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The Ghosts of Abandoned Suits: How the Supreme Court Used Ancient Latin Maxims to Deny Relief to Parties Who Played Fast and Loose with the Judicial Process

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Introduction

There is a peculiar cruelty in the law's finality. A party who wins a decree, who stands with a court's imprimatur in hand, may still find that decree unenforceable, not because it was wrong, but because of how that party conducted itself in the corridors of justice. In a landmark judgment delivered on March 25, 2026, Justice Dipankar Datta of the Supreme Court of India handed down a decision in Sharada Sanghi & Ors. v. Asha Agarwal & Ors. that is destined to become a touchstone in the law of civil procedure, not for what it decided about property, but for the judicial philosophy it so elegantly distilled.

The case involved a property dispute in Hyderabad stretching back to the 1980s, specific performance decrees, competing sale deeds, and a dizzying trail of abandoned litigation. But the Supreme Court's judgment transcends the facts. It is, at its heart, a meditation on three ancient ideas: that litigation must have an end, that courts will not be weaponised by the unscrupulous, and that a party who abandons its own suit cannot later benefit from that abandonment.

"The process of the court cannot be used to revive what has already been consciously abandoned."

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Part One: The Story Behind the Suit

To understand why the Court's reasoning is so remarkable, one must understand what the appellants, the Sanghis, actually did. In 1988, they filed a suit for specific performance against Abdul Mujeeb Mahmood for the sale of a property in Himayat Nagar, Hyderabad. They ultimately won. A decree was passed in 1998, a sale deed was executed through court in 2001, and delivery of possession was being carried out through the process of court.

Enter the respondents, Asha Agarwal and others, who claimed title through entirely different sale deeds, dated 1990, purportedly flowing from an oral gift to one Mir Sadat Ali. Here is the twist: the Sanghis themselves, two years after filing the specific performance suit, had filed two separate suits in 1990 to cancel those very sale deeds. They knew about the respondents' claim. They engaged with it formally in court. And then, they simply stopped attending. Both suits were dismissed for default. Restoration applications were filed, then also dismissed for default. One restoration application came 308 days late.

When it came time to execute the specific performance decree, the Sanghis sought to dispossess the respondents. The executing court sided with them. But the Appellate Court reversed, and the High Court affirmed that reversal. The Supreme Court was thus confronted with a question that went far beyond property law: can a party that has abandoned its own proceedings, proceedings squarely aimed at resolving a title dispute, later reap the benefits of a decree obtained through a separate suit, as if those abandoned proceedings never existed?

Part Two: Res Judicata and Its Limits

The Appellate Court had held, and the High Court affirmed, that the dismissal of O.S. Nos. 892 and 893 of 1990 operated as res judicata under Section 11 of the Code of Civil Procedure, barring the appellants from relitigating. The Supreme Court found this reasoning to be legally incorrect, and said so clearly. This correction is important in its own right.

Res judicata pro veritate accipitur

"A MATTER ADJUDICATED UPON IS ACCEPTED AS TRUTH"

Section 11 CPC codifies res judicata and requires that a matter must have been "heard and finally decided" for the doctrine to apply. A dismissal for default, where no merits are considered, no evidence weighed, no legal question answered, does not satisfy this requirement. The suit simply ceases without a judicial determination. Res judicata cannot be invoked on the back of an absence; it demands a verdict.

The Supreme Court's clarity here is important. Lower courts have sometimes loosely invoked res judicata in situations where suits were dismissed for procedural default, importing a finality that the doctrine does not actually provide. The judgment firmly corrects this error: res judicata requires adjudication on merits. A suit abandoned mid-stream does not decide anything. It simply disappears.

Yet, and this is where the judgment takes a genuinely fascinating turn, the Court says the appellants still lose. Not because of res judicata, but because of something older, broader, and in some ways more powerful.

Part Three: Nemo Debet Bis Vexari and the Architecture of Finality

Having rejected res judicata, the Court pivoted to the Latin maxim at the centre of its analysis: *nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa,* no one ought to be twice troubled, if it appears to the court that it is for one and the same cause of action.

Nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa

"NO ONE OUGHT TO BE TWICE TROUBLED FOR ONE AND THE SAME CAUSE"

Unlike res judicata, this maxim does not require a decision on merits in the earlier proceeding. It operates on a broader equitable plane: once a party has invoked the court's jurisdiction and raised a positive case, that party cannot later re-agitate the same issue before another tribunal, even if the earlier proceedings ended without a decision on merits. The principle protects opponents from being serially harassed through the mechanics of litigation itself.

The Court drew on a rich comparative canvas to illuminate this distinction. From the English Court of Appeal's decision in S.C.F. Finance Co. Ltd. v. Masri (No. 3) [1987], the Court adopted the proposition that a litigant who has had the opportunity to establish a case, declines to proceed, and submits to dismissal, loses the right to agitate the same issue in subsequent proceedings.

The Court also cited Barber v. Staffordshire County Council [1996] for the principle that even a dismissal order, without detailed consideration on merits, can give rise to estoppel where a party has put forward a positive case and then declines to pursue it.

THE CRITICAL DISTINCTION

Res judicata says: 'this was decided, you cannot re-open it.'

Nemo debet bis vexari says: 'you had the chance to get this decided, and you chose not to. You cannot now burden another party and another court with what you deliberately abandoned.'

One is about finality of decision; the other is about finality of opportunity.

Part Four: Equity's Sharp Edge — Conduct as a Disqualification

It is easy to think of equity as a softening principle, something that bends harsh legal rules to achieve fair outcomes. But equity has a sharp edge too. It cuts against those who seek its protection while themselves behaving inequitably. The Court's analysis in this segment of the judgment is a compelling reminder of that.

The Sanghis had, the Court found, known about the respondents' competing claims at all times. They had filed suit to challenge those claims. They had knowledge of the respondents' written statements, their legal position was therefore fully within the appellants' sight. Despite this, they chose not to implead the respondents in the specific performance suit. And then they allowed the cancellation suits to die, through neglect, through non-appearance, through what the Court called something far more troubling than mere passivity.

The Court's language at this point is unusually direct: the appellants appeared to have 'deliberately avoided direct proceedings and instead securing orders through proceedings wherein they were not parties.' This is a judicial finding of strategic bad faith, an accusation that the appellants were not merely negligent but were deliberately engineering a situation where they could claim a benefit without having to fight for it fairly.

"Equity frowns upon selective prosecution. A party cannot act recklessly with the judicial process, invoking it as per his convenience and abandoning it when inconvenient."

The reference to S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1] drove this point home. That decision had held that a person whose case is based on falsehood has no right to approach the court and can be summarily thrown out at any stage of litigation.

Part Five: Abuse of Process — The K.K. Modi Principle

Having established the equitable disqualification, the Court also reached for a distinct, though related, doctrine: abuse of process. Relying on K.K. Modi v. K.N. Modi [(1998) 3 SCC 573], the Court affirmed that relitigation of an issue already raised, or capable of being raised, constitutes an abuse of process, even if the strict requirements of res judicata are not satisfied.

Interest reipublicae ut sit finis litium

"IT CONCERNS THE STATE THAT THERE BE AN END TO LAWSUITS"

This maxim, drawn from Roman jurisprudence, is a statement about the social function of courts, not merely a technical rule. Litigation consumes finite public resources. Every proceeding that could have been resolved in an earlier, abandoned round of litigation but is now resurrected imposes costs: on the court, on the opposing party, and on the broader public interest in a functioning justice system.

The K.K. Modi judgment had defined abuse of process in vivid terms: the court's machinery must be used bona fide and properly, and the court will prevent improper use of that machinery where it is used as a means of vexation and oppression. The categories of conduct rendering a claim an abuse of process are not closed, they depend on all relevant circumstances, including considerations of public policy and the interests of justice.

Part Six: The CPC's Own Policy — Order XXIII and Sarguja Transport

The final element of the Court's analytical architecture was drawn directly from the Code of Civil Procedure itself. Order XXIII Rule 1 prohibits a plaintiff who abandons a suit from instituting a fresh suit on the same subject matter without the court's permission. The provision is not grounded in res judicata, it requires no prior adjudication. It is grounded in public policy: the prevention of repeated invocation and abandonment of judicial machinery.

The Court cited the landmark decision in Sarguja Transport Service v. State Transport Appellate Tribunal [(1987) 1 SCC 5] to explain the principle. The Code distinguishes between 'abandonment' of a suit and 'withdrawal' with permission to file a fresh suit. Where a party abandons without permission, it is barred from fresh proceedings on the same cause.

Invito beneficium non datur

"THE LAW CONFERS UPON A MAN NO RIGHTS OR BENEFITS WHICH HE DOES NOT DESIRE"

Whoever waives, abandons or disclaims a right will lose it. To prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason, the Code insists that permission must be obtained to file a fresh suit. The underlying principle is founded on public policy.

Part Seven: The Four-Layered Framework

The analytical architecture of this judgment is worth mapping in full. The Court arrived at its conclusion through four distinct but mutually reinforcing layers of legal reasoning:

- **Not Res Judicata**

Dismissal for default is not a decision on merits under Section 11 CPC. The Appellate Court's finding of res judicata was legally incorrect and expressly overruled.

- **Nemo Debet Bis Vexari Applies**

A party that had the opportunity to litigate an issue and chose not to cannot revive the dispute in collateral or execution proceedings. No merits-based decision in the prior suit is required for this principle to operate.

- **Equitable Disqualification**

The appellants' conduct in selectively prosecuting suits, abandoning some while relying on others, was not bona fide. Equity will not assist a party that plays fast and loose with the judicial process.

- **Statutory Policy Under Order XXIII**

The CPC's own framework reflects the same underlying principle: abandonment of proceedings forecloses the right to re-agitate the same matter. This is grounded in public policy, not merely procedural rule.

Part Eight: Enduring Lessons for Civil Practitioners

What does this case stand for in the canon of Indian civil procedure? Several propositions emerge with crystalline clarity that practitioners would do well to internalise.

First, default dismissal does not equal res judicata. Courts must resist the temptation to invoke Section 11 CPC wherever there is a prior proceeding touching the same subject matter. Res judicata requires hearing and final decision on merits.

Second, equitable finality fills the gap. Where res judicata does not technically apply, the broader principle of nemo debet bis vexari may. A party who has raised an issue, had the opportunity to litigate it, and chosen not to pursue it, cannot later re-agitate the same issue, particularly in execution proceedings.

Third, conduct is a form of evidence. In equitable jurisdiction, how a party has conducted itself across the entire arc of litigation is relevant to whether it deserves relief. The Court's decision to examine the Sanghis' full procedural history reflects a holistic approach to adjudicating rights.

Fourth: abuse of process is an independent ground. Even where a claim cannot be struck down as res judicata or estoppel, a court may decline to grant relief if the bringing of the claim constitutes an abuse of process.

Fifth: the CPC's anti-abandonment policy reflects deep statutory commitment to preventing serial invocation and abandonment of judicial proceedings. Its spirit extends beyond the literal text of Order XXIII Rule 1.

Coda: Justice as Architecture

There is a temptation, in reading judgments like this one, to focus on winners and losers. The Sanghis lost. The Agrawals survived execution. But the more interesting reading is architectural. The Supreme Court was not merely deciding who gets the property in Himayat Nagar. It was reinforcing a structure of principles that stops courts from being used as opportunistic instruments by parties who dip in and out of litigation at their convenience.

The maxims invoked (res judicata pro veritate accipitur, nemo debet bis vexari, interest reipublicae ut sit finis litium, invito beneficium non datur) are not decorative Latin. They are load-bearing beams in the architecture of civil procedure. Each one reflects a considered judgment, refined over centuries, about how a functioning legal system must operate if it is to serve justice rather than merely serve litigants.

The Court refused to allow a party to engineer its own legal advantage by selectively abandoning proceedings it found inconvenient, then returning in a different forum to claim the fruits of a decree obtained through a process the respondents were never truly part of. The law, held Justice Datta, will not lend itself to that choreography.

In that sense, this judgment is less about property and more about the integrity of the legal process itself. And that, perhaps, is why it will be read and re-read long after the dispute over Municipal No. 3-6-996, Himayat Nagar, Hyderabad has faded from memory.

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Reference:

[2026 INSC 292] SHARADA SANGHI & ORS. Vs. ASHA AGARWAL & ORS.

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