unhesitatingly whatever doubts one may individually entertain about their correctness. The rationale for this is plain because to seek a universal intellectual unanimity is an ideal too Utopian to achieve. Consequently, the logic and the rationale upon which the ratio of a larger Bench is rested, are not matters open for reconsideration. Negatively put, therefore, the challenge to the rationale and reasoning of a larger Bench is not a valid ground for unsetting it and seeking a re-opening and re-examination of the same thus putting the question in a flux afresh.

(Paras 12 and 14).

(Case referred by a learned Single Judge Hon'ble Mr. Justice A. S. Bains to the larger Bench on 10th January, 1983 for decision of an important question of law involved in this case. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice S. C. Mital after answering the relevant question of law, again referred the case to the learned Single Judge for decision on merits in accordance with the law laid down in Smt. Kailash Wati's case (supra).

First Appeal from the order of the court of Shri Niranjan Singh, Sub Judge, 1st Class, Bhatinda, dated the 17th November, 1977 granting a decree to the petitioner for the restitution of conjugal rights against the respondent and also ordering the respondent to pay the costs of the proceedings to the petitioner.

J. R. Mittal, Advocate with Pawan Bansal, Advocate, *for the Appellants.*

Surjit Singh Advocate with A. L. Bansal, Advocate *for the Respondent.*

ORDER

S. S. Sandhawalia, C.J.

The linchpin of our justice system——the doctrine of precedent and its binding nature——is the significantly spinal issue in this reference by the learned Single Judge recording a frontal dissent

from the ratio of the Full Bench in *Smt. Kailash Wati* v. *Ayodhia Parkash,* (1) and seeking its reconsideration by a still larger Bench. This jugular issue inevitably calls for adjudication at the very threshold.

2. The issue aforesaid stems from a broken-down marriage. The respondent-husband had preferred a petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) for the restitution of conjugal rights against the appellant-wife. It was averred that the parties were married way back in July, 1967 and a daughter born out of this wedlock had died within a few days of her birth. The couple resided together for a year or less and that too sporadically and thereafter on the 17th of August, 1972, the appellant-wife withdrew from the society of the respondent-husband without any reasonable cause and despite repeated requests and entreaties of the respondent-husband and the members of his family she declined to return and live with him. Ultimately, a panchayat along with the family members of the respondent-husband had approached and requested for the return of the appellant-wife to the matrimonial home but she flatly refused to return and stay with him at Bhatinda. The respondent-husband was then compelled to resort to the service of a registered legal notice to the wife in February, 1974, reiterating his request to come and reside with him. Pursuant thereto the appellant-wife made a show of returning to the husband's house at Bhatinda for a few days and then again went away to her parents' house on the 16th of May, 1974. Persistent attempts thereafter to persuade the appellant-wife to return to the matrimonial home having failed the petition for restitution of conjugal rights was hence presented on the 27th of July 1974.

3. In contesting the petition, the appellant-wife admitted the marriage but pleaded that she was serving as a teacher in another State in Rajasthan, where she was posted at different places after her marriage. It was alleged that she had continued in service of the Rajasthan Government with the consent of the respondent-husband. She pleaded that she had been occasionally visiting the respondent-husband during the leave periods since she was continuing in service in Rajasthan at her various places of postings. In the replication filed by the respondent-husband, it was stoutly denied that the appellant-wife was continuing in the service of Rajasthan Government with his consent and instead it was averred

(1) P.L.R. 216.

that she was doing so against his categoric wishes to the contrary. The other allegations made in the written statement were also controverted.

4. On the aforesaid pleadings, the trial court framed a solitary issue in the following terms :—

> "Whether the respondent has withdrawn from the society of the petitioner without any reasonable excuse ?"

After an elaborate consideration of the evidence led by both the parties, it arrived at the following categoric finding of fact:—

> "In the case in hand the petitioner is employed at Bhatinda while the respondent has been serving in the State of Rajasthan. In these circumstances they cannot visit each other even at the week end or an alternative week-end or when they have only few holidays. They can reside together only when the respondent gets vacations once a year. Such an arrangement, in my opinion is directed against the basic concept of marriage which requires both the spouses to live together and discharge the matrimonial obligations."

Holding rightly that on the aforesaid premises the ratio of the Full Bench in *Smt. Kailash Wati's case* (supra) was directly attracted, the petition was allowed and a decree for the restitution of conjugal rights was granted in favour of the husband.

5. Aggrieved by the judgment of the trial court, the appellant-wife preferred the present appeal. This originally was placed before a learned Single Judge and before him, learned counsel for the appellant attempted tenuously to assail the ratio of the Full Bench in *Smt. Kailash Watis's case* (supra). The learned Single Judge, in his order of reference, has categorically differed from the reasoning, rationale and the conclusion of the Full Bench. In particular, he observed that an altogether fresh argument sought to be rested on the equality clause of Article 14 of the Constitution was not raised before the Full Bench and consequently not considered by it. On this premise, he declined to follow the same and opined that the Full Bench decision in *Smt. Kailash Wati's case* (supra) needs reconsideration by a still larger Bench and the reference was made accordingly.

6. Before us, it was indeed the common and admitted position of the parties that on the facts of the present case the ratio of the Full Bench in *Smt. Kailash Wati's case* (supra) directly and squarely covers the legal issues involved. Now once it is so held, as it inevitably must be, then *a fortiori*, its ratio was binding on the learned Single Judge. What is the precise import of this binding nature, seems now to need no exhaustive dissertation. More than two centuries ago Blackstone in his celebrated Commentaries elaborated the rule of the binding nature of the precedent in the following terms:—

> "—It is an established rule to abide by former precedents when the same points come again into litigation; as well to keep the scale of justice even and steady and not likely to waver with every Judge's new opinion, as also because the law in that case being solemnly declared and determined, what before was uncertain is now become a permanent rule, which it is not in the breast of any subsequent Judge to alter or vary from according to his private sentiments."

The aforesaid rule has been unhesitatingly followed in our jurisprudence, so much so that the superior Courts of England have held themselves bound by their own earlier decisions irrespective of the number of Judges rendering the same. In *Young* v. *Bristol Aeroplane Co. Ltd.*, (2), it has now been settled beyond doubt that the Court of Appeal would be bound to follow previous decisions of its own irrespective of the fact whether the judgment was of a Division of the said Court or of the Full Court. Conforming to this very discipline, the House of Lords was also so inflexibly bound by its earlier decisions that the same could be corrected only by an Act of Parliament and not otherwise. However, being the final Court, a limited change from this rigid rule was made in the following terms by the Practice Statement (Judicial Precedent), 1966(1) W.L.R. 1234:—

> "Lord Gardiner L. C.: Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rule.

(2) 1944(2) All England Law Reports 293.

Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.

In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.

This announcement is not intended to affect the use of precedent elsewhere than in this House."

7. Now the true approach to a binding precedent is illustrated by the celebrated words of Buckley, L.J. in *Produce Brokers Co. Ltd.* v. *Olympis Oil & Cake Co. Ltd* (3), as under:—

"I am unable to adduce any reason to show that the decision which I am about to pronounce is right. On the contrary, if I were free to follow my own opinion, my own powers of reasoning such as they are, I should say that it is wrong. But I am bound by authority—which, of course, it is my duty to follow—and, following authority, I feel bound to pronounce the judgment which I am about to deliver."

Similarly Lord Cozon-Hardy, M. R., in *Velazguez Ltd.* v. *Inland Revenue Comrs,* (4), had occasion to observe as follows :—

"But there is one rule by which, of course, we are bound to abide—that when there has been a decision of this Court upon a question of principle it is not right for this court, whatever its own views may be, to depart from that decision. There would otherwise be no finality in the law. If it is contended that the decision is wrong, then the proper course is to go to the ultimate tribunal, the House of Lords, who have power to settle the law and hold that the decision which is binding upon us is not good law."

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(3) (1916) 1 A.C. 314.
(4) (1914) 3 K.B. 458.

8. As in England, so in India, the legal position is identical and indeed Article 141 gives a constitutional status to the theory of precedents in respect of the law declared by the Supreme Court. In *Tribhavandas Purshottamdas Thakkar* v. *Batlilal Patel and others*, (5), whilst settling all veiled doubts raised by Raju J., with regard to the theory of precedents, it was held:—

> "Precedents which enunciate rules of law from the foundation of administration of justice under our system. It has been held time and again that a single Judge of a High Court is **ordinarily bound to accept as correct judgments** of Courts of Co-ordinate jurisdiction and of Division Benches and of the Full Benches of his Court and of this Court. The reason of the rule which makes a precedent binding lies in the desire to secure uniformity and certainty in the law."

Even earlier in *A. Raghavama* v. *A. Chenchamma and another*, (6), it was held as axiomatic that a Division Bench was bound by the decision of another Division Bench.

(9) It would thus follow that once a precedent is held to be a binding one, then no deviation therefrom is permissible within the judicial polity except in the well accepted categories of cases enumerated hereafter in para-12 of this judgment.

10. It is equally necessary to highlight that the biding nature of precedents generally and of Full Benches in particular, is the kingpin of our judicial system. It is the bond that binds together what otherwise might well become a thicket of individualistic opinions resulting in a virtual judicial anarchy. This is self-imposed discipline which rightly is the envy of other Schools of Law. Because of the legal position here being axiomatic and well-settled it is unnecessary to elaborate the issue on principle." In *Jai Kaur and others* v. *Sher Singh and others,* (7) their Lordships gravely frowned on any deviation from the law once settled by the Full Bench and observed, that thereafter any previous decision on the same point contrary to its ratio, would have to be ignored in the following terms:—

> "———It is true that they did not say in so many words that these cases were wrongly decided; but when a Full Bench

(5) A.I.R. 1968 S.C. 372.
(6) A.I.R. 1964 S.C. 136.
(7) **A.I.R. 1960 S.C. 1118.**

decides a question in a particular way every previous decision which had answered the same question in a different way cannot but be held to have been wrongly decided.———"

* * * * *

And again:

"———If, as we pointed out there, considerations of judicial decorum and legal propriety require that Division Benches should not themselves pronounce decisions of other Division Benches to be wrong, such considerations should stand even more firmly in the way of Division Benches disagreeing with a previous decision of the Full Bench of the same Court."

11. Now apart from Full Benches and the precedents of the superior Court, it would appear that even judgments of the Benches of the same High Court in a limited way are binding in the sense that a judgment cannot be rendered contrary to the earlier decision of a co-equal Bench. At the highest, an equivalent Bench can seek reconsideration of the same by a larger Bench. It is unnecessary to multiply the precedents on the point and reference may instructively be made to the following observations in *Mahadeolal Kanodia* v. *The Administrator General of West Bengal,* (8).

"———Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion.———"

To the same tenor are the observations in *Jaisri Sahu* v. *Rajdewan Dubey and others,* (9); *Lala Sri Bhagwan and another* v. *Ram Chand another,* (10); *Meganlal Chhagganlal* (*P*) *Ltd.* v. *Municipal Corpn. of*

(8) A.I.R. 1960 S.C. 936.

(9) A.I.R. 1962 S.C. 83.

(10) A.I.R. 1965 S.C. 1767.

Greater Bombay and others, (11); *Chetu Ram* v. *Asa Nand*, (12); and, *C. Varadarajulu Naidu* v. *Baby Ammal and another*, (13).

12. From the above, it would follow as a settled principle that the law specifically laid down by the Full Bench is binding upon the High Court within which it is rendered and any and every veiled doubt with regard thereto does not justify the reconsideration thereof by a larger Bench and thus put the law in a ferment afresh. The ratios of the Full Benches are and should be rested on surer foundations and are not to be blown away by every side wind. It is only within the narrowest field that a judgment of a larger Bench can be questioned for re-consideration. One of the obvious reasons is, where it is unequivocally manifest that its ratio has been impliedly overruled or whittled down by a subsequent judgment of the superior Court or a larger Bench of the same Court. Secondly, where it can be held with certainty that a co-equal Bench has laid the law directly contrary to the same. And, thirdly, where it can be conclusively said that the judgemnt of the larger Bench was rendered *per incuriam* by altogether failing to take notice of a clear-cut statutory provision or an earlier binding precedent. It is normally within these constricted parameters that a similar Bench may suggest a reconsideration of the earlier view and not otherwise. However, it is best in these matters to be neither dogmatic nor exhaustive, yet the aforesaid categories are admittedly the well-accepted ones in which an otherwise binding precedent may be suggested for reconsideration.

13. Again, an equally well-settled norm for references to larger Benches calls for a passing comment. By hallowed precedent it is unnecessary to suggest that the number of Judges who may have to be requested to consider or reconsider a significant point of law in a Full Bench. That is a matter to be viewed and decided individually on the peculiarities of each case and therefore, to pin-point the number or the order of the Judges who may be called upon to consider the matter must, therefore, be left entirely open.

14. However, it is equally apt to elaborate what cannot be a valid ground for questioning or reconsidering the law settled by a larger Bench. The very use of the word 'binding' would indicate that it would hold the field despite the fact that the Bench obliged to follow the same may not itself be in agreement at all with the view.

(11) A.I.R. 1974 S.C. 2009.
(12) 1962 P.L.R. 235.
(13) A.I.R. 1964 Madras 448.

It is a necessary discipline of the law that the judgments of the superior Courts and of larger Benches have to be followed unhesitatingly whatever doubts one may individually entertain about their correctness. The rationale for this is plain because to seek a universal intellectual unanimity is an ideal too Utopian to achieve. Consequently, the logic and the rationale upon which the ratio of a larger Bench is rested, are not matters open for reconsideration. Negatively put, therefore, the challenge to the rationale and reasoning of a larger Bench is not a valid ground for unsettling it and seeking a re-opening and re-examination of the same thus putting the question in a fix afresh.

15. It remains to advert to the solitary ground which was originally pressed by the learned counsel for the appellant in support of this reference. It was sought to be argued that an argument resting on Article 14 of the Constitution with regard to equality even in the context of the personal laws like the Hindu Law, could be raised which had in fact not been raised before and considered by the Full Bench. On this premise, it was suggested that the ratio of the Full Bench in *Smt. Kailash Wati's* (supra), would either be by-passed or called-in for reconsideration.

16. The argument aforesaid is plainly untenable on principle. If the ratios of larger Benches and the judgments of superior Court were to be merely rested upon the quick-sands of the ingenuity of the counsel to raise some fresh or novel argument (which had not been earlier raised or considered) in order to dislodge them, then the hallowed rule of the finality of binding precedent would become merely a teasing mirage. It seems unnecessary to elaborate this aspect because it is clearly concluded by binding precedent. An identical issue arose in *Smt. Somawanti and others* v. *The State of Punjab and others*, (14), wherein the Constitution Bench was invited to ignore the earlier precedents of the Supreme Court up-holding the constitutionality of the Land Acquisition Act on the ground that the attack resting on Article 19(1)(f) was not raised before the earlier Benches. It was counsel's forceful stand that the earlier judgments for that reason would not be binding. Categorically rejecting such an argument, their Lordships observed as under:—

"——All the decisions are binding upon us. It is contended that none of the decisions has ocnsidered the argument advanced before us that a law may be protected from an

(14) A.I.R. 1963 S.C. 151.

attack under Article 31(2) but it will still be invalid under Article 13(2) if the restriction placed by it on the right of a person to hold property is unreasonable. In other words, for the law before us to be regarded as valid, it must also satisfy the requirements of Article 19(5) and that only thereafter can the property of a person be taken away. It is sufficient to say that though this Court may not have pronounced on this aspect of the matter, we are bound by the actual decisions which categorically negative an attack based on the right guaranteed by Article 19(1)(f). *The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided.* That point has been specifically decided in the three decisions referred to above."

Yet again in *T. Govindaraja Mudaliar etc. etc.* v. *The State of Tamil Nadu and others,* (15) the Bench was invited to ignore the earlier decisions about the constitutionality of Chapter IV-A of the Motor Vehicles Act, on the ground that a fresh argument under Article 19(1)(f) sought to be raised was not earlier considered and adjudicated upon. Repelling the contention and reiterating the afore-quoted passage from *Smt, Somawanti and others' case* (supra), it was observed as under: —

"It is common ground in the present cases that the validity of Chapter IV-A of the Act has been upheld on all previous occasions and merely because the aspect now presented based on the guarantee contained in Article 19(1)(f) was not expressly considered or a decision given thereon will not take away the binding effect of those decisions on us."

Following the above, identical views have been expressed in *Ramanlal Keshavlal Soni and others* v. *State of Gujarat and others,* (16), and; *Chikkamuddu and others* v. *State of Karnataka and others,* (17), (para-10). The solitary stand in support of the reference, therefore, merits rejection.

(15) A.I.R. 1973 S.C. 974.

(16) A.I.R. 1977 Gujrat 76.

(17) A.I.R. 1980 Karnataka 16.

17. It deserves pointed notice and indeed redounds to the credit of the learned counsel for the appellant, Mr. J. R. Mittal, that when faced with the afore-mentioned precedents and unable to cite any one to the contrary, he in the end conceded his inability to support the reference.

18. To finally conclude, it has to be inevitably held that the ratio of the Full Bench in *Smt. Kailash Wati's case* (supra) was binding upon the learned Single Judge and he was obliged to follow the same. No question for its reconsideration could, therefore, arise before the Single Bench. In this situation, it follows logically that the present reference does not arise and the case has consequently to be sent back to a Single Bench for a decision on merits in accordance with the law laid down in Smt. Kailash Wati's case (supra).

Prem Chand Jain, J.—I agree.

S. C. Mittal, J.—I agree.

N.K.S.

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