JUDICIAL TRAINING & RESEARCH INSTITUTE, U.P., LUCKNOW

Quarterly Digest

CONSTITUTIONAL, CIVIL, CRIMINAL & REVENUE LAWS

(Covering important judgments of Supreme Court and Allahabad High Court)

October – December, 2015

Volume: XL1 **Issue No.: 4**

FROM THE CHAIRMAN'S DESK

Imposition of President's Rule in Arunachal Pradesh has been challenged before the Supreme Court. Initially Supreme Court while issuing notice directed the Governor to respond why he recommended President's Rule, however, the Constitution Bench realized that the Governor under the Constitution had complete immunity and was not answerable to Courts for acts done in his official capacity. Accordingly, on 8.2.2015 the Supreme Court recalled the order candidly stating that it had made a mistake.

The question as to whether Section 377 IPC is valid or not, initially answered in affirmative by the Supreme Court, has been referred to Constitution Bench.

The legality and morality of euthanasia is again being examined by a Constitution Bench of the Supreme Court. Recently (as reported in the editorial of the newspaper The Hindu dated 2.2.2016,) the Union Government informed the Supreme Court that a bill in that regard was being drafted as per the recommendation of the Law Commission made in its 241st report. However, the Government stated before the Supreme Court that before enacting the law it would wait for the decision of the Constitution Bench. The request of the patient to the doctor to relieve him of the suffering by helping him to die is something described as "fleeting desire of transient depression". It is also said that if doctor does anything in this direction it will be violating the Hippocratic Oath which every doctor is supposed to take at the start of medical practice.

Recently the Supreme Court has taken Gujarat and some other State Governments to task for no enforcing National Food Security Act.

According to Times of India Lucknow edition 8.2.2016 a Civil Judge in District Jaunpur entertained a plea against an order of the Supreme Court in respect of dispute about a property. In the said suit judgment of the Supreme Court in between the same parties was challenged on the ground that it was false and frivolous and the Civil Judge entertained the suit and decided to consider the plea. The Supreme Court has issued contempt against the Presiding Officer of the Court who passed the order. The Supreme Court observed that after knowing the circumstances it might pass stricture against the Judge concerned.

In the Times of India, Lucknow edition 11.2.2016 it is reported that on 10.2.2016 advocates of High Court Lucknow Bench went on the rampage around High Court premises. Thirty vehicles were burned and at least 40 persons including 17 police personnel, advocates, health department (premises of which is situate adjacent to the High Court building) employees and ordinary people on the road were injured. FIRs were lodged against an unidentified group of lawyers. The reason was that a day earlier dead body of an advocate had been recovered from a *Nalla*. Serious advocates are dignified section of the society. However, some unscrupulous elements among the advocates whose main job does not appear to be legal practice malign the entire community. Silent majority give in. How the High Court deals with the situation is to be seen. (On 11.2.2016 a seven Judges Bench of Allahabad High Court debarred an advocate from practicing for six months. He had been photographed

with a revolver in his hand, on the site of disturbance.) For hours even ambulances and vehicles carrying school children back were held up. Neither helplessness nor kneejerk reaction can solve the problem. Strict action with lot of tact can provide some solution. Advocates in general particularly saner elements among them must come out with some solution for such situations. If it is not so done they would be inviting the others particularly those in authority to do serious thinking about such incidents, come out with methods to prevent such situations and redress the aggrieved persons if such situation takes place. After all advocates are meant to assert the supremacy of law and help in preventing or redressing its breach.

U.P. Revenue Code 2006 was made an Act in 2012. It is U.P. Act No. 8 of 2012. (President gave his assent on 19.11.2012). By virtue of its Section 1(3) it was to come into force on such date as the State Government might by notification appoint and there could be different dates for different provisions of the Code. The Code has been amended through U.P. Ordinance No. 4 of 2015. The Code has come into force with effect from 18.12.2015 (some provisions) and 11.2.2016 (rest of the provisions) through notification of the State Government dated 18.12.2015. U.P.Z.A.L.R. Act and U.P. Land Revenue Act have been amalgamated in U.P. Revenue Code after repealing them. In the first schedule 32 Acts have been mentioned which have been repealed, two of which, are U.P.Z.A.L.R. Act and U.P. Land Revenue Act. Other repealed Acts are such which had either lost their efficacy or were operating in small areas of the State.

Most of the provisions of U.P.Z.A.L.R. Act and U.P.L.R. Act have been re-enacted in the Code,

however, Code also contains some drastic departures from both the Acts.

Regarding will of agricultural land, in the year 2004 an amendment had been incorporated in U.P.Z.A.L.R. Act making such will compulsorily registrable. Such provision has been retained in Section 107(3) of the Code.

Regarding succession of agricultural land a happy departure from U.P.Z.A.L.R. Act has been made. After the death of the Bhumidher his widow, unmarried daughter and son (or male lineal descendant) inherit the property simultaneously under Section 108. However, married daughter is to inherit only if the Bhumidher does not leave behind any widow, unmarried daughter, mail lineal descendant mother and father.

The greatest controversy was regarding right of scheduled caste Bhumidhers to transfer their land. Under Section 98 of the Code certain restrictions have been imposed on transfer by Bhumidhars belonging to scheduled caste. There is no restriction on transfer by a member of scheduled caste to another scheduled caste, however, in case a Bhumidhar belonging to a scheduled caste intends to transfer his agricultural land to a person not belonging to a scheduled caste then he will have to obtain permission of the Collector and permission may be granted only when the proposed seller has not got any surviving heir or has settled or is ordinarily residing in the district other than that in which the land is situate. There is a miscellaneous clause in the form of Section 98 (1) (c) according to which permission may be granted if the Collector is, for the reasons prescribed, satisfied that it is necessary to grant the permission for transfer of land. This section

was in a different form in the Code earlier. New section has been substituted by U.P. Revenue Code Amendment Ordinance 015 (4 of 2015).

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This Journal is meant only for reference and guidance. For authentic and detailed information, readers are advised to consult referred Journal(s).

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93. **Shiv Prasad v. State of U.P. and others, 2015 (129) RD 250**
94. **Shiva Agarwwal (Shiwani) daughter of Rakesh Gupta v. State of U.P. and another, 2015 ((6) ALJ 345**
95. **Shri Chandra Gupta v. Additional District Judge, Court No. 1, Hardoi and others, 2015 (33) LCD 2966**
96. **Shyama Singh (Dead) Through LRs v. Sarv Deo Singh and others, 2015 (129) RD 467**
97. **Sipahi Lal vs. State of U.P., 2015 (129) RD 650 (All.)**
98. **Smt. Kusum Devi v. Ram Ji Verma 2015(129) RD 313**
99. **Smt. Leena Katiyar v. State of U.P. & others, 2015 (6) ALJ 1**
100. **Smt. Pooja v. State of U.P. and others, 2015 (91) ACC 498**
101. **Smt. Praveen Singh v. Board of Revenue, U.P. at Alahabad and others, 2015(129) RD 534**
102. **Smt. Rekha Devi v. Buniyad Husain and another, 2015 (113) ALR 858**

103. **Smt. Saira and others v. Additional District Judge and others, 2015 (129) RD 292**
104. **Smt. Umman Bibi v. Board of Revenue, U.P., Lucknow and others, 2015 (5)AWC 5422**
105. **Smt. Vijaya Jain vs. State of U.P. Through Its Principal Secretary (Stamp & Revenue) Govt. of U.P., Lucknow, 2015 129) RD 703 (All.)**
106. **Sri Nahar Singh Yadav, Advocate, Ghaziabad and others, 2015 (113) ALR 907**
107. **State of U.P. and others v. Rajendra Singh and others, 2015 (113) ALR 124**
108. **State of U.P. v. Baijnath Prasad (Dead) By L.Rs., 2015 (129) RD 352**
109. **Sunil Kumar Gupta v. State of U.P. and others, 2015 (33) LCD 3070**
110. **Surya Dutt vs. Suresh Chandra, 2015 (3) ARC 726**
111. **Sushil Kumar and others v. Board of Revenue and others, 2015 (129) RD 267**
112. **Sushila and another v. State of U.P. through Collector Faizabad and others, 2015 (129) RD 253**
113. **Swami Ram Nivas Ram Saneshi v. Swami Ram Vinod and another, 2015 (113) ALR 783**
114. **The Oriental Insurance Co. Ltd. V. U.P.S.R.T.C. and others, 2015 (33) SCD 2814**
115. **Transport Corporation of India, Varanasi through its Regional Magager v. Vijayanand Singh @ Vijaymal Singh and another, 2015 (129) RD 285**
116. **Union of India and another v. M/s. Mukul Builders Pvt. Ltd. And another, 2015 (112) ALR 583**
117. **United India Insurance Co. Ltd. v. Smt. Shashi Prabha Sharma & others 2015 (5) ALJ 661**
118. **Vilayat Jafri vs. High Definition Television Pvt. Ltd. Mumbai & Another, 2015 (3) ARC 726**
119. **Vishambhar Dham Higher Secondary School v. State of U.P. and others, 2015 (129) RD 486**
120. **Yellapu Uma Baheswari and another v. Buddha Jagadheeswararao and others, 2015 (6) AWC 6019**

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PART – 1 (SUPREME COURT)

Arbitration and Conciliation Act

Section 31(a) and 34-- Pendent elite interest-effect of the words "unless otherwise agreed by parties" in Section 31(7) (a) of the Act

Being aggrieved by the judgment delivered in Union of India v. Bright Power Projects (I) (P) Ltd. dated 7-8-2006 by the High Court of Judicature of Bombay, this appeal has been filed wherein the issue is whether the appellant is liable to pay interest to the respondent though there was a provision in the contract that no interest should be paid on the amount payable to the contractor.

It was held by Supreme Court-

Section 31(7) (a) of the Arbitration and Conciliation Act, 1996 is clear to the effect that unless otherwise agreed by the parties, the Arbitral Tribunal can award interest of reasonable rate for a period commencing from that date when the cause of action arises till the date of the award. Section 31(7)(a) of the Act, by using the words "unless otherwise agreed by the parties", categorically specifies that the arbitrator is bound by the terms of the contract so far as award of interest from the date of cause of action to date of the award is concerned. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest. In view of the specific bar under Clause 13(3) of the contract entered into between the parties, we are of the view that the Arbitral Tribunal was not justified in awarding interest from the date of entering upon the reference to the Arbitral Tribunal till the date of the award. The Tribunal, however, failed to consider the provisions of Section 31(7) of the Act and clause 13(3) of the contract before awarding interest in the present case. Section 31(7)(a) of the Act ought to have been read and interpreted by the Arbitral Tribunal before taking any decision with regard to awarding interest. The said Section, which has been reproduced hereinabove, gives more respect to the agreement entered into between the parties. If the parties to the agreement agree not to pay interest to each other, the Arbitral Tribunal has no right to award interest pendente lite.

Union of India v. Bright Projects (India) (P) Ltd., (2015) 9 SCC 695

Civil Procedure Code

Section 11, Or. 12 R. 6-- Judgment on the basis of Admission of Defendant

In present case, respondent mother filed a suit against her appellant son for recovery of possession of suit property and damages on ground that she was absolute owner of the property concerned purchased out of her own funds but part of that property was under illegal occupation of appellant. On the other hand, appellant was opposing the suit on ground that suit property was Hindu Undivided Family (HUF) property having been purchased in the name of respondent using the funds of his grandfather, father and himself. Earlier a suit for partition was filed by appellant son on same ground i.e. the property involved herein was a HUF property, but said suit was dismissed by trial court and that decision was affirmed by High Court. Relying on decision passed in earlier suit against the appellant son, respondent-plaintiff mother toled an application under Or. 12 R. 6 CPC in present suit for passing decree in her favour contending that said decision amounted to an unequivocal admission by appellant son that respondent mother was entitled to possession. Trial Court dismissed said application, but High Court allowing the same.

Held:-

Since question of ownership had already been decided in earlier suit filed by appellant son, said issue was not required to be decided afresh. Hence, on basis of finding of ownership decided in favour of respondent mother in earlier suit, present suit was rightly decreed by High Court so far as recovery of possession was concerned. As regards second issue relating to entitlement of respondent mother to damages for unauthorized possession of suit property by appellant, in that view of the matter, since said issue had not been decided either in earlier suit or in present suit, decree for recovery of damages ought not to have been passed by High Court. [**Raveesh Chand Jain v. Raj Rani Jain, (2015) 8 SCC 428]**

Section 11—Resjudicata

Resjudicata will not apply if reliefs claimed in both the suits are not identical and parties are also not same. Moreover, the decision in the first suit was not on merit. Accordingly second suit was not barred by resjudicata.

Section 80. Municipality / municipal counsel is not a public officer hence, notice under Section 80 C.P.C. is not necessary before instituting the suit against it. **[*City Municipal Council Bhalki v. Gurappa, AIR 2015 3826]***

Section 33, 47, 151, 152 and order 20-- Court's powers to amend decree at execution stage

Plaintiff filed an amended side plan and thereby sought amendment of decree at the execution stage because of non-disclosure of non-disclosure of precise location of place ordered to be given over to possession of plaintiff by defendants. Trial court refused said amendment on ground that taking on record the amended site plan at that stage would amount to going behind the decree and modified the terms of the original decree which was not permissible in law. Held, order passed by trial court was proper. High Court erred in interfering therewith by passing the impugned directions. [**Ramesh v. Harbans Nagpal, (2015) 8 SCC 716]**

Section 144-- Restitution in case of money decree

IRFC bonds already sold by the plaintiff - bank, the factum of sale of bonds cannot be ignored. The date, on which bonds were delivered, they were tradable commodity on the stock market but subsequently the bonds did not remain in currency. It would be unjust to fasten the liability upon the plaintiff to make good the possible gains which might have been made by the third parties who purchased the bonds or the subsequent purchasers. **[*Citibank N.A. v. Hiten P. Dalal AIR 2015 SC 3523]***

Sections 148, 151 & 33 discretion of court regarding extension of time for fulfilling conditions imposed in a conditional decree.

The trial court passed a conditional decree, whereby it was directed that if the balance sale consideration o Rs. 33.6 lakhs (Rs. 8 lakhs had been paid earlier during sale agreement) was not deposited by the plaintiff buyer in court in court in demand draft within one month from 27&2&2007 (that is from date of decree), the suit shall be deemed to have been dismissed. From a perusal of the judgment and decree dated 15&2&2007 passed by the trial court, it is clear that the period of one month granted for depositing the balance consideration started from the date of decree. From the records it appears that the decree was signed on 27.2.2007. Therefore, the period of one month started from 27.2.2007 and ended on 26.3.2007. After extension of two months was granted, the last date for depositing the amount of balance consideration fell on 26.5.2007. As the civil court was not working on 26.5.2007 and next date i.e. 27.5.2007 was Sunday, the plaintiff buyer was to deposit the amount on 28.5.2007, which was

the reopening day. However, there is no evidence on record to show that the plaintiff buyer made efforts to deposit the balance consideration on 28.5.2007 or made an application on 28.5.2007. The receipt order is dated 29.5.2007 and deposit was made on 29.5.2007. Thus, the plaintiff buyer failed to comply with the decree and the suit stood dismissed automatically.

The trial court rightly held that the decree-holder did not make the deposit within the time stipulated by the court nor was the deposit of the balance consideration made through the mode as stipulated by the court, and that being the case, the suit will have to be deemed as dismissed. The trial court further held that the decree-holder is not entitled to seek execution of decree, which does not exist in the eye of the law and consequently the trial court dismissed the execution petition. Further, the application for extension of time before the trial court was dismissed not solely on technical grounds. The trial court has discussed full merits of the application and given a finding that there is no evidence to show that the plaintiff had made any effort to deposit the amount on 28.5.2007. The application was dismissed on its merits and not merely on the technical grounds. Having given the above findings, the obvious corollary is that since the plaintiff buyer failed to comply with the terms of the decree, the suit stood dismissed as the order passing the decree was a peremptory order. In light of this, it is not necessary to address the arguments on the point of bona fide purchaser. Further, the contention that the acceptance of deposit made by the plaintiff buyer on 29.5.2007 is an implied grant of extension of time is a misplaced one. In view of the above findings, the question as to whether the plaintiff buyer was required to give notice of the amount deposited also need not be answered, though if the plaintiff buyer, irrespective of any obligation under law, could have given notice of the deposit made to the defendant seller if would have helped the case of the plaintiff buyer.

Thus, in the present case, the plaintiff buyer has clearly defaulted on time of depositing as well as the mode of payment. The decree was self-operative and the suit stood demised for non-compliance with the decree. Further, the plaintiff buyer also failed to make out a case for condonation of delay. In view of these findings, the questions formulated by the High Court in order of remand are not required to be answered by the trial court. Consequently, the appeal filed by the plaintiff buyer is dismissed and the appeal filed by the defendant seller is allowed. There shall be no order as to costs. [**P.R. Yelumalai vs. N.M. Ravi, (2015) 9 SCC 52]**

O.6, R.17-- Amendment

Normally a relief which has become time barred cannot be permitted to

be added through amendment unless there are extraordinary circumstances due to which the amendment may be treated to relate back to the date of filing of the plaint. If the amendment seeking to incorporate the relief of declaration of title is allowed subject to the plea of limitation then it cannot relate back to the date of institution of suit.

L.C. Hanumanthappa v. H.B. Shivakumar AIR 2015 SC 3364

Order VI Rule 17-Amendment of written statement after lapse of very long time (That is 20 Years) – Permissibility of - Amendment sought after 20 years of filing the written statement to wholly withdraw the admission therein-Not permissible-The admission in the written statement can be clarified or explained by way of amendment- The basis of admission can be challenged in a substantive proceedings.

In this case, it is significant to note that defendant Nos. 5 and 12, after moving an application for amendment withdrawing the admissions made in the written statement, have filed a substantive suit attacking the alleged relinquishment of their claim in the family property and we are informed that the trial is in progress. In that view of the matter, we do not propose to deal with the matter any further lest it should affect the outcome of the suit filed by Defendant Nos. 5 and 12 since the declaration sought in the suit filed in 2005 is to take away the basis of the said relinquishment of the claim in the suit property. However, as far as amendment is concerned, the attempt to wholly resile from the admission made after twenty five years, we are afraid, cannot be permitted.

Delay in itself may not be crucial on an application for amendment in a written statement, be it for introduction of a new factor for explanation or clarification of an admission or for taking an alternate position. It is seen that the issues have been framed in the case before us, only in 2009. The nature and character of the amendment and the other circumstances as in the instant case which we have referred to above, are relevant while considering the delay and its consequence on the application for amendment. But a party cannot be permitted to wholly withdraw the admission in the pleadings, as held by this Court in Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and others (1974) 1 SCC 242. To quote Paragraph 27:

> "27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a

compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

However, the admission can be clarified or explained by way of amendment and the basis of admission can be attacked in a substantive proceedings. In this context, we are also mindful of the averment in the application for amendment that:

"11. …. Mahabir Prasad Kajaria died at age of 24 years on 7th May, 1949 when the defendant No. 5 was only 2 years and the defendant No. 12 was only 21 years. Till the death of Mahabir and even thereafter, the petitioners had been getting benefits from income of the joint properties. The defendant No.5 and his two sisters, namely, Kusum and Bina were brought up and were maintained from the income of the joint family properties. The petitioners after the death of Mahabir, they continued to live in the joint family as members and till now members of the joint family. In the marriage of the two sisters of the defendant no.5 Kusum and Bina (now after marriage Smt. Kusum Tulsian and Smt. Bina Tulsian) the expenses were wholly borne out from the incomes of the joint family properties. The said facts are well known to all the family members and their relations. [**Jugal Kishore Kajaria vs. Sheo Prakash Kajaria and others, 2015 (7) Supreme Today 144 Supreme Court of India]**

Order VI, Rule 17-Petition for amending value of suit property from Rs. 13,50,000/- to Rs. 1,20,00,000/- Amendment not changing nature of suit i.e., specific performance-Only corrects value of suit property-Even defendant in written statement admitting undervaluation of suit property-Could not have objected to amendment-Trial court dismissing amendment because it would take the suit out of its pecuniary jurisdiction requiring its transfer to High Court on its original side-No ground for declining amendment.

In our opinion, as per the provisions of Order 6 Rule 17 of the Civil Procedure Code, the amendment application should be normally granted unless

by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance and initially the property had been valued at Rs.13,50,000/- but as the market value of the property was actually Rs.1,20,00,000/-, the appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint.

In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance and initially the property had been valued at Rs. 13,50,000/- but as the market value of the property was actually Rs. 1,20,00,000/-, the appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint.

It is also pertinent to note that the defendant had made an averment in para 30 of the written statement filed in Suit No.1955 of 2010 that the plaintiff had undervalued the subject matter of the suit. It had been further submitted in the written statement that the market value of the suit property was much higher than Rs. 14 lacs. The defendant had paid Rs.13.5 lacs for the said premises in the year 2002 when the said premises had been occupied by a tenant bank.

Even according to the defendant value of the suit property had been undervalued by the plaintiff in the plaint. If in pursuance of the averment made in the written statement the plaintiff wanted to amend the plaint so as to incorporate correct market value of the suit property, the defendant could not have objected to the amendment application whereby the plaintiff wanted to incorporate correct value of the suit property in the plaint by way of an amendment. The other contention that the valuation had already been settled cannot also be appreciated since the High Court has held that the said issue was yet to be decided by the trial Court.

The main reason assigned by the trial court for rejection of the amendment application was that upon enhancement of the valuation of the suit property, the suit was to be transferred to the High Court on its original side. In our view, that is not a reason for which the amendment application should have been rejected. With regard to amendment of plaint, the following observation has been made by this Court in the case of North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) by LRs. (2008) 8 SCC 511 :

> "16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil

and others (1957) 1 SCR 595 which still holds the filed, it was held that all amendments ought to be allowed which satisfy the two conditions:

(a) of not working injustice to the other side, and

(b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs."

In our opinion, on the basis of the aforestated legal position, the amendment application made by the plaintiff should have been granted, especially in view of the fact that it was admitted by the plaintiff that the suit property was initially undervalued in the plaint and by virtue of the amendment application, the plaintiff wanted to correct the error and wanted to place correct market value of the suit property in the plaint. **[Mount Mary Enterprised vs. M/s. Jivratna Medi Treat Pvt. Ltd., (2015 (7) Suprme Today 631 Suprme Court of India]**

O. 7, R. 11

Plaint cannot be rejected on the plea of bar of resjudicata as such plea is a mixed question of law and fact and for deciding it examination of plaint of earlier suit and other evidence is required, hence plaint cannot be rejected at threshold. **[*Vaish Aggarwal Panchayat v. Inder Kumar AIR 2015 SC 3357]***

Order 22 Rules 3 and 9

After death of appellant no steps were taken for substitution in the first appeal. In second appeal, application for impleadment of his heirs was filed under O. I R. 10 C.P.C. The High Court rejected it on the ground that procedure prescribed by order 22 had not been followed. The Supreme Court held that this view was too technical.

In the second appeal also the appellant had died. Application for substitution was filed. Second appeal was dismissed for want of prosecution, thereafter restored. No specific order for restoration was passed on substitution, setting aside abatement and condonation of delay applications. The High Court dismissed the appeal as abated. The Supreme Court held that the view taken was too technical and order on the substitution application should have been passed by the High Court. ***[Banwari Lal v. Balbir Singh AIR 2015 SC 3573]***

Order XXII, Rule 4-Abatement-Plaintiffs having equal shares in the suit property left by their predecessors joining in the suit-Even after death of any of the plaintiffs, the estate will be fully and substantially represented

by the other sharers as owners of the suit property-Therefore the entire suit will not abate because of non-substitution of the legal representative(s) of plaintiffs dying during pendency of appeal in High Court.

In the instant case, the plaintiffs joined together and filed the suit for rectification of the revenue record by incorporating their names as the owners and possessors in respect of the suit land on the ground inter alia that after the death of their predecessor-in-title, who was admittedly the Pattadar and Khatadar, the plaintiffs succeeded the estate as sharers being the sons of Khatadar. Indisputably, therefore, all the plaintiffs had equal shares in the suit property left by their predecessors. Hence, in the event of death of any of the plaintiffs, the estate is fully and substantially represented by the other sharers as owners of the suit property. We are, therefore, of the view that by reason of non-substitution of the legal representative(s) of the deceased plaintiffs, who died during the pendency of the appeal in the High Court, entire appeal shall not stand abated. Remaining sharers, having definite shares in the estate of the deceased, shall be entitled to proceed with the appeal without the appeal having been abated. We, therefore, do not find any reason to agree with the submission made by the learned counsel appearing for the appellants. **[Govt. Of Andhra Pradesh Thr, Principal Secretary and others vs. Pratap Karan and others and Andhra Pradesh Industrial Infrastructure Corporation Ltd. vs. Pratap Karan and others (2015 (7) Supreme Today 481 Supreme Court of India]**

Order XXII Rule 10 and 11- Appellant filing title suit-Releasing her interest in favour of her daughter during pendency of first appeal-High Court dismissing the appeal on the ground that she had lost her right to continue the appeal because she had released her interest in the suit property in favour of her daughter who, in turn, had transferred the property in favour of third person- High Court holding that consequently, she had lost her right to continue the appeal- Not correct-Merely by assignment or release of the rights during the pendency of the appeal, one does not lose right to continue the appeal-Assignee may move an application for impleadment.

A bare reading of the provisions of Order XXII Rule 10 makes it clear that the legislature has not envisaged the penalty of dismissal of the suit or appeal on account of failure of the assignee to move an application for impleadment and to continue the proceedings. Thus, there cannot be dismissal of the suit or appeal, as the case may be, on account of failure of assignee to file an application to continue the proceedings. It would be open to the assignor to continue the proceedings notwithstanding the fact that he ceased to have any

interest in the subject-matter of dispute. He can continue the proceedings for the benefit of assignee. The question is no more res integra. This Court in Dhurandhar Prasad Singh v. Jai Prakash Univesity & Ors. (2001 (6)SCC 534) has laid down thus:

> "6.In order to appreciate the points involved, it would be necessary to refer to the provisions of Order 22 of the Code, Rules 3 and 4 whereof prescribe procedure in case of devolution of interest on the death of a party to a suit. Under these Rules, if a party dies and right to sue survives, the court on an application made in that behalf is required to substitute legal representatives of the deceased party for proceeding with a suit but if such an application is not filed within the time prescribed by law, the suit shall abate so far as the deceased party is concerned. Rule 7 deals with the case of creation of an interest in a husband on marriage and Rule 8 deals with the case of assignment on the insolvency of a plaintiff. Rule 10 provides for cases of assignment, creation and devolution of interest during the pendency of a suit other than those referred to in the foregoing Rules and is based on the principle that the trail of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during its pendency but such a suit may be continued with the leave of the court by or against the person upon whom such interest has devolved. But, if no such step is taken, the suit may be continued with the original party and the person upon whom the interest has devolved will be bound by and can have the benefit of the decree, as the case may be, unless it is shown in a properly constituted proceeding that the original party being no longer interested in the proceeding did not vigorously prosecute or colluded with the adversary resulting in decision adverse to the party upon whom the interest had devolved. The legislature while enacting Rules 3, 4 and 10 has made a clear-cut distinction. In cases covered by Rules 3 and 4, if right to sue survives and no application for bringing the legal representatives of a deceased party is filed within the time prescribed, there is automatic abatement of the suit and procedure has been prescribed for setting aside abatement under Rule 9 on the grounds postulated therein. In cases covered by Rule 10, the legislature has not prescribed any such procedure in the event of failure to apply for leave of the court to continue the proceeding by or against the person upon whom interest has devolved during the pendency of a suit which shows that the legislature was conscious of this eventuality and yet has not prescribed that failure would entail dismissal of the suit as it was intended that the

proceeding would continue by or against the original party although he ceased to have any interest in the subject of dispute in the event of failure to apply for leave to continue by or against the person upon whom the interest has devolved for bringing him on the record.

Resultantly, we are of the opinion that the High Court has gravely erred in law in dismissing the appeal on the aforesaid ground. Thus, its judgment and order being unsustainable, are hereby set aside. We remit the appeal to the High Court for deciding the same afresh in accordance with law after hearing the parties. The appeal is allowed. No order as to costs. **[Sharadamma vs. Mohammed Pyrejan (D) Through LRs. & Anr. 2015 (7) Supreme Today 86 Supreme Court of India]**

Order XXXV

II, Rule 3- Leave to defend Summons for Judgment- Defendant showing that on the basis of facts mentioned in the affidavit he may be able to establish a defence to plaintiff's claim- Held, defendant entitled to unconditional leave to defend Summons for Judgment.

Although the affidavit does not positively and immediately make it clear that he had a defence, yet, it shows such a state of facts leading to the inference that at the trial of the action, the defendant may be able to establish a defence to the plaintiff`s claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security [See : T. Sukhender Reddy Vs. M. Surender Reddy, 1998 (3) ALD 659].

Apart from these, the substantial revelations of the defendant (appellant) in the affidavit coupled with the views expressed by the Division Bench of the High Court makes it clear that there are certain triable issues for adjudication and the defendant/appellant is entitled to defend the Suit. The appellate side of the High Court ought to have taken into consideration the factual matrix of the case before recording its finding. Taking into consideration the totality of the facts and circumstances of the case, we are of the opinion that the defendant/appellant has made out a prima facie case of triable issues in the Suit which needs to be adjudicated. Therefore, the defendant is entitled to grant of unconditional leave to defend the Suit. **[State bank of Hyderabad vs. Rabo Bank, (2015(7) Supreme Today 328)(Supreme Court of India]**

Order 39 Rules 1 and 2

Order of temporary injunction is not binding upon a person who is not a party thereto. Due to declaration under Section 6 of West Bengal Estates Acquisition Act 1953 the defendants became intermediaries hence Civil Court had no jurisdiction to deal with the property in view of Section 57 B of the

Act. The Supreme Court sed aside the order of the trial court directing police to enforce the temporary injunction order against the appellants who were not parties in the suit.

[Bengal Ambuja Housing development Ltd. v. Pramila Sanfui, AIR 2015 SC 3729]

Order XXXIX Rules 1 and 2, and Order XLI Rule 5- Inherent and statutory powers to stay/restrain the execution of the action impugned in the lis during pendency of the lis- Always available to the courts-Order of disqualification- Suspension by court by way of interim order pending adjudication-Division Bench observing that so long as the order of disqualification was not set aside, it remained operative-Not correct.

It is a well settled principle of law that the Courts are always vested with inherent and statutory power to stay/restrian the execution of the action impugned in the lis during pendency of the lis. There powers are contained in Order 39 Rules 1 and 2, and Order 41 Rule 5 of the Code of Civil Procedure, 1908.

Keeping in view this well settled principle, which we need not elaborate herein, we are of the view that the Division Bench was not tight in observing that so long as the order of disqualification was not set aside, it remained operative.

In our considered view, the Division Bench failed to see that so long as the final adjudication is not done in accordance with law on merits in the election petitions, the District Court was vested with the power to pass appropriate interim orders in relation to the impugned action under Section 22-A of the Act which reads as under:

> "22-A Bar of jurisdiction: No order passed or proceedings taken under the provisions of this Act, shall be called in question in any Court, in any suit, or application, and no injunction shall be granted by any Court except District Court in respect of any action taken or about to be taken in pursuance of any power conferred by or under this Act."

The Division Bench also failed to appreciate the once writ petitions filed by the appellant herein were allowed on 07.11.2014 by suspending the proceedings dated 11.08.2014, the respondents had no option but to allow the appellant to function as the Chairman of ZPP.

Similarly the Division Bench was also not right in giving an illustration quoted above in support of the impugned order. In our opinion, the illustration is wholly misplace and has nothing to do with the short question involved herein.

In our considered opinion, the effect of the suspension order dated 07.11.2-014 of the learned Single Judge was that the appellant's

disqualification from the post of member of ZPTC and the Chairperson of ZPP was kept in abeyance till the disposal of the election petitions. In other words, no effect was to be given to the appellant's disqualification in relation to his status as member and the Chairperson till the disposal of the election petitions.

In our considered opinion, the impugned order of the Division Bench in directing removal of the appellant from the post of Chairperson and asking the Vice-Chairperson to take over the charge of the Chairperson in his place is not only untenable in law but also perverse.

Though learned senior counsel for the appellant also urged the issues relating to legality of the whip issued by the TDP contending inter alia that it was not in conformity with the requirements of Rules etc. But we refrain from going into this question at this stage in these appeals for the simple reason that these issues are sub judiced in the election petitions and hence need to be tried by the District Judge on merits in accordance with law as directed by the learned Single Judge vide order dated 07.11.2014.

In our considered view, if we find that the reasoning given by the High Court while passing the interim order is perverse and legally unsustainable being against the settled principle of law laid down by this Court then interference of this Court in such order is called for regardless of the nature of the order impugned in appeal. **[Edra Haribabu vs. Tulluri Venkata Narasimham & Ors, Mudavath Manthru Naik vs. Edara Haribabu & Ors., (2015(6) Supreme Today 735 Supreme Court of India]**

Companies Act

Auction Sale

In winding up proceedings under section 434, 457 before the High court, official liquidator auctioned the assets of the company in liquidation. Neither there was any proper publicity through advertisement nor any reserve price for the property to be sold was fixed. It was held that the auction sale was invalid and the entire process culminating in auction sale was vitiated due to illegality and irregularity in conducting sale. The auction sale and order confirming the sale were set aside and re-auction was ordered by the Supreme Court. ***[M/s. Tech Invest India (Pvt.) Ltd. thr. Major Shareholder Rajiv Gosain v. M/s. Assam Power & Electricals Ltd. AIR 2015 SC 3675]***

Constitution of India

Articles 14, 16, 25, 44—Contracting second marriage by a Muslim

Husband during subsistence of First Marriage without permission of Government in terms of R.29(1) U.P. Govt. Servant Conduct Rules, 1956 amounts to "misconduct".

This appeal has been preferred against the final judgment and order dated 01.03.2011 of the High Court of Judicature of *Allahaad in Khursheed Ahmad Khan v. State of U.P.* (Writ-A No. 36738 of 2008, decided on 01.03.2011 (All.) The question raised for consideration relates to the validity of the order dated 17.06.2008 removing the appellant from service for proved misconduct of contracting another marriage during existence of the first marriage without permission of the Government in violation of Rule 29 (1) of the U.P. Government Servants' Conduct Rules, 1956 (for short "the Conduct Rules")

The appellant was employed as Irrigation Supervisor, Tubewell Division, Irrigation Department, Government of Uttar Pradesh and posted at Fourth Sub Division, Hasanpur. He was served with a charge sheet alleging that during existence of first marriage with Sabina Begum, he married Anjum Begum and thereby violated Rule 29 of the Conduct Rules and further alleging that he had given misleading information to the authorities that he had given divorce to Sabina Begum. The appellant denied the charge by stating that the complaint made by Shagufta Parveen, sister of his first wife was due to her personal enmity. He had duly divorced his first wife, before performing the second marriage. However, he had made a statement to the contrary in enquiry proceedings initiated by the National Human Rights Commission due to fear of the police. It was only a mistake that he could not get the name of his first wife corrected in the service book.

It is on record that before the charge sheet, on a complaint by the sister of the first wife of the appellant, the National Human Rights Commission had issued notice to the appellant dated 27.10. 2006 and conducted an inquiry through the Superintendent of Police, District Moradabad who submitted a report to the effect that the appellant had in fact, performed a second marriage without the first marriage having been dissolved. The S.S.P., Moradabad also wrote to the department for taking action as per rules. It is on that basis that the department appears to have initiated action. In disciplinary proceedings, an inquiry officer was appointed who gave a report that the charge was fully proved. The appellant was furnished a copy of inquiry report and given an opportunity to respond to the same vide letter dated 21.1.2008. His reply being not satisfactory, the disciplinary authority imposed the punishment of removal on 17.06.2008.

Hon'ble Supreme Court held that-

……..It may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any other community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. What is permitted or not prohibited by a religion does not become a religious practice or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is permitted. Assuming the practice of having more wives than one or procreating more children than one is a practice followed by any community or group of people, the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does. [**Khursheed Ahmad Khan v. State of U.P., (2015) 8 SCC 439]**

Art. 21—Right to Privacy

Hon'ble Supreme Court considered ratio decidendi of its two earlier decisions namely *M.P. Sharma v. Satish Chandra, AIR 1954 SC 300* and Kharak Singh v. State of U.P., AIR 1963 SC 1295 on question of Right to Privacy as Fundamental Right which is implicit in Art. 21 of Constitution in the light of subsequent decisions in *R. Rajagopal v. State of T.N., (1994) 6 SCC 632* & *People's Union for Civil Liberties (PUCL) v. Union of India, (1997) 1 SCC 301*. While R. Rajagopal case held that the "right to privacy" is implicit under Article 21 of the Constitution, PUCL case held that the "Right to privacy" insofar as it pertains to speech is part of fundamental rights under Articles 19(1) (a) and 21 of the Constitution.

> In M.P. Sharma case an eight Judges bench of Hon'ble Supreme Court observed at para 18 –
>
> ……"A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction."

Where as in **Kharak Singh's** Case it was observed by a six judges bench of Supreme Court in Para 20-

> "20……Nor do we consider that Art. 21 has any relevance in the context as was sought to be suggested by learned counsel for the

petitioner. As already pointed out, the right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movement of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III."

While analyzing the aforesaid cases Hon'ble Supreme Court in present case held that the cases on hand raise far-reaching question of importance involving interpretation of Constitution. What is at stake is the amplitude of the fundamental rights including that precious and inalienable right under Article 21. If the observations made in M.P. Sharma (supra) and Kharak Singh (supra) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 would be denuded of vigour and vitality. At the same time, we are also of the opinion that the institutional integrity and judicial discipline require that pronouncement made by larger Benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger Benches. With due respect to all the learned Judges who rendered the subsequent judgments - where right to privacy is asserted or referred to their Lordships concern for the liberty of human beings, we are of the humble opinion that there appears to be certain amount of apparent unresolved contradiction in the law declared by this Court.

Therefore, in our opinion to give a quietus to the kind of controversy raised in this batch of cases once for all, it is better that the ratio decidendi of *M.P. Sharma v. State of U.P., AIR 1954 SC 300 and Kharak Singh vs. State of U.P., AIR 1963 SC 1295* is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength. [**K.S. Puttaswamy vs. Union of India, (2015) 8 SCC 735 (Matter refer to larger Bench)]**

Article 226, 227—Letters patent appeal to High Court—Writ Jurisdiction U/A 226 and supervisory jurisdiction U/A 227 distinguished—No writ can be issued against the order passed by the civil court and, therefore, no letters patent appeal would be maintainable.

Article 226 confers a power on a High Court to issue the writs, orders, or directions mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. This is neither an appellate nor a Revisional jurisdiction of the High Court. The High Court in exercise of its power under Article 226 of the Constitution exercises original jurisdiction,

through and said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may, for convenience, be described as extraordinary original jurisdiction. If that be so, it cannot be contended that a petition under Article 226 of the Constitution is a continuation of the proceedings under the Act concerned.

The order passed by the Civil Court is only amenable to be scrutinized by the High Court in exercise of jurisdiction under Article 227 of the Constitution of India, no intra-court appeal is maintainable. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226 of the Constitution and, therefore, a letters patent appeal or an intra-court appeal in respect of an order passed by the Single Judge dealing with an order arising out of a proceeding from a civil court would not lie before the Division Bench. No writ can be issued against the order passed by the civil court and, therefore, no letters patent appeal would be maintainable. The Civil Courts will decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. [**Jogendrasinhji Vijaysinghji v. State of Gujarat, (2015) 9 SCC 1]**

Art. 226- The availability of alternative remedy does not affect extra ordinary jurisdiction of High Court under Article 226. However, it is settled law that when an alternative remedy open to a litigant, he should not invoke writ jurisdiction of the High Court.

The respondent was awarded a road improvement contract. An agreement pertaining thereto was executed between the appellant and the respondent. As per the agreement, the work was to be completed within 12 months. As the respondent could not finish the work within stipulated period of 12 months, the time was extended by another 6 months. Later, it was extended by another 9 months. Even then the respondent failed to complete the work. Therefore, a memorandum to stop work was issued to him. At that point of time, some revised estimation was to be made but the appellant was not sanctioning the same, the respondent approached the High Court disposed of the petition by directing the appellant to make revised estimation. But as steps were not taken by the officials, contempt petition was filed and later it was dropped. Later, the respondent submitted a representation to the appellant. Then he filed several writ petition against the appellant. The High Court directed the Principal Secretary, PWD to consider his representation and pass orders as per law. Thereafter, the contract in favour of the respondent was terminated. This action was challenged by the respondent before the High Court. Considering

the submissions of the parties, the High Court accepted only one prayer and directed the appellant to measure the work already completed by the respondent before finalizing the next tender. However, it rejected other prayers of the respondent. This order was challenged by the respondent in intra-court appeal. The Division Bench first appointed a Commission to examine the work site and submit a report. It empowered the Commission to seek assistance from any official and also that it could call for any recour4ds from the appellant and as well as from the respondent. Based on the Report submitted by the Commission, the Division Bench concluded that the order passed by the authority was based on erroneous facts. The Division bench set aside the order of termination of contract and also ordered to pay expenses incurred for work conducted by the Commission. Hence this appeal.

Allowing the appeal, the Supreme Court.

Held-

It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudication of such disputes relating to contractual disputes. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court is issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226. [**State of Kerala v. M.K. Jose, (2015) 9 SCC 433]**

Article 226

Board of Control for Cricket in India (BCCI) even though is not State under Article 12 of the Constitution still it is amenable to writ jurisdiction as it performs public functions for the reason that BCCI has got pervasive control on game of cricket.

High Powered Probe Committee headed by Justice R.M. Lodha former Chief Justice of India was formed to investigate frauds in Indian Premier League (IPL) games including betting and conflict of interest. Regulation 6.2.4 of BCCI Regulations permitting its administrators to have commercial interest in the event (I.P.L. Matches) conducted by BCCI was struck down as it gave rise to conflict of interest. [***Board of Control for Cricket in India v. Cricket Association of Bihar AIR 2015 SC 3194]***

Articles 226 & 227

Against orders passed by Civil Court writ petition under Article 226 of the Constitution is not maintainable. Only in rare cases jurisdiction under article 227 can be exercised by the High Court and *Surya Dev Rai v. Ram Chander Rai AIR 2003 SC 3044* overruled. **[*Radhey Shyam v. Chhabi Nath***

AIR 2015 SC 3269 **and** ***Jogendrasinhji Vijaysinghji v. State of Gujarat AIR 2015 SC 3623]***

Article 245

A delegatee cannot frame regulations which are not in accordance with the statutory provision under which the delegatee is created. **[*Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited AIR 2015 SC 2978]***

Article 299—Application of doctrine of promissory estoppels against the government

Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. The doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. [**Devi Multiplex vs. State of Gujarat, (2015) 9 SCC 132]**

Co-operative Societies

M.P. Co-operative Societies Act, Section 64.

The purpose of the society in question was to purchase land, develop the same, carve out smaller plots for house sites and allot the same to its members. It was held that purchasing land touches the business of the society. However, it was further held that matter could not be referred for arbitration under Section 64 as under the said section disputes arising out of business transactions were referable and as for the seller of the land it was a solitary transaction hence it could not be said to be business transaction involving both the parties. **[*Bhanushali Housing Cooperative Society Ltd. v. Mangilal AIR 2015 SC 3016]***

Development Authority:

Delhi Development Authority floated scheme for allotment of flats. It was provided that in case allotment was cancelled, the deposited amount would be returned with 7% p.a. interest. It was further provided that if an allottee

deposited the installment/ amount beyond the due date he would be required to pay 12% p.a. interest. MRTP Commission directed that in case of cancellation of allotment also 12% interest must be paid by the DDA to the allottee. The Supreme Court reversed the order holding that both the rates could not be equated. **[*Delhi Development Authority v. P.R. Samanta AIR 2015 SC 3035]***

Development Authority:

Allotment of house

If in the advertisement calling application for allotment provisional price is given and it is mentioned therein that the final price would be fixed after completion of scheme and the allottee would be required to pay the balance then the allottees are bound by the said terms. However, final price cannot be fixed in accordance with circle rates or market price fixed by some committee. Charging such price is arbitrary and irrational. Final price fixed by Madhya Pradesh Housing and Infrastructure Development Board was set aside by the Supreme Court and it was directed that the escalation must be charged @ 10% per year from the date of advertisement to the date of completion. **[*Madhya Pradesh Housing and Infrastructure Development Board v. B.S.S. Parihar AIR 2015 SC 3436]***

Contract Act

Section 10

Contractor gave sub-contract. The principal directly made payments to the sub-contractor for smooth completion of work, however, such payments were made only on certification of the work by the contractor. Subsequently, dispute between contractor and sub-contractor arose. The arbitrator passed the award directing the principal to pay the disputed amount to the sub-contractor. The Supreme Court set aside the said direction holding that the mere fact that for smooth working of the project direct payments were made by the principal to the sub-contractor, it does not mean that it became liability of the principal to pay all the amounts due to the sub-contractor. **[*M/s Essar Oil Ltd. v. Hindustan Shipyard Ltd. AIR 2015 SC 3116]***

Copy Right Act

Section 62 and Trade Marks Act 1999 Section 134 and Section 20 C.P.C.

Under Copy Right Act and Trade Marks Act plaintiff may also sue at a

place where he /it resides/ works for gain or carries on business irrespective of provisions of C.P.C. However, if a company or corporation institutes suit taking advantage of this provision then the explanation to Section 20 C.P.C. infra will be applicable:

> *"A corporation shall be deemed to carryon business at its sole or principal office in India or in respect of any cause of action arising at any place where it has also a subordinate office at such place."*

The entire cause of action was alleged to have accrued in Mumbai and head office of the plaintiff was also at Mumbai. The suit was instituted at Delhi on the ground that plaintiff had its branch at Delhi. The Supreme Court held that in view of explanation to Section 20 C.P.C. the suit was not maintainable at Delhi and it ought to have been filed at Mumbai. **[*Indian Performing Rights Society Ltd. v. Sanjay Dalia AIR 2015 SC 3479]***

Criminal Procedure Code

Section 24—Role of Public Prosecutor and Private Counsel in Prosecution

The upshot of this analysis is that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing. Reverting to the case in hand, we are of the opinion that the complainant or informant or aggrieved party who is himself an accomplished criminal lawyer and who has been represented before us by the erudite Senior Counsel, was not possessed of any vested right of being heard as it is manifestly evident that the Court has not formed any opinion adverse to the prosecution. Whether the Accused is to be granted bail is a

matter which can adequately be argued by the State Counsel. We have, however, granted a full hearing to Mr. Gopal Subramanium, Senior Advocate and have perused detailed Written Submissions since we are alive to impact that our opinion would have on a multitude of criminal trials. [**Sundeep Kumar Bafna Versus State Of Maharashtra & Anr., (2015) 3 Scc (Cri) 558; (2014) 16 Scc 623,** Criminal Appeal No. 689 Of 2014 [Arising Out Of Slp (Crl.)No.1348 Of 2014**]**

Sec. 125—Maintenance

Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.

Merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance. [**Sunita Kachwaha & Ors. Versus Anil Kachwaha**, (2015) 3 Scc (Cri) 589; (2014) 16 Scc 715 Criminal Appeal No. 2310 Of 2014 (Arising Out Of Slp (Crl.) No. 2659/2012]

Sec. 154—FIR - not encyclopedia

FIR is not meant to be an encyclopedia nor is it expected to contain all the details of the prosecution case. It may be sufficient if the broad facts of the prosecution case are stated in the FIR. Complaint was lodged within few hours after the tragic event. PW-1 has lost his young daughter just married before six weeks in unnatural circumstances. Death of a daughter within few days of the marriage, the effect on the mind of the father-PW1 cannot be measured by any yardstick. While lodging the report, PW-1 must have been in great shock and mentally disturbed. Because of death of his young daughter being grief stricken, it may not have occurred to PW-1 to narrate all the details of payment of money and the dowry harassment meted out to his daughter. Unless there are indications of fabrication, prosecution version cannot be doubted, merely on the ground that FIR does not contain

the details. [**V.K. Mishra & Anr vs. State of Uttarakhand & Anr., AIR 2015 SC 3043 (Criminal Appeal No.1247 Of 2012) with Rahul Mishra vs. State Of Uttarakhand & Anr., (Criminal Appeal No. 1248 of 2012)]**

Sec. 167-- Custody - Defined

Custody, detention and arrest are sequentially cognate concepts. On the occurrence of a crime, the police is likely to carry out the investigative interrogation of a person, in the course of which the liberty of that individual is not impaired, suspects are then preferred by the police to undergo custodial interrogation during which their liberty is impeded and encroached upon. If grave suspicion against a suspect emerges, he may be detained in which event his liberty is seriously impaired. Where the investigative agency is of the opinion that the detainee or person in custody is guilty of the commission of a crime, he is charged of it and thereupon arrested. The terms 'custody' and 'arrest' are not synonymous even though in every arrest there is a deprivation of liberty is custody but not vice versa. [**Sundeep Kumar Bafna vs. State of Maharashtra & Anr., (2015) 3 Scc (Cri) 558; (2014) 16 SCC 623, Criminal Appeal No. 689 of 2014 [Arising out of Slp (Crl.)No.1348 Of 2014]**

Sec. 167-- Police Custody/Remand

Police custody – the person arrested during further investigation – may be given - subject to the fulfilment of the requirements and the limitation of Section 167

We are, therefore, of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167. [**Central Bureau of Investigation Versus Rathin Dandapat and others, AIR 2015 SC 3285 (Criminal Appeal No.1081 Of 2015) (Arising out of S.L.P. (Crl.) No. 3611 of 2015)]**

Sec. 173(2)-- Action on Final Report

In the event the Magistrate disagrees with the police report, he has

two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter. If the magistrate was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police, in such an event, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court. [**Chandra Babu @ Moses Versus State Through Inspector Of Police & Ors., AIR 2015 SC 3566 (Criminal Appeal No.866 of 2015) [Arising Out Of Slp (Crl.) No. 5702 Of 2012]**

Sec. 173(8)-- Whether Magistrate has power to direct to investigate by particular agency- Held no

The learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lancinated and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the concerned Superintendent of Police. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case. **[Chandra Babu @ Moses Versus State Through Inspector Of Police & Ors., AIR 2015 SC 3566 (Criminal Appeal No.866 Of 2015) [Arising Out Of Slp (Crl.) No. 5702 Of 2012]**

Section 227-- Discharge

Person who is added as an accused under Section 319 of the Cr.P.C - cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C

It is apparent that Section 319 AND Section 227 of the Cr.P.C, in essence, have the opposite effect. The power under Section 319 of the Cr.P.C.

results in the summoning and consequent commencement of the proceedings against a person who was hitherto not an accused and the power under Section 227 of the Cr.P.C., results in termination of proceedings against the person who is an accused. It does not stand to reason that a person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused.

The contrary would render the exercise undertaken by a Court under Section 319 of the Cr.P.C., for summoning an accused, on the basis of a higher standard of proof totally infructuous and futile if the same court were to subsequently discharge the same accused by exercise of the power under Section 227 of the Cr.P.C., on the basis of a mere prima facie view. The exercise of the power under Section 319 of the Cr.P.C., must be placed on a higher pedestal. Needless to say the accused summoned under Section 319 of the Cr.P.C., are entitled to invoke remedy under law against an illegal or improper exercise of the power under Section 319, but cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C. [**Jogendra Yadav & Ors Versus State Of Bihar & Anr. AIR 2015 SC 2951(Criminal Appeal No. 343 Of 2012]**

Section 235-- Hearing Before Sentence

The requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality. The accused would be justified in making a grievance that the trial court actually treated it as a mere formality as is evident from the fact that it

recorded the finding of guilt on 31-3-1987, on the same day before the accused could absorb and overcome the shock of conviction they were asked if they had anything to say on the question of sentence and immediately thereafter the decision imposing the death penalty on the two accused was pronounced. In a case of life or death as stated earlier, the presiding officer must show a high decree of concern for the statutory right of the accused and should not treat it as a mere formality to be crossed before making the choice of sentence. If the choice is made, as in this case, without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the court, the court's decision on the sentence would be vulnerable. We need hardly mention that in many cases a sentencing decision has far more serious consequences on the offender and his family members than in the case of a purely administrative decision; a fortiori, therefore, the principle of fair play must apply with greater vigour in the case of the former than the latter. An administrative decision having civil consequences, if taken without giving a hearing is generally struck down as violative of the rule of natural justice. Likewise a sentencing decision taken without following the requirements of sub-section (2) of Section 235 of the Code in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order. The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence. We think as a general rule the trial courts should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender. In the present case, as pointed out earlier, we are afraid that the learned trial Judge did not attach sufficient importance to the mandatory requirement of sub-section (2) of Section 235 of the Code. The High Court also had before it only the scanty material placed before the learned Sessions Judge when it confirmed the death penalty. [**State Of Haryana Versus Asha Devi And Anr**., **AIR 2015 Sc 3189 ;** (2015) 3 SCC (Cri) 433 ; (2015) 6 SCC 39 (May be repeated) CRIMINAL APPEAL NO. 1953 OF 200]

Section 300—Second Complaint

Having perused Section 300, we are satisfied, that the submission advanced at the hands of the learned counsel for the respondent, namely, that

Section 300 of the Criminal Procedure Code, will be an embargo to obstruct the right of the appellant to file a second complaint against the respondent, is not justified. Our above determination is based on the fact, that the respondent had not been tried, in furtherance of the previous complaint made by the appellant, under Section 376 of the Indian Penal Code. The contention of the learned counsel for the appellant, that the respondent had been discharged in furtherance of the complaint made by the appellant, without any trial having been conducted against him (the respondent), was not disputed. Based on the above factual contention, learned counsel for the appellant had placed emphatic reliance, on the explanation under Section 300 of the Criminal Procedure Code. The explanation relied upon, clearly mandates that the dismissal of a complaint, or the discharge of an accused, would not be construed as an acquittal, for the purposes of this Section. In this view of the matter, we are in agreement with the contention advanced at the hands of the learned counsel for the appellant. We are of the considered view, that proceedings in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint. Having so concluded, it emerges that it is open to the appellant, to press the accusations levelled by her, through her second complaint, referred to above. [**Ravinder Kaur Versus Anil Kumar, (2015) 3 Scc (Cri) 492; (2015) 8 Scc 286** Criminal Appeal No.457 Of 2008]

Sec. 311– Recall of witness

A conspicuous reading of Section 311 CrPC would show that widest of the powers have been invested with the courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a prefix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the court was only in relation to such evidence that appears to the court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the court. The order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 CrPC and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with

the prescription contained in Section 311 CrPC. It is, therefore, imperative that the invocation of Section 311 CrPC and its application in a particular case can be ordered by the court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined is concerned, the court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re- examined has to be ascertained. To put it differently, while such a widest power is invested with the court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution."

There would not be any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. Witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for victims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross-examination. **[AG Versus Shiv Kumar Yadav & Anr. AIR 2015 SC 3501 (Criminal Appeal No.1187 of 2015)]**

Sec. 401—Rivisional Jurisdiction

The learned Single Judge has dwelled upon in great detail on the statements of the witnesses to arrive at the conclusion that there are remarkable discrepancies with regard to the facts and there is nothing wrong with the investigation. In fact, he has noted certain facts and deduced certain conclusions, which, as the Hon'ble Supreme Court find, are beyond the exercise of revisional jurisdiction. It is well settled in law that inherent as well as revisional jurisdiction should be exercised cautiously. Normally, a

revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the Court. [**Chandra Babu @ Moses Versus State Through Inspector Of Police & Ors., AIR 2015 SC 3566 (Criminal Appeal No.866 Of 2015) [Arising Out Of Slp (Crl.) No. 5702 Of 2012]**

Law of Bail, Sec. 437-- The Conundrum of Cognizance, Committal & Bail

The provisions of cognizance to committal are subsumed in Cr. P.C. from the section 190 to the Section 209 to commit the case to Sessions. What is to happen to the accused in this interregnum; can his liberty be jeopardized! The only permissible restriction to personal freedom, as a universal legal norm, is the arrest or detention of an accused for a reasonable period of 24 hours. Thereafter, the accused would be entitled to seek before a Court his enlargement on bail. In connection with serious offences, Section 167 CrPC contemplates that an accused may be incarcerated, either in police or judicial custody, for a maximum of 90 days if the Charge Sheet has not been filed. An accused can and very often does remain bereft of his personal liberty for as long as three months and law must enable him to seek enlargement on bail in this period. Since severe restrictions have been placed on the powers of a Magistrate to grant bail, in the case of an offence punishable by death or for imprisonment for life, an accused should be in a position to move the Courts meaningfully empowered to grant him succour. It is inevitable that the personal freedom of an individual would be curtailed even before he can invoke the appellate jurisdiction of Sessions Judge. The Constitution therefore requires that a pragmatic, positive and facilitative interpretation be given to the CrPC especially with regard to the exercise of its original jurisdiction by the Sessions Court. We are unable to locate any provision in the CrPC which prohibits an accused from moving the Court of Session for such a relief except, theoretically, Section 193 which also only prohibits it from taking cognizance of an offence as a Court of original jurisdiction. This embargo does not prohibit the Court of Session from adjudicating upon a plea for bail. It appears to us that till the committal of case to the Court of Session, Section 439 can be invoked for the purpose of pleading for bail. If administrative difficulties are encountered, such as, where there are several Additional Session Judges, they can be overcome by enabling the accused to move the Sessions Judge, or by further empowering the Additional Sessions Judge hearing other Bail Applications whether post committal or as the Appellate Court, to also entertain Bail

Applications at the pre-committal stage. Since the Magistrate is completely barred from granting bail to a person accused even of an offence punishable by death or imprisonment for life, a superior Court such as Court of Session, should not be incapacitated from considering a bail application especially keeping in perspective that its powers are comparatively unfettered under Section 439 of the CrPC. [**Sundeep Kumar Bafna Versus State Of Maharashtra & Anr., (2015) 3 Scc (Cri) 558; (2014) 16 Scc 623, Criminal Appeal No. 689 Of 2014 [Arising Out Of Slp (Crl.)No.1348 Of 2014]**

The principles for bail - culled out

The principles which can be culled out, for the purposes of the instant case, can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately

after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into Section 438 CrPC

the limitations mentioned in Section 437 CrPC. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal

of anticipatory bail should necessarily depend on the facts and circumstances of each case.

The following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of in juring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused in entitled to an order of bail. [**Bhadresh Bipinbhai Sheth Versus State Of Gujarat & Another, AIR 2015 SC 3090, Criminal appeal nos. 1134-1135 of 2015 [arising out of Special Leave Petition (Crl.) Nos. 6028-6029 of 2014]**

Role of pariry & criminal history in granting bail .

When a stand was taken that the accuded was a history sheeter, it was imperative on the part of the Court to scrutinize every aspect and not capriciously record that the accused is entitled to be admitted to bail on the

ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the 2nd respondent has been charge sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this court would tantamount to travesty of justice, and accordingly we set it aside. [**Neeru Yadav Versus State Of U.P And Another**, **(2015) 3 Scc (Cri) 527; (2014) 16 Scc 508** Criminal Appeal No.2587 Of 2014 (Arising Out Of S.L.P. (Crl.) No. 8469 Of 2014)]

Sec. 439-- Cancallation of bail-- Jurisdiction for cancallation of bail - when an individual behaves in a disharmonious manner ushering in disorderly things - which the society disapproves - the legal consequences are bound to follow.

The liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.

It is well settled in law that cancellation of bail after it is granted

because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court. [**Neeru Yadav Versus State Of U.P And Another**, **(2015) 3 SCC (Cri) 527; (2014) 16 SCC 508** Criminal Appeal No.2587 Of 2014 (Arising Out Of S.L.P. (Crl.) No. 8469 Of 2014)]

Section 482— No quash even after settelment of amount

The allegation against the respondent is 'forgery' for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science & technology etc. have led to an enormous increase in economic crimes viz. phishing, ATM frauds etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at public at large.

The inherent power of the High Court under Section 482 Cr.P.C. should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi's case, the order of the High Court cannot be sustained. [**Central Bureau Of Investigation Versus Maninder Singh, AIR 2015 SC 3657 (CRIMINAL APPEAL NO. 1496 OF**

2009)]

Criminal Trial

Circumstantial evidence

In case of circumstantial evidence, court has to examine the entire evidence in its entirety and ensure that the only inference that can be drawn from the evidence is the guilt of the accused. In the case at hand, neither the weapon of murder nor the money allegedly looted by the appellants or any other material was recovered from the possession of the appellants. There are many apparent lapses in the investigation and missing links:–(i) Non-recovery of stolen money; (ii) The weapon from which abrasions were caused; (iii) False case lodged by PW-2 alleging that he was being robbed by some other miscreants; (iv) Non-identification of the dead body and (v) Non-explanation as to how the deceased reached Maniya village and injuries on his internal organ (penis). Thus we find many loopholes in the case of the prosecution. For establishing the guilt on the basis of the circumstantial evidence, the circumstances must be firmly established and the chain of circumstances must be completed from the facts. The chain of circumstantial evidence cannot be said to be concluded in any manner sought to be urged by the prosecution.

In view of the time gap between Manoj left in the truck and the recovery of the body and also the place and circumstances in which the body was recovered, possibility of others intervening cannot be ruled out. In the absence of definite evidence that appellants and deceased were last seen together and when the time gap is long, it would be dangerous to come to the conclusion that the appellants are responsible for the murder of Manoj and are guilty of committing murder of Manoj. Where time gap is long it would be unsafe to base the conviction on the "last seen theory"; it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. From the facts and evidence, we find no other corroborative piece of evidence corroborating the last seen theory.

Normally, this Court will not interfere in exercise of its powers under Article 136 of the Constitution of India with the concurrent findings recorded by the courts below. But where material aspects have not been taken into consideration and where the findings of the Court are unsupportable from the evidence on record resulting in miscarriage of justice, this Court will certainly interfere. The "last seen theory" seems to have substantially weighed with the courts below and the High Court brushed aside many loopholes in the prosecution case. None of the circumstances relied upon

by the prosecution and accepted by the courts below can be said to be pointing only to the guilt of the appellants and no other inference. If more than one inferences can be drawn, then the accused must have the benefit of doubt. In the facts and circumstances of the case, we are satisfied the conviction of the appellants cannot be sustained and the appeal ought to be allowed. [**Nizam & Anr. Versus State of Rajasthan, AIR 2015 SC 3430 (Criminal Appeal No. 413 OF 2007)]**

Directions regarding Acid Attack Cases

Member Secretary of the State Legal Services Authority is directed to take up the issue with the State Government so that a minimum of Rs.3,00,000/- (Rupees three lakhs only) is made available to each victim of acid attack and the Authority would obtain a copy of the Victim Compensation Scheme from the concerned State/Union Territory and to give it wide and adequate publicity in the State/Union Territory so that each acid attack victim in the States/Union Territories can take the benefit of the Victim Compensation Scheme.

The State Governments/Union Territories should seriously discuss and take up the matter with all the private hospitals in their respective State/Union Territory to the effect that the private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries.

The hospital, where the victim of an acid attack is first treated, should give a certificate that the individual is a victim of an acid attack. This certificate may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.

The Secretary in the Ministry of Home Affairs and Secretary in the Ministry of Health and Family Welfare to take up the matter with the State Governments/Union Territories to ensure that an appropriate notification to this effect is issued within a period of three months from today. It appears that some States/Union Territories have already issued such a notification, but, in our opinion, all States and Union Territories must issue such a notification at the earliest.

In case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as

the Criminal Injuries Compensation Board for all purposes. [**Laxmi Versus Union Of India & Ors., AIR 2015 SC 3662 (WRIT PETITION (CRL.)NO.129 OF 2006)]**

For Remand of case for retrial

The incident in question occurred on 24th March, 1998. The appellant was, at that point of time, around 38 years old. The appellant is today a senior citizen. Putting the clock back at this stage when the prosecution witnesses themselves may not be available, will in our opinion, serve no purpose. That apart, the trial Court had, even upon appreciation of the evidence, although it was not required to do so, given its finding on the validity of the sanction, and had held that the prosecution case was doubtful, rejecting the prosecution story. It will, therefore, serve no purpose to resume the proceedings over and again. We do not, at any rate, see any compelling reason for directing a fresh trial at this distant point of time in a case of this nature involving a bribe of Rs.500/-, for which the appellant has already suffered the ignominy of a trial, conviction and a jail term no matter for a short while. We, accordingly, allow this appeal and set aside the order passed by the High Court. [**Nanjappa Versus State of Karnataka, AIR 2015 SC 3060 (Criminal Appeal No.1867 Of 2012)]**

Compromise

Compromise in a case of rape or attempt of rape - no circumstances can really be thought of

In a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a

woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. [**State of M.P. Versus Madanlal, AIR 2015 SC 3003 (Criminal Appeal No. 231 of 2015)]**

Education

Due to high tech, large scale unfair means used in All India Pre-Medical and Pre-Dental Entrance Test held in 2015 it was cancelled by the Supreme Court. It was something akin to what was shown in the film 'Munna Bhai MMBS'. Supreme Court cancelled the entire selection process and directed for fresh entrance test. **[*Tanvi Sarwal v. Central Board of Secondary Education AIR 2015 SC 3454]***

Evidence Act

Sec. 3-- Appriciation of evidence

In Suicide Cases -

The Trial Court and so also the High Court has rejected the story of suicide by the deceased and in the opinion of the Hno'ble Supreme Court rightly so, for reasons more than one. Firstly, because the death in the case at hand occurred because of strangulation/constriction force around the neck leading to asphyxia and shock as observed by the doctor which is possible not necessarily by hanging, although the doctor has opined it could be caused probably by hanging also. Secondly, because if death had occurred because of hanging, she would have been discovered by the witnesses in a hanging position, unless of course somebody had upon seeing her hanging, brought her down and placed the body on the ground or the rope by which she hung herself had itself snapped in which event there would have been a rope partly tied to the branch of the tamarind tree and partly around her neck with a noose which the witnesses say was not there. Thirdly, because it is nobody's case that she was carrying a rope with herself when she was seen going towards the field. The presence of the rope and the heap of stones before the branch was obviously a make-believe situation created by the appellant, who was seen by the witness, returning from the field. Fourthly, because there was no immediate provocation for the deceased to take the step to commit suicide. All that she wanted was money from her husband to take her child to the hospital for treatment. Besides, the parents of the deceased were also present in the village around the time the deceased went towards the field which only shows that there was no intense or great provocation that could

have led her to commit suicide. Fifthly, because the classic signs of death by hanging as reported in Modi's Medical Jurisprudence and Toxicology (23rd Edition) like face being usually pale; saliva dribbling out of the mouth down on the chin and chest; Neck Stretched and elongated in fresh bodies; Ligature mark being oblique, non-continuous and placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard yellow and parchment like; Abrasions and ecchymoses around the edges of the ligature mark, subcutaneous tissues under the mark being white or glistening; carotid arteries, internal coats being ruptured; fracture or dislocation of the cervical vertebrae were all conspicuously absent in the case at hand as is evident from the post-mortem report prepared by the doctor. [**Eshwarappa Vs State Of Karnataka, Air 2015 SC 3037 (Criminal Appeal No. 1951 Of 2012)]**

SUICIDE NOTE + LETTER

Process under which the suicide note come before the court makes it doubtful.

Inland letter Kha7/1 was not discovered during investigation but the same was produced by the accused in a bail application filed on 29.08.1997. Thereafter on the request made by the accused, investigating officer was directed to investigate upon the same. As noticed earlier, the inland letter was not discovered during the investigation; but brother-in-law of Archana is said to have discovered the inland letter and also the letter allegedly written by Archana to her brother-in-law from the suitcase of deceased-Archana. Brother-in-law who is said to have discovered those letters was not examined in the court. No explanation is forthcoming from the accused as to why the same was not handed over to the investigating officer. We have also perused the original of the inland letter and the postal seal in the said letter was not clear. In his evidence PW-14 investigating officer had specifically stated that he tried to ascertain from which post office the inland letter was dispatched but he could not identify the same. When the seal on the inland letter was not clear, investigating officer cannot be faulted in conducting further investigation in connection with the said inland letter. The fact that it was produced on 29.08.1997 along with the bail application raises doubts about the genuineness of the said inland letter. When bail application was filed, by that time possibly there would have been legal advice and deliberations. The possibility of such an inland letter being fabricated to create evidence to make a possible defence cannot be ruled out and rightly the courts below recorded concurrent findings rejecting the said letter. **V.K. Mishra & Anr Versus State Of Uttarakhand & Anr., AIR 2015 SC 3043 (Criminal Appeal No.1247 Of 2012) with Rahul Mishra**

Versus State Of Uttarakhand & Anr., (Criminal Appeal No. 1248 of 2012)

Section 32-- Dying declaration– Duties of authorites - Whenever a person is brought to a hospital in an injured state which indicates foul-play

When a person makes a statement while being aware of the prospect that his death is imminent and proximate, such a statement assumes a probative value which is almost unassailable, unlike other statements which he may have made earlier, when death was not lurking around, indicating the cause of his death. That is to say that a person might be quite willing to implicate an innocent person but would not do so when death is knocking at his door. That is why a Dying Declaration, to conform to this unique specie, should have been made when death was in the contemplation of the person making the statement/declaration.

The central question, however, remains as to whether the alleged Dying Declaration attracts authenticity. Since the prosecution has succeeded in showing/proving by preponderance of probability that a dowry death has occurred, the burden of proving innocence has shifted to the accused. It appears to us to be unexceptionable that whenever a person is brought to a hospital in an injured state which indicates foul-play, the hospital authorities are enjoined to treat it as a medico-legal case and inform the police. If the doctor, who has attended the injured, is of the opinion that death is likely to ensue, it is essential for him to immediately report the case to the police; any delay in doing so will almost never be brooked. The police in turn should be alive to the need to record a declaration/statement of the injured person, by pursuing a procedure which would make the recording of it beyond the pale of doubt. This is why an investigating officer (I.O.) is expected to alert the jurisdictional Magistrate of the occurrence, who in turn should immediately examine the injured. When this procedure is adopted, conditional on the certification of a doctor that the injured is in a fit state to make a statement, a Dying Declaration assumes incontrovertible evidentiary value. We cannot conceive of a more important duty cast on the Magistrate, since the life & death of a human being is of paramount importance. We think that only if it is impossible for the Magistrate to personally perform this duty, should he depute another senior official. Non-adherence to this procedure would needlessly and avoidably cast a shadow on the recording of a Dying Declaration. The prosecution, therefore, would be expected to prove that every step was diligently complied with. The prosecution would have to produce the doctor or the medical authority to establish that on the examination of the injured/deceased, the police had been immediately informed. The I.O. who was so informed would then have to testify that he alerted the Magistrate, on whose non- availability, some responsible person

was deputed for the purpose of recording the Dying Declaration. We are not in any manner of doubt that where medical opinion is to the effect that a person is facing death as a consequence of unnatural events, the responsibility of the Magistrate to record the statement far outweighs any other responsibility. There may be instances where there was no time to follow this procedure, but that does not seem to be what has transpired in the case in hand. In cases where some other person is stated to be recipient of a Dying Declaration, doubts may reasonably arise. **[Ramakant Mishra @ Lalu Etc. Versus State Of U.P., (2015) 3 Scc (Cri) 503; (2015) 8 Scc 299,** Criminal Appeal Nos.1279-1281 Of 2011**]**

Sec. 35-- Recovery of weapon – not necessary

Conviction of the appellant-Ramvilas and other accused is based mainly on the evidence adduced by six eye witnesses. All the eye witnesses have consistently spoken about the occurrence and the overt acts of the accused including the appellant-Ramvilas. Courts below have recorded the concurrent findings of fact observing that the testimony of eye witnesses is credible and trustworthy. Deceased-Bansilal had sustained as many as twenty six injuries. Evidence of eye witnesses is amply corroborated by medical evidence. By perusal of the records, no cogent reasons are forthcoming to disbelieve the testimony of the eye witnesses and we find no reason to interfere with the concurrent findings recorded by the courts accepting the evidence of eye witnesses as trustworthy. In the incident, the presence of witness at the time and place of occurrence cannot be doubted. Evidence of the injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of the injured witnesses.

The contention that the presence of accused at the scene of occurrence was doubtful as no 'katta' was seized from him nor any gun shot injury was found on the person of deceased-Bansilal. As observed by the High Court all the eye witnesses have spoken in one voice so far as carrying of 'katta' by appellant-Ramvilas and therefore his presence at the scene of occurrence cannot be doubted merely because no 'katta' was recovered from him. It has come out in the evidence that the appellant-Ramvilas had exhorted the other accused in attacking the deceased and also actually participated in the attack. As pointed out by the courts below that the appellant-Ramvilas nowhere pleaded in his examination under Section 313 Cr.P.C. that he was neither present at the scene of occurrence nor involved in the incident. Held the appellant guilty. [**Ramvilas Versus State of M.P.., AIR 2015 SC 3362 (Criminal appeal nos. 1786-1787 of 2009)]**

Section 113-B

Since the burden of proving innocence beyond reasonable doubt shifts to the Accused in the case of a dowry death, as it has in the present case, it was imperative for the defence to prove the sequence of events which lead to the recording of the alleged Dying Declaration by the Tehsildar DW1. This burden has not even been faintly addressed. It appears that at the time of seeking bail the accused had requested the Sessions Court to call for the alleged Dying Declaration. Keeping in perspective that none of the Accused was present when the deceased was receiving medical treatment in the hospital, or when the Dying Declaration was allegedly recorded, or at the time of death, or even at the time of cremation, the manner in which the Accused learnt of the existence of the Dying Declaration has not been disclosed. The statement of the I.O. also does not clarify the position; he has stated that he learnt of the existence of the Dying Declaration from the relatives of the deceased. On the application of Sher Singh, the burden and necessity of proving this sequence of events stood transferred to the shoulders of the Accused since Section 304B of the IPC had been attracted. The I.O. has deposed that all the Accused, including the late father-in-law, Gorakh Nath, had absconded after the incident. In fact, in the cross-examination, the I.O. states that - "there is no reliable information about the Dying Declaration... On keeping this information that the Dying Declaration of Vijay Lakshmi was recorded by the Magistrate I did not consider any need of this thing". Neither the Doctor DW2 who had allegedly certified that the deceased was in a fit condition to make a statement nor the Tehsildar who had allegedly written down the alleged Dying Declaration has stated the manner in which the Tehsildar had been conscripted or located to perform this important recording. The Dying Declaration appears to have mysteriously popped up and referred to at the time of praying for bail. The chain or sequence of events which lead to its recording remains undisclosed. In his statement, the Tehsildar has not clarified the manner in which he happened to record the Dying Declaration and the timing of its transmission to the Court. Since the onus of proof had shifted to the Accused, this alleged sequence of events should have been proved beyond reasonable doubt by them. We may emphasise that the Tehsildar as well as the Doctor who allegedly certified that the deceased was in a fit state to make the Dying Declaration has been produced by the defence. The Doctor should have spoken of the

sequence of events in which the Tehsildar came to record the Dying Declaration. The alleged exculpating Dying Declaration is, therefore, shrouded in suspicion and we have not been persuaded to accept that it is a genuine document. The defence has failed to comply with Section 113B of the Evidence Act. [**Ramakant Mishra @ Lalu Etc. Versus State Of U.P., (2015) 3 SCC (Cri) 503; (2015) 8 SCC 299,** Criminal Appeal Nos.1279-1281 Of 2011**]**

Sec. 145-- For contradiction

Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction. [**V.K. Mishra & Anr Versus State Of Uttarakhand & Anr., AIR 2015 SC 3043 (Criminal Appeal No.1247 Of 2012) with Rahul Mishra Versus State Of Uttarakhand & Anr., (Criminal Appeal No. 1248 of 2012)]**

Foreign Trade (development and Regulation) Act

Ss.3 and 5- Prohibition of import of crude palm oil selectively through ports of Kerala alone- Validity of.

The issue involved in this appeal is as to whether the Government had the requisite power under Section 5 read with Section 3 of Foreign Trade (Development and Regulation) Act, 2992 to issue the impugned notifications selectively prohibiting import of crude palm oil at the ports of Kerala and as to whether the said notifications were arbitrary and in violation of Article 14 of the constitution?

No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determining the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decisions is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the executive as the policy making is the domain of the executive and the decision in question has passed the test of the judicial review. [**Parison Agrotech Private Limited and other v. Union of India and others, (2015) 9 SCC 667]**

Indian Penal Code

Sec. 154-- Sentencing – Principal - Discretion on reasonable and rational parameters - keep in mind the paramount concept of rule of law - the conscience of the collective and balance - Society waits with patience to see that justice is done.

Section 306 IPC deals with abetment of suicide and further stipulates that whoever abets in the crime would be punished with imprisonment for either description for a term which may extend to ten years and shall also be liable to fine. The two ingredients are essential to prove the offence, that is, the death should be suicidal in nature and there must be abetment thereof. The learned trial Judge has arrived at the conclusion that the respondents had committed the offence under Section 306 IPC. He has applied the test that the accused persons are first offenders and belong to weaker section of the society. Another mitigating fact that has been recorded is that daughter of the

accused Satbir Singh was teased. He has also mentioned the nature of the offence and other circumstances of the case. It is also not discernible how the principle of "first offender" would come into play in such a case. Once the offence under Section 306 IPC is proved, there should have been adequate and appropriate punishment. The learned trial Judge has, on the basis of the appreciation of the evidence on record, cometo the conclusion that the deceased was assaulted and being apprehensive of further torture, he committed suicide. The mitigating factors which have been highlighted by the learned trial Judge are absolutely non-mitigating factors and, in a way, totally inconsequential for imposing a sentence of three years. The approach of the High Court, as the reasoning would show, reflects more of a casual and fanciful one rather than just one. A Court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the Court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective. **[Raj Bala Versus State of Haryana & Ors. Etc. Etc., AIR 2015 SC 3142 (Criminal Appeal nos. 1049-1050 of 2015) (@ SLP(Crl) Nos. 4099-4100 of 2015)]**

Sec. 300

The decision in Kalu Ram's case cannot be applied in the instant case. The element of inebriation ought to be taken into consideration as it considerably alters the power of thinking. In the instant case, the accused

was in his complete senses, knowing fully well the consequences of his act. The subsequent act of pouring water by the accused on the deceased also appears to be an attempt to cloak his guilt since he did it only when the deceased screamed for help. Therefore, it cannot be considered as a mitigating factor. An act undertaken by a person in full awareness, knowing its consequences cannot be treated at par with an act committed by a person in a highly inebriated condition where his faculty of reason becomes blurred. **Santosh S/O Shankar Pawar Versus State Of Maharashtra**, **(2015) 3 Scc (Cri) 276 ; (2015) 7 Scc 641,** Criminal Appeal No. 683 Of 2015 (Arising Out Of S.L.P. (Crl.) No.5741/2013)

Sec. 304 -B-- Dowry must consist - any property - given or even agreed to be given - can be at any time - can be many years after a marriage - must be in connection with the marriage -which is reasonably connected to the death of a married woman.

Dowry must first consist of any property or valuable security - the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever. Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary. Such property or security can be given or agreed to be given either directly or indirectly. Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned. Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised. Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".

Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfil the object sought to be achieved by Parliament, we feel that the judgment in Appasaheb's case followed by the judgment of Vipin Jaiswal do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would

necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. **Rajinder Singh Versus State Of Punjab, (2015) 3 SCC(Cri) 225 ; (2015) 6 SCC 477** (Criminal Appeal No.2321 Of 2009)

Sec. 306

Even cruelty aspect meted and proved beyond all reasonable doubt - cannot be said - the same had lead her to commit suicide or that the accused had abetted in the commission of the same

Further, the accused were present inside the house at the time the deceased consumed the poisonous tablet and they had taken her to the hospital as soon as they realized that she was in a critical condition. Thus, even though the cruelty aspect meted on the deceased has been proved beyond all reasonable doubt, it cannot be said that the same had lead her to commit suicide or that the accused had abetted in the commission of the same, as is clear from the facts and circumstances of the present case. The appellant no.1 herein even though had behaved stoically in the beginning by calling the act of the deceased as "epileptic fit", but as soon as she realized the gravity of the situation she called her son and they took her to the hospital for examination and treatment. This act of the accused clearly shows that they did not abet the deceased in the commission of the suicide, if at all it was a suicide.

From the facts and circumstances of the present case and upon the examination of the body of deceased, it is clear that her death was a result of an accident and she had mistakenly consumed the poisonous tablet as the same was kept with other medicines. Had the deceased wanted to implicate the accused, she would have revealed their names in the final moments before her death, as she had nothing to fear for and her antecedent showed that she had previously filed a complaint against the accused when they harassed her. If the accused had any hand in her death, the same would have been revealed in the dying declaration of the deceased. Thus, the prosecution has failed to prove beyond all reasonable doubt that the accused had abetted the deceased in the commission of suicide as provided under the provision of Section 306, I.P.C. [**Bhanuben and Anr. Versus state of gujarat, AIR 2015 SC 3405 (Criminal Appeal No.1209 of 2015 , (Arising out of SLP (Crl.) No. 3869 of 2015)]**

Section 493– Marriage Sustained – is divorce decree is set a side – held no offence made out.

A perusal of the section 493 IPC reveals, that to satisfy the ingredients thereof, the man concerned should have deceived the woman, to believe the existence of matrimonial ties with her. And based on the aforesaid belief, the man should have cohabited with her. The question to be determined on the basis of the factual position. In the facts and circumstances of this case, it is possible to accept such deceit, at the hands of the HUSBAND, even if it is accepted for the sake of arguments, that cohabitation continued between the parties between 08.01.1994 till 23.06.1994, i.e., from the date when the HUSBAND was granted an ex-parte decree of divorce, till the date when the HUSBAND married IInd LADY. We are of the considered view, that with the setting aside of the ex-parte decree of divorce dated 08.01.1994 (on 19.02.1996), it cannot be accepted, that there was any break in the matrimonial relationship between the parties. Even the complaint filed by the FIRST WIFE under Section 376 of the Indian Penal Code was not entertained (and the respondent was discharged), because it came to be concluded, that the matrimonial ties between the FIRST WIFE and the HUSBAND were restored, with the setting aside of the ex-parte decree of divorce, as if the matrimonial relationship had never ceased. In sum and substance therefore, consequent upon the passing of the order dated 19.02.1996 (whereby the Additional District Judge, Chandigarh, set aside the ex-parte decree dated 08.01.1994), the matrimonial ties between the FIRST WIFE and the HUSBAND, will be deemed to have subsisted during the entire period under reference (08.01.1994 to 23.06.1994). In fact, the accusation of the FIRST WIFE, on the aforesaid premise, in the first complaint filed by the FIRST WIFE against the HUSBAND (under Section 376 of the Indian Penal Code) was not entertained, and the HUSBAND was discharged, just because of the above inference. For exactly the same reason, we are satisfied that the charge against the HUSBAND is not made out, under Section 493 of the Indian Penal, because the HUSBAND could not have deceived the FIRST WIFE of the existence of a "lawful marriage", when a lawful marriage indeed existed between the parties, during the period under reference. [**Ravinder Kaur Versus Anil Kumar, (2015) 3 Scc (Cri) 492; (2015) 8 Scc 286** Criminal Appeal No.457 Of 2008]

Section 493– Offence Compoundable

So far as the surviving provision, namely, Section 494 of the Indian Penal Code is concerned, the same is compoundable. Having given our thoughtful consideration to the facts and circumstances of this case, specially the factual position as has emerged after the ex-parte decree of divorce dated 08.01.1994 (passed by the Additional District Judge, Chandigarh) was

set aside on 19.02.1996, we are of the view, that the best course for the parties is to settle their dispute amicably. Section 320 of the Criminal Procedure Code is an avenue available to the parties, for such resolution. [**Ravinder Kaur Versus Anil Kumar, (2015) 3 Scc (Cri) 492; (2015) 8 Scc 286** Criminal Appeal No.457 Of 2008]

Indian Succession Act

Sections 61, 68 -- Indian Evidence Act, Sec. 71-- The Propounder of disputed Will is enjoined to remove the suspicious circumstances surrounding the Will by adducing cogent evidence. The propounder will have to explain why a person bequeathed his entire property excluding his natural heirs.

The appellant claimed that a will had been executed in 1973 by one N (since deceased), the predecessor-in-interest of the respondents, thereby bequeathing the property mentioned therein to him. The appellant filed a petition under the property mentioned therein to him. The appellant filed a petition under Section 276 of the Succession Act with the will annexed, seeking grant of letter of administration. The parties adduced oral and documentary evidence. Whereas the appellant examined six witnesses, including himself, two attesting witnesses K (an advocate) and B and the Sub-Registrar Concerned: the respondents examined eight witnesses in support of their case.

The trial court held that the will had been validly executed by the testator with a sound disposing state of mind in the presence of two attesting witnesses. Consequently, the letter of administration as prayed for, by the appellant vis-à-vis the said will was granted.

The respondents preferred appeal before the High Court. Referring to the testimony of the attesting witnesses, the High Court held that they could not prove the execution of the will as well as the attestation thereof within the meaning of Section 63(c) of the Act, a mandatory legal edict. The High Court also dismissed the plea based on Section 71 of the 1872 Act noting that the evidence of the Attesting witnesses produced by the appellant, did not only demonstrate lack of intention to attest the will, but also, rendered the execution of the document and their signatures thereon doubtful.

The main question before the Supreme Court in appeal was whether N, deceased, had executed the will validly while possessed of a sound disposing maid?

Held:

A will as an instrument of testamentary disposition of property being a legally acknowledged mode of bequeathing a testator's acquisitions during his lifetime, is to be acted upon only on his/her demise, it carries with it an overwhelming element of sanctity. As understandably, the testator/testatrix, as the case may be, at the time of testing the document for its validity, would not be available, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. This is more so, as many a times, the manner of dispensation is in stark departure from the prescribed canons of devolution of property to the heirs and legal representatives of the deceased. The rigour of Section 63(c) of the Act and Section 68 of the 1872 Act is thus befitting the underlying exigency to secure against any self-serving intervention contrary to the last wishes of the executor.

The legislatively prescribed essentials of a valid execution and attestation of a will under Section 63(c) of the Succession Act are mandatory in nature, so much so that any failure or deficiency in adherence thereto would be at the pain of invalidation of such document/instrument of disposition of property. The interplay of Section 63 (c) of the Succession Act as also Sections 68 and 71 of the Evidence Act and the underlying legislative objective would be of formidable relevance in evaluating the materials on record and recording the penultimate conclusions.

Viewed in premise, Section 71 of the 1872 Act has to be necessarily accorded a strict interpretation. The two contingencies permitting the play of this provision, namely, denial or failure to recollect the execution by the attesting witness produced, thus a fortiori has to be extended a meaning to ensure that the limited liberty granted by Section 71 of 1872 Act does not in any manner efface or emasculate the essence and efficacy of Section 63 of the Act and Section 68 of 1872 Act. The distinction between failure on the part of a attesting witness to prove the execution and attestation of a Will and his or her denial of the said event or failure to recollect the same, has to be essentially maintained. Any unwarranted indulgence, permitting extra liberal flexibility to these two stipulations, would render the predication of Section 63 of the Act and Section 68 of the 1872 Act, otiose. The propounder can be initiated to the benefit of Section 71 of the 1872 Act only if the attesting witness/witnesses, who is/are alive and is/are produced and in clear terms either denies /deny the execution of the document or cannot recollect the said incident. Not only, this witness/witnesses has/have to be credible and impartial, the evidence adduced ought to demonstrate unhesitant denial of the execution of the document or authenticate real forgetfulness of such fact. If the testimony evinces a casual account of the execution and attestation of the document disregardful of truth,

and thereby fails to prove these two essentials as per law, the propounder cannot be permitted to adduce other evidence under cover of Section 71 of the 1872 Act. Such a sanction would not only be incompatible with the scheme of Section 63 of the Act read with Section 68 of the 1872 Act but also would be extinctive of the paramountcy and sacrosanctity thereof, a consequence, not legislatively intended. If the evidence of the witnesses produced by the propounder is inherently worthless and lacking in credibility, Section 71 of Act 1872 cannot be invoked to bail him (propounder) out of the situation to facilitate a roving pursuit. In absence of any touch of truthfulness and genuineness in the overall approach, this provision, which is not a substitute of Section 63 (c) of the Act and Section 68 of the 1872 Act, cannot be invoked to supplement such failed speculative endeavour.

Section 71 of the 1872 Act, even if assumed to be akin to a proviso to the mandate contained in Section 63 of the Act and Section 68 of the 1872 Act, it has to be assuredly construed harmoniously therewith and not divorced therefrom with a mutilative bearing. [**Jagdish Ghanda Sharma v. Narain Singh Saini (Dead) through legal representatives and others, (2015) 8 SCC 615]**

Interpretation of Statutes

Words "subject to" mean one provision yields place to another provision. This is an expression which places limitations.

Stand of the Government regarding particular interpretation of a statutory provision cannot be taken as correct in every case, as, ultimately the interpretation is to be done by the Court which would be final.

Through interpretation words may be supplied only if without supplying the words some absurdity is likely to come into existence**. [*Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited AIR 2015 SC 2978]***

Land Acquisition Act

Section 23—Compensation – Market Value.

If the land is acquired for industrial development then it means that it has got non-agricultural potentiality. 25% deduction towards development charges and 5% deduction towards waiting period for every year and expenses for conversion are on the higher side. Total 17% deduction under both the heads would be justified. [***Peerappa Hanmantha Harijan v. State of Karnataka AIR 2015 SC 2908]***

Section 23—Compensation – Market Value.

If due to statutory ban on execution of sale-deeds, no sale-deed of near proximity is available then old acquisition award of adjoining land may be taken into consideration with suitable escalation. If the acquired land has got immense potential due to the reason that it has got pilgrimage status then escalation must be on the higher side.

In the earlier awards in the year 1957 market value had been fixed @ Rs. 30/- per square feet, in the year 1964 @ Rs. 40/- per square feet and in the year 1976 @ Rs. 73/- per square feet. Determining the appreciation in the value in the last 25 years @ Rs. 3/- per square feet per year by the reference court was found suitable by the Supreme Court and determining the rate of the acquired lands between Rs. 80/- to Rs. 100/- per square feet, was upheld. **[*K. Devakimma v. Tirumala Tirupati Devasthanams AIR 2015 SC 3375]***

Land Acquisition

If the Government has sold a property vested in it through auction and highest bidder has been granted provisional possession after depositing full amount but formal ownership has not been transferred and before that the land is acquired then the acquisition is of the encumbrance on the land and it is permissible. The doctrine that the Government cannot acquire land of its own does not apply.

The land was evacuee property but under Displaced Persons (Compensation and Rehabilitation) Act of 1954 (since repealed in 2005) it had vested in Central Government. The Supreme Court held that thereafter the land did not remain evacuee property. **[*Lt. Governor of Delhi v. Matwal Chand, AIR 2015 SC 3709]***

Limitation Act

Section 5-- Condonation of Delay

Under Section 80 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act) limitation to file appeal is 30 days. Under Section 18(2) of the Act appellate tribunal has to dispose of the appeal in accordance with the provisions of Recovery of Debts Due to Banks and Financial Institutions Act 1993 (RDB Act) which Act contains provision of condonation of delay. Accordingly even though by virtue of Section 29(2) of the Limitation Act power of condonation of delay is not available to the appellate court, under SARFAESI Act however it is entitled to condone delay as power of condonation of delay is available under RDB Act . Principle of legislation by incorporation is applicable. **[*Baleshwar Dayal Jaiswal v. Bank of India AIR 2015 SC 2881]***

Limitation-- Article 91

Suit for recovery of consideration on bonds. Bonds are specific movable property, hence, Article 91(a) of the schedule to the Limitation Act is applicable.

The words "first learns" used in Article 91(a) mean exact knowledge and not mere suspicion or unconfirmed knowledge. **[*Standard Chartered Bank v. Andhra Bank Financial Services Ltd. AIR 2015 SC 3530]***

Motor Vehicles Act

S. 166- Compensation/Damages. Question of Future prospects to be added to annual income to determine the compensation towards loss of dependency referred to Lager Bench. Conflict in Reshma Kumari, (2013)9 SCC 65 and Rajesh (2013) 9 SCC 54. Matter already standing referred to a larger Bench vide Pushpa, (2015) 9 SCC 166, this matter also to be heard therewith.

Though claimants filed income tax returns for two Assessment Years 2005-2006 and 2006-2007, as per income tax returns for year 2006-2007, income of assessee was Rs 2,02,911. Tribunal did not take income of deceased for Assessment Year 2006-2007 on the ground that only xerox copy was filed and claimants failed to examine Income Tax Authorities to prove the same. High Court chose to calculate average of income for two Assessment Years 2005-2006 and 2006-2007- Propriety.

Held-considering age of deceased and transport business he was doing, income of deceased stated in income tax return for year 2006-2007 i.e. Rs 2,02,911 may be taken as income of deceased. Ten per cent of said amount i.e. Rs 20,290 is to be deducted towards income tax and remaining comes to Rs 1,82,620. Amount to be deducted for professional tax is Rs 2400 and after deducting the same, balance comes out to Rs 1,80,220. Income from house property for the year 2006-2007 is shown to be Rs 20,000 and after deducting the same, net amount comes to Rs 1,60,220.Deducting l/4th towards personal expenses which comes out to Rs 40,055 loss of dependency/loss of contribution is arrived at Rs 1,20,165 p.a. Since deceased has completed only 45 yrs, High Court has rightly taken the age 0 deceased as 45 yrs and adopted multiplier of 14 which is appropriate multiplier and the same is maintained w Total loss of dependency calculated at Rs 16,82,310 (Rs 1,20,165xl4). Substantial compensation to be awarded towards conventional damages like loss of consortium, loss love and affection and funeral expenses-Rs 100.000 is

awarded towards loss of consortium and Rs 1,00,000 towards loss of love and affection minor children and Rs 25,000 towards funeral expenses and Rs 25,000 towards to claimants is enhanced to Rs. 19,32,310. Enhanced compensation of Rs. 4,62,938 is payable with interest @ 9% p.a. from date of claim petition till date of realization. [**Shashikala v. Gangal Akshmamma, (2015) 9 SCC 150]**

Section 166- Reduction of compensation- When not Warranted? –When disability has been found proved, the compensation should not be reduced.

Court has considered opinion, in a case where the appellant has proved that he has lost his speaking power as also lost his memory retention power due to causing of head injury and further he is not able to move freely at the age of 35 years and lastly due to these injuries, he has also lost job, we fail to appreciate as to how and on what reasons the MACT and the High Court could come to a conclusion that a compensation of Rs. 4,00,000/- claimed by the appellant was on a higher side and thus reduced it to Rs. 1,54,200/-. Indeed we found no reason.

In Court's considered opinion, keeping in view of the nature of injuries sustained by the appellant, resultant permanent disabilities caused to him to the extent of 50% or 30% due to such injuries which are held proved by the appellant coupled with the amount spent by him in receiving medical treatment also duly held proved (Ex-P-1 to Ex-P-58) by him, loosing the permanent job due to injuries sustained by him, future loss of income caused as result of the injuries and lastly the continuous mental pain and agony suffered by him, a sum of Rs. 4,00,000/- claimed by the appellant by way of compensation is just and reasonable.

In a case of this nature, in our opinion, the injuries sustained by the claimant appellant herein are more painful because he has to live his remaining life with such disabilities, which he did not have before accident. This undoubtedly deprives him to live his normal life. The Courts below failed to take note of this material fact while determining the compensation, which in our opinion, calls for interference by this Court.

In view of foregoing discussion, the appeals filed by the claimant succeed and are hereby allowed. Impugned order is modified in appellant-claimant's favour by awarding a sum of Rs. 4,00,000/- by way of compensation against respondent No. 1-Corporation. An awarded sum, i.e. Rs. 4,00,000/- (Rs. 4 Lakhs) would carry interest at the rate of 6% per annum payable from the date of claim petition till realization. No. Costs. **[Mithusinh Pannasinh Chauhan vs. Gujarat State Road Transport Corporation and Anr., (2015 (6) Supreme Today 714 Supreme Court of India]**

Section 166-Compensation- Consideration for -In absence of any salary slip etc, nature of job, wages under Minimum Wages Act ought to be considered and agricultural income of deceased has to be added-Correct multiplier factor ought to be taken on basis of age of deceased -Funeral expenses are also to be added to the final amount of compensation-Appellants would also be entitled to interest on the total amount of compensation.

In the case of Vimal Kanwar & Ors. V. Kishore Dan & Ors.(2013) 7 SCC 476 this Court has held as under:-

"31. In New India Assurance Co. Ltd. this Court noticed that the High Court determined the compensation by granting 100% increase in the income of the deceased. Taking into consideration the fact that in the normal course, the deceased would have served for 22 years and during that period his salary would have certainly doubled, upheld the judgment of the High Court.."

Taking the principle laid down in the aforesaid case, the deceased would have served another 25 years, during that period their salary would have certainly doubled, which is the view taken by this Court in the case of New India Assurance Co. Ltd. v. Gopali & Ors., (2012) 12 SACC 198 keeping in view the aforesaid statement of law laid down in the aforesaid cases and monthly income of the deceased who were doing the skilled job of carpentry and added to that income, the income that was derived from the agricultural occupation from their agricultural occupation from their agricultural land and future prospects as held by this Court in the above case, it would be just and proper for this Court to assess their monthly income at Rs. 12,000/-p.m. each for the purpose of computation of loss of dependency. Further, in view of the law laid down by this Court in the case of Santosh Devi v. National Insurance Company Ltd. & Ors., (2012) 6 SCC 421 this Court has ruled that even in the case of private employment, the future prospects can be taken into consideration to determine the loss of dependency. Having regard to the age of the decease, the same shall beaded to the annual income of the deceased to determine the just and reasonable compensation under the heading of the loss of dependency.

Therefore, it would be just and proper to take the aforesaid additional income from the agricultural occupation and further prospects as claimed by the appellants on the basis of speculation and presumption and apply the multiplier 16, as the same is applicable in view of the age of the deceased as 33 years as on the date of their death, which is sworn to by the witnesses who were examined before the Tribunal on behalf of the appellants, in respect of both the Claim Petitions before the Tribunal.

Thus, the annual income of both the deceased would be Rs. 1,44,000/- each. Deducting ¼th of this amount towards their personal expenses, in order to determine the loss of dependency and keeping in view the age of the minor children, their widowed wives and the aged parents, as their units will be 4 and 5 respectively, as provided in the Sarla Verma case, the balance amount comes to Rs. 1,08,000/- {(1,44,000/-(-) Rs. 36,000/-(1/4th of Rs. 1,44,000/-)]. Therefore, the loss of dependency of the appellants by applying the appropriate multiplier of 16, comes to Rs. 17,28,000/-(Rs. 1,08,000/- X16).

Further, we award Rs. Rs. 1,00,000/- to each of the appellant-children, i.e. Rs. 1,00,000/- and Rs. 3,00,000/- respectively, as per the principles laid down by this Court in the case of Jiji Kuruvila & Ors. V. Kunjujamma Mohan & Ors.,(2013) 9 SCC 166 towards loss of love and affection of the deceased father. Further, an amount of Rs. 50,000/- each is to be awarded to the parents of the deceased for the loss of love and affection of their deceased son as per the principles laid down by this Court in the case of M. Mansoor & Anr. V. United India Insurance Co. Ltd. (2013) 12 SCALE 324. We further award Rs. 25,000/- each towards funeral expenses of both the deceased as held by this Court in the case of Rajesh & Ors. V. Rajvir Singh & Ors., (2013) 9 SCC 54.

The appellants are also entitled to the interest on the compensation awarded by thisCourt in these appeals at the rate 9% p.a. along with the amount under the different heads as indicated above. The courts below have erred in awarding the interest at the rate of 8% o.a. on the compensation awarded by them to the appellants without following thedecision of this Court in Municipal Corporation of Delhi, Delhi v. Uphaar Tragedy Victims Association & Ors., (2011) 14 SCC 481.

Accordingly, we award the interest at the rate of 9% p.a. on the compensation determined in these appeals from the date of filing of the application till the date of payment. 9% p.a. from the date of filing of the application till the date of payment. **[Smt. Neeta W/o Kallappa Kadolkar & Ors. Vs. The Div. Manager, Msrtc, Kolhapur, 2015(7) Supreme Today 118 Supreme Court of India]**

Section 166- Compensation- Determination of- While determining compensation in motor accident cases, besides correct monthly income, factors like future prospects, funeral expenses, lose of love and affection, medical expenses and interest have to be quantified.

We have heard the learned counsel for the parties. In our considered view, the courts below have erred in taking the monthly income of the deceased at Rs.11,146/- p.m. From the facts, circumstances and evidence on record, it is clear that the deceased was 27 years of age, working with HDFC as the

Manager earning Rs.1,81,860/- per annum (i.e. Rs.15,155/- p.m.) and there were definite chances of his further promotion and consequent increase in salary by way of periodical revision of the salary on the basis of cost of living Index prevalent in the area if he would alive and worked in the bank. Therefore, adding 50% under the head of future prospects to the annual income of the deceased according to the principle laid down in the case of Vimal Kanwar & Ors. (supra), the total loss of income comes to Rs.2,72,790/- per annum [Rs. 1,81,860 + (1/2 * Rs.1,81,860)]. Deducting 10% tax (Rs.27,279/-), net annual income comes to Rs.2,45,511/-. Deducting 1/3rd [Rs.81,837] towards personal expenses since the claimants are the parents of the deceased, loss of dependency comes to 1,63,674 X 11(appropriate multiplier as per the age of the parent) Rs. 18,00,414/-.

1.	Loss of Dependency	Rs. 1800,414/-
2.	Loss of Love and affection	Rs. 1,00,000/-
3.	Funeral expenses	Rs. 25,000/-
4.	Medical expenses	Rs. 5,00,190/-
	Total	**Rs. 24,25,604.00**

The Tribunal and the High Court have further erred in law in awarding only Rs.2,000/- towards funeral expenses instead of Rs.25,000/- according to the principles laid down by this Court in Rajesh & Ors. v. Rajbir Singh & Ors. Hence, we award Rs.25,000/- towards the same.

Further, the Tribunal and the High Court have erred in not following the principles laid down by this Court in M. Mansoor & Anr v. United India Insurance Co. Ltd., 2013(12) SCALE 324, in awarding a meagre sum of just Rs.30,000/- under the heads of loss of love and affection. Accordingly, we award Rs.1,00,000/- to the appellants towards the same.

Further, we award Rs.5,00,190/- towards medical expenses incurred towards medical treatment.

The Courts below have erred in not granting the interest on compensation at the rate of 9% p.a. as per the principles laid down in the case of Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481. The total compensation payable to the appellants by the respondent-Insurance Company will be Rs. 24,25,604/- with interest at the rate of 9% p.a. from the date of filing of the application till the date of payment to the appellants. **[Kanhsing & Anr. Vs. Tukaram & Ors. (2015(7) Supreme Today 637 Supreme Court of India]**

Municipalities

Kerala Building Tax Act.

For imposition of luxury tax on a multistoried building having different flats purchased by different persons, the entire building cannot be taken as one unit. The tax shall be imposed on separate flats and not on total area of the entire building. In such situation principle of purposive construction will apply. [***State of Kerala v. A.P. Mammikutty AIR 2015 SC 3009]***

Municipalities – annual value for the purposes of house tax and water tax determination.

Under Section 116 of Delhi Municipal Corporation Act general principle for determination of rateable value of land and buildings assessable to property tax has been provided. The principle was explained and clarified in two judgments by the Supreme Court reported in *Dr. Balbir Singh v. M.C.D., AIR 1985 SC 339* and *R.P., Chaudhari v. M.C.D. 2000 (4) SCC 577.* In the case of *P.R. Chaudhari* the position as continuing before 1994 was examined. In 1994 Delhi Municipal Corporation (Determination of Readable Value) Bye-laws 1994 were framed. The Supreme Court held that the principles laid down in both the earlier authorities of the Supreme Court did not apply after the framing of the bye-laws.

It was further held that those cases which did not become final before amendment of 2003 of Delhi Municipal Corporation Act would be decided as per un-amended provision. It was explained that even the cases which were pending before the District Judge and which were remanded will also be governed by the un-amended provisions. Through amendment of 2003 Municipal Taxation Tribunal had been set up. However, if under amended Section 169 third proviso if the applicant requested for transfer of appeal to the tribunal, it was to be so transferred.

[M.C.D. v. M/s Mehrasons Jewellers, AIR 2015 SC 3121]

Negotiable Instruments Act

Sec. 138

Taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the accused in the commission of offence. It is settled law that to attract a case under Section 141 of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability. But in this case, the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged

offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.

So far as the Letter of Guarantee is concerned, it gives way for a civil liability which the respondent No. 2-complainant can always pursue the remedy before the appropriate Court. So, the contention that the cheques in question were issued by virtue of such Letter of Guarantee and hence the appellant is liable under Section 138 read with Section 141 of the N.I. Act, cannot also be accepted in these proceedings.

Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Section 138/141 of the N.I. Act, making a person vicariously liable has to ensure strict compliance of the statutory requirements. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law. [**Pooja Ravinder Devidasani vs. State Of Maharashtra & Anr., (2015) 3 SCC (Cri) 378; (2014) 16 SCC 1**, Criminal Appeal Nos.2604-2610 Of 2014 Arising Out Of Special Leave Petition (CRL) Nos. 9133-9139 Of 2010]

Narcotic Drugs and Psychotropic Substances Act

Effect of possibility of Accused abscondance

Both the DSP Maharaj Singh as well as I.O. Ramphal have deposed that public persons were available when the contraband was seized; however, none of the public person acceded to their request of joining the investigation as an independent witness. The Courts below have found it unbelievable but no reason for same is rendered. In our opinion, the consistent statement of both the DSP as well as I.O. rather enhances the veracity of the circumstances as put forth by them. With respect to the finding of the Courts below that Om Prakash could not have fled away after scaling the wall and the police constables would have failed to catch hold of him; we find the Courts below have proceeded on assumption and conjecture. There is nothing in the evidence which could show that Om Prakash could not have run away. There are positive statements by several prosecution witnesses that he ran away on seeing the police party and these statements have withstood the test of

cross examination as well. Further, no other evidence was led to disprove the fact of running away of accused Om Prakash. So, held that the High Court and the Trial Court were not correct in arriving at the said finding. [**State Of Haryana Versus Asha Devi And Anr., AIR 2015 Sc 3189 ; (2015) 3 SCC (Cri) 433 ; (2015) 6 SCC 39 (Criminal Appeal No. 1953 Of 2009)]**

No possibility of tempering with sample if the seal was proved to be intact and the sample was un-tampered.

There has been a controversy with respect to possession of seal. The controversy is that I.O. Ramphal had given the seal "RP" to ASI Rishiraj on 03.02.2006 after sealing the contraband and samples thereof. However, the next day when the case property was produced before the learned Judicial Magistrate, after verification it was resealed again with "RP". The Courts below found the case of prosecution as doubtful inasmuch as that when the seal "RP" was in possession of ASI Rishiraj, how could it have been with I.O. Ramphal the next day. We find, the more important evidence was with respect to the sample which was sealed with "RP". There is clear evidence that initially the samples were taken and sealed with "RP" and "MS" on 03.02.2006 at the place of seizure and thereafter, on same day, SHO Vikram Singh also sealed the said samples with "SS". There is uncontroverted evidence to the fact that the samples were produced before the learned Judicial Magistrate, where seal of one sample was broken and resealed with "RP". Thereafter, the sample was deposited in Judicial Malkhana from where it was sent to the FSL. The FSL report notes that the seal was intact and the sample was un-tampered.

All the persons who possessed the contraband sample have been brought on record to support that no tampering was done with the samples. The Defence failed to bring out anything in the cross-examination of the witnesses with respect to tampering of the samples. Thus, we find that the samples were properly dealt with throughout and the same was found to be Ganja. Going further, with respect to the seal that was handed over to ASI Rishiraj, the Defence failed to cross-examine the I.O. Ramphal as to how did he got possession of seal back from ASI Rishiraj. Under these circumstances, we do not believe that the prosecution was duty bound to explain the movement of the seal from one person to another in the given circumstances. Since, the movement of sample has been proved and found to be regular, the prosecution has sufficiently proved its case to establish the guilt of the accused in the present case. All the persons who possessed the contraband sample have been brought on record to support that no tampering was done with the samples. [**State Of Haryana Versus Asha Devi And**

Anr., AIR 2015 Sc 3189 ; (2015) 3 SCC (Cri) 433 ; (2015) 6 SCC 39 (Criminal Appeal No. 1953 Of 2009)]

Practice and Procedure

Administration of Justice- Liability of legal heirs-Legal heirs of original defendant bound by agreement executed by him- Also bound by written statement filed by the original defendant.

Though the appellants have pleaded that Mishrilal Mondal was not absolute owner of the land, however, said plea appears to have not been accepted by none of the courts below. Moreover, the legal heirs of the original defendant are not only bound by the agreement executed by him, but also by the pleas taken by the original defendant in his written statement before the trial court. **[Hemanta Mondal and Others Vs. Sri Ganesh Chandra Naskar, 2015(7) Supreme Today 70 Supreme Court of India]**

Prevention of Corruption Act

Essential for the offecne under Sections 7 and 13(1)(d)(i)&(ii) of the P. C. Act - proof of demand of illegal gratification

The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder. **[P. Satyanarayana Murthy Versus the Ddist. Inspector of Police and Anr., AIR 2015 SC 3549 (Criminal Appeal No. 31 of 2009)]**

Section 19—Sanction under -- Invalid Sanction - should have discharged the accused - rather than recording an order of acquittal on the merit of the case

The Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said order was incompetent to grant sanction. The trial Court held that the authority who had issued the sanction was not

competent to do so, a fact which has not been disputed before the High Court or before us. The only error which the trial Court, in the opinion of the Hon'ble Supreme Court, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case. As observed by the Hon'ble Supreme Court in Baij Nath Prasad Tripathi's vs State of Bhopal and ors AIR 1957 SC 494 (supra), the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent Court was bound to be invalid and non-est in law. **[Nanjappa Versus State of Karnataka, AIR 2015 SC 3060 (Criminal Appeal No.1867 Of 2012)]**

Rent Control Act

Calcutta Thika Tenancy Act of 1949-- Section 2(5)

While determining the meaning of the words "any structure" it will have to be seen that for what purpose structure was erected or acquired. It is irrelevant to see whether structure is temporary or permanent. Accordingly purpose of the structure is relevant and not its nature. **[*Nemai Chandra Kumar v. Mani Square Ltd., AIR 2015 SC 2955]***

Representation of People Act

Election petition should be disposed off expeditiously and the court shall not be liberal in granting adjournments. **[*Pukhrem Sharatchandra Singh v. Mairembam Prithviraj, AIR 2015* SC 3783]**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act

Section 24(2)-- Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013

Hon'ble Court observed that there is no ambiguity (a) that the award is over five years old; there is no ambiguity that (a) the Award is over five years old and (b) that compensation has not been paid or (c) that possession of the land has not been taken, the acquisition is liable to be quashed. In Rajiv Chowdhrie HUF v. Union of India, noting that the physical possession of the

land had not been taken by the Respondents, nor compensation paid by the Respondents to the Appellant in respect whereof the Award was passed on 6.8.2007, the acquisition proceedings had been declared as having lapsed. The same position was arrived at in Rajiv Chowdhrie HUF v. Union of India (2015) 3 SCC 541 by a different Bench of this Court. **[Radiance Finance (P) v. Union of India, (2015) 8 SCC 544]**

Service Law

Constitution of India, Article 311

A police constable was dismissed from service on account of unauthorized absence on few occasions. The absence was due to the reason that he was suffering from Tuberculosis. It was held that punishment of dismissal from service was disproportionate. Accordingly, it was substituted by compulsory retirement which is also a prescribed punishment under the relevant rules of Haryana from where the case arose. **[*Rajendra Kumar v. State of Haryana, AIR 2015 SC 3780]***

Entitlement to Higher Grade Scale to the eligible employee- cannot be withdrawn on insufficient grounds

The appellant had completed nine years of service on 30.6.2006 and was granted the first higher grade scale of Rs. 4000-6000 by the competent authority i.e. Commissioner of Tribunal Development, Gujarat State w.e.f. 1.7.2006 by order dated 22.06.2007, according to the policy of the Government Higher Grade Scale introduced vide Gujarat Government Resolution dated 16.8.1994.

The order of granting first higher grade scale to the appellant vide said resolution was not given effect to because of the objection raised by the audit authorities and same was withdrawn by the order dat3ed 14.2.2008 and it was pleased that no opportunity to hearing was given to the appellant. The order dated 14.2.2008 was challenged by the appellant by way of Special Civil Application which was allowed on 5.2.2009 by the High Court and the impugned order was quashed and set a aside. Liberty was granted to the respondent authority to pass the appropriate order in accordance with law and on merits after giving an opportunity of hearing to the appellant. The Commissioner of Tribal Development considered the pleas of the appellant and passed and order 26.8.2009 and cancelled the higher pay scale given to the appellant.

This appeal by special leave is directed against the judgment and order dated 11.12.2009 passed by the High Court of Gujarat at Ahmadabad in K.K.

Gohil v. State of Gujarat, whereby the High Court has dismissed the letters patent appeal of the appellant.

While allowing the civil appeal filed by the appellant Hon'ble Supreme Court held-

From perusal of the Government Resolution dated 16.8.1994, it is manifest that the grant of a higher grade scale to the eligible employees who have completed nine years of service is permissible, provided that the employee is eligible to get the promotion on the basis of his overall performance, qualifications and passing the examination if prescribed. It is also material that if the employee gets higher grade scale without passing any competitive examination, he will have to clear the departmental examination otherwise the grant of higher grade scale is to be withdrawn.

However, by circular dated 24.11.2004, the Government of Gujarat modified the earlier Resolution taking note of the High Court's order and directed that in cases where for getting higher pay scales a departmental examination is necessary then in such cases it is equally necessary that the departmental examination should be organised in time. Further by Government Order dated 22.06.2006, it was specifically brought to the notice of the Department that if the higher departmental examination is not organised during the eligibility period for getting the higher pay scales then in such case the higher pay scale benefit cannot be stalled on such ground. In the instant case, admittedly, the higher pay scale was ordered to be granted to the appellant after completion of nine years but the same was withdrawn on the basis of earlier circular of 1994. The High Court has not considered the subsequent circular of 2004 and based on the circular of 1994, the order withdrawing the benefit was upheld. The impugned order (*K.K. Gohil v. State of Gujarat, 2009 SCC online Guj 11474*) passed by the High Court on this account cannot be sustained in law. [**K.K. Gohil vs. State of Gujarat and others, (2015) 9 SCC 652]**

Service Law- Pension- Reiterated that pension is not a bounty but a benefit conferred upon employee for his unblemished career- Duty of State of avoid unwarranted litigation emphasized.

It is a well known principle that pension is not a bounty. The benefit is conferred upon an employee for his unblemished career. In **D.S. Nakara v. Union of India (1983) 1 SCC 305 : 1983 SCC (L & S) 145**, D.A. Desai, J. speaking for the Bench opined that: (SCC pp. 319-20, paras 18-20)

> "The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the

State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in **Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330]** wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh [(1976) 2 SCC 1]".

It is the duty of the State Government to avoid unwarranted litigations and not to encourage any litigation for the sake of litigation. [**State of Rajasthan v. Mahendra Nath Sharma, (2015) 9 SCC 540]**

Specific Relief Act

Section 6r/w Order VII Rule 3 of the Code of Civil Procedure, 1908-Suit for permanent prohibitory injunction-Land in question described with boundaries and its municipal number-Property identifiable even in absence of length and breadth of the land-Trail court decreeing the suit-No. Error.

We have considered the submission of leaned counsel for the defendants but we are unable to agree with it for the reason that had it been a

case of mandatory injunction requiring restoration of possession of land to the plaintiff or demolition of the construction raised by the defendants, what the defendants have pleaded before us, could have been accepted but the present suit is for the relief of permanent prohibitory injunction in respect of the land which is described with boundaries and its municipal number. Therefore, it cannot be said that the decree passed by the trial court is un-executable.

Order VII Rule 3 of the Code of Civil Procedure, 1908 (for short "CPC"), which pertains to the requirement of description of immovable property, reads as under:

> " Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property, sufficient to identify it, and in case such property can be identified by boundaries in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

The object of the above provision is that the description of the property must be sufficient to identify it. The property can be identifiable by boundaries, or by number in a public record of settlement or survey. Even by plaint map showing the location of the disputed immovable property, it can be described. Since in the present case, the suit property has been described by the plaintiff in the plaint not only by the boundaries but also by the municipal number, and by giving its description in the plaint map, from no stretch of imagination, it can be said that the suit property was not identifiable in the present case. In our opinion, the High Court has righty held that the first Appellant Court has erred in law in dismissing the suit by holding that the land is not identifiable. It appears that the first Appellate Court has wrongly framed the additional issue as to whether the property in dispute is identifiable or not particularly when there was no such plea in the written statement. We are in agreement with the High Court that there was no need on the part of the first Appellate Court to remit the matter to the trial court as contended by the defendants before is (High Court) to allow the parties to adduce evidence on the additional issue, as neither issue on identifiability of land arises from the pleadings nor the evidence was lacking on record. **(Zarif Ahmad (D) through Lrs. & Ans. Vs. Mohd. Farooq, (2015 (7) Supreme Today 123 Supreme Court of India).**

Section 20

Suit for specific performance of agreement for sale of immovable property cannot be decreed merely on the basis of a finding in a criminal proceeding regarding existence of the agreement. The Civil Court is required to record independent finding of existence of the agreement. An agreement was alleged to have been executed on quarter sheet of a paper bearing no stamp.

Signatures were denied by the defendant but no opinion of the expert was sought. In such situation suit for specific performance cannot be decreed. The relief being discretionary cannot be granted.
K. Nanjappa v. R.A. Hameed AIR 2015 SC 3389

Section 20-Discretionary jurisdiction- Scope of - Where the contract, though not voidable, gives plaintiff an unfair advantage over defendant, decree of specific performance need not be passed.

In the above facts and circumstances of the case and the judicial principle discussed above, we are of the opinion that it is a fit case where instead of granting decree of specific performance, the plaintiff can be compensated by directing the appellant to pay a reasonable and sufficient amount to him. We are of the view that mere refund of rupees four lacs with interest at the rate of 8% per annum, as directed by the trial court, would be highly insufficient. In our considered opinion, it would be just and appropriate to direct the appellants (Legal Representatives of original defendant No.1, since died) to repay rupees four lacs along with interest at the rate of 18% per annum from 21.06.2004 till date within a period of three months from today to the L.Rs. of respondent No. 1 (mentioned in I.A. No. ---- of 2015 dated 07.09.2015). If they do so, the decree of specific performance shall stand set aside. We clarify that if the amount is not paid or deposited before the trial court in favour of the L.Rs. of respondent No.1 within a period of three months, as directed above, the decree of specific performance shall stand affirmed. We order accordingly. **(Ramesh Chand (Dead) through LRs. Vs. Asruddin (Dead) through LRs and another, (2015(7) Supreme Today) 343 (Supreme Court of India).**

Suit for Specific Performance

Suit for Specific Performance of agreement to sell immovable property. Failure of the plaintiff to pay balance sale consideration within stipulated time disentitlements him to obtain decree.

The last contention urged is whether defendant Nos. 12 to 15 (the appellants herein) are protected under Section 19(b) of the Specific Relief Act as they being the bona fide purchasers. Learned counsel for defendant Nos. 12 to 15 has rightly invited our attention that the non-compliance of the contract regarding payment of balance consideration to defendant Nos. 1 to 11 on the part of the plaintiff within nine months is an undisputed fact and further the agreement of sale is not registered, as is evidenced from the encumbrance certificate obtained by defendant Nos. 12 to 15 before they entered into an agreement (Exhibit B-1). Both the Courts below have erroneously recorded an

erroneous finding on the non existent fact holding that the agreement of sale in favour of the plaintiff is a registered document which, in fact, is not true. The same is evidenced from the encumbrance certificate. More so, defendant Nos. 12 to 15 before entering into the agreement with defendant Nos. 1 to 11 have made proper verification from the competent authority to purchase the part of the suit schedule property and got the agreement of sale (Exhibit B-1) executed in their favour, from defendant Nos. 1 to 11 and thereafter, they got the sale deed registered by paying sale consideration amount. As could be seen from the agreement of sale and registered sale deed, which is marked as Exhibit B-3, it is very clear that defendant Nos. 12 to 15 have paid the sale consideration amount of the property, therefore, the reliance placed upon Section 19(b) of the Specific Relief Act as they being the bona fide purchasers, the specific performance of contract cannot be enforced against the transferees. Defendant Nos. 12 to 15 being the transferee as they have purchased the suit schedule property for value and have paid the money in good faith and without notice of the original contract. [**Padmakumar v. Dasayyan, (2015) 8 SCC 695]**

U.P. Intermediate Education Act

Regulations framed there under providing that 50% of the posts shall be filled through promotion and further providing that if a single post in clerical cadre is to be filed then it must be filled through promotion from amongst eligible candidates in feeder cadre. This does not amount to enhancing the reservation quota to more than 50% as the said prohibition applies only for reservation to SC/ST and OBC. **[*Akhilesh Kumar Singh v. Ram Dawan, AIR 2015 SC 3740]***

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act

Sec. 20(4)—Scope of

Under Section 20(4) of the Act it is provided that if suit for eviction is instituted on the ground of default in payment of rent and on the first date of hearing the tenant deposits the entire arrears of rent along with interest and the cost of the suit then decree of eviction may not be passed. However, it is further provided that this benefit would not be available to a tenant who had acquired another residential building in the same city. If the tenant acquires a building used for residential – cum – commercial purpose then he is not entitled to the protection. **[*Samar Pal Singh v. Chitranjan Singh, AIR 2015 SC 3793]***

Landlord Tenant matter

Tenant gave undertaking before the Supreme Court to vacate the premises in one year, it was not stated that any other person was in possession. After one year, whoever is found in possession will have to be dispossessed in execution. Neither tenant nor any other person in possession will have any right to continue to occupy the premises. **[*Board of Trustees of The Port of Mumbai v. Nikhil N. Gupta, AIR 2015 SC 3558]***

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PART – 2 (HIGH COURT)

Allahabad High Court Rules

Chapter V, Rules 1,7,12,13,14 and 15- Allocation of work and Chapter VI, Rule 7 to prime judges- Administrative order of Chief Justice with regard to part heard and tied up cases- Legality and enforceability –Full Bench could not have examined the validity of the order of the Chief Justice

In this present caesFrom a bare perusal of the 18 questions which were formulated by the Full Bench in Smt. Chawali (supra), which were later compartmentalised as Issues no. A to H, it is clear that no issue was framed in respect of validity of the order of the Chief Justice dated 16 December 2013. We have no hesitation to record that the Full Bench could not have examined the validity of the order of the Chief Justice dated 16 December 2013 in absence of any issue having been framed and the same being addressed by counsel for the parties.

So far as the issue no. B is concerned, we are of the considered opinion that since the order dated 16 December 2013 had been made by the Chief Justice and if the Full Bench of this Court in Smt. Chawali (supra) wanted to examine the legality of the same, the minimum expected was to have issued notice to the Registrar General of the High Court so that he could represent the views of the High Court on the said order. Any direction issued in the absence of the High Court in respect of the order dated 16 December 2014 would be in violation of principles of natural justice. Therefore, answer to question no. B has to be in negative. **(Amar Singh v. State of U.P. , 2015(113) ALR 196)**

Arbitration and Conciliation Act

Ss. 37 and 34- Award –Valid ground to set aside an Arbitration award-Consideration

In this case, Arbitrator had misinterpreted sections 25 and 29 of the Indian Contract Act. The Hon'ble Apex Court has observed that wrong interpretation of the legal provisions cannot be a valid ground to set aside an award under section 34 of the 1996 Act till it has not vitiated the ultimate decision. According to the Hon'ble Apex Court, the legal error made by the Arbitrator must be of such magnitude that it is patent and be basis of wrong decision. To elaborate further it must be on the face of the award, such legal error that had not taken place, the result of the award would have been otherwise. In nut-shell legal error must culminate into miscarriage of justice.

In the present matter, when we would examine the application of the provisions contained in the aforesaid sections by the Arbitrator, court find that it was only a bona fide mistake committed by a lay man, for whom niceties of legal provisions are not material, but he is aware about the substance of the law and its equitable justification. Therefore, the award is also not vulnerable on account of any error of law, as indicated by the learned counsel for the appellants during the arguments. **(Union of India and another v. M/s. Mukul Builders Pvt. Ltd. And another, 2015 (112) ALR 583)**

Arms Act

Sections 14 and 25 –Constitution of India, 1950 – Article 21- Licence refused by District Magistrate on the ground that he had committed an offence under section 25 of Act by not depositing the fire arm immediately on the death of his father and that he has no fundamental right to carry a fire arm –Refusal of licence under Section 25 of the Act wholly in without jurisdiction- Right to carry arms for self defence is a part of Article 21 of the Constitution of India- No one can be deprived of this fundamental right

The commission of an offence under Section 25 of the Act is not specifically provided under Section 14 of the Act as a ground for refusal to grant licence. It is not the case of the respondents that petitioner was prohibited under the Act or any law from possessing or carrying any fire arm or that it was deemed necessary for the security of public peace or public safety to refuse him licence.

The only possible ground under which the petitioner can be refused licence is that he is unfit for holding a licence as he has committed an office under Section 25 of the Act by retaining the fire arm of his father for a long time despite his death.

The petitioner on the death of his father had not ipso facto acquired the fire arm held by him. It is on record that there was a serious dispute regarding the properties of his late father including the fire arm possessed by him. It is only on the settlement of the property disputes amongst the family members when it was decided that the fire arm possessed by the father of the petitioner will go to his share that the petitioner applied for the licence. It is not on record that it was in his possession.

In addition to the above, the petitioner has not been held guilty of any offence under Section 25 of the Act by any court of law. Therefore, refusal of licence to him on the ground that he has committed an offence under Section 25 of the Act is wholly without jurisdiction.

That other aspect that the petitioner has no fundamental right to carry a fire arm

as has been observed by the appellate authority does not require any elaborate consideration in view of the settled legal position that right to carry arms for self-defence is a part of Article 21 of the Constitution of India and that no one can be deprived of this fundamental right though may be subjected to reasonable restrictions. **(Ajad Singh v. State of U.P. and others, 2015, ACC (91) 758)**

Civil Procedure Code

Ss. 2(2) and 96- Scope of –Appeal lies against a degree passed by court exercising original jurisdiction not against any judgment and order

A plain reading of Section 96 C.P.C. postulates that the appeal lies against a decree passed by the Court exercising original jurisdiction and not against any judgment or order. The term 'decree' has been defined in Section 2(2) C.P.C. to mean a formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. Accordingly, adjudication of a lis involved in a suit between the parties is necessary to constitute a decree. In the case of R. Rathinavel Chettiar v. Sivaraman it has been held that a decree must fulfil the following essential elements:

(i)There must be an adjudication in a suit.

(ii)The adjudication must determine the rights of the parties in respect of, or any of the matters in controversy.

(iii)Such determination must be a conclusive determination resulting in a formal expression of the adjudication.

The aforesaid decision has been followed with approval by the Supreme Court recently in the case of Rajni Rani and another v. Khairati Lal and others (2015) 2 SCC 682 **(Transport Corporation of India, Varanasi through its Regional Magager v. Vijayanand Singh @ Vijaymal Singh and another, 2015 (129) RD 285)**

S. 9- Jurisdiction of Civil Court- Disputed property agricultural land and only Revenue court had jurisdiction to decide its title and ownership- Civil court has no jurisdiction to determine or decide title of such agricultural land

A perusal of the pleadings as well as two judgments make it clear that disputed property is agricultural land and admittedly only the revenue court had jurisdiction to decide its title and ownership. It is also admitted legal position that when consolidation proceedings initiate then only consolidation courts have right to determine rights and title of such agricultural land under

consolidation proceedings; and civil court had no jurisdiction to determine or decide title of such agricultural land. The only point of dispute between the parties in lower court was regarding ownership of disputed agricultural land. Both the parties to dispute claimed their ownership on the basis of sale-deeds executed in their favour, but it is settled legal position that when dispute relating to title and ownership of agricultural property comes under consolidation proceedings then jurisdiction of other courts seizes.

Pith and substance of the dispute between the parties is the ownership of agricultural land; and the point relating to authority to execute valid sale-deed becomes ancillary matter. Since main dispute relates to the title of agricultural land which is within jurisdiction of consolidation court, therefore the ancillary dispute relating to sale-deed regarding them or authority to execute the valid sale-deed or about the effectiveness of such sale-deed will also come within the jurisdiction of consolidation court in present matter. The main dispute between the parties relating to ownership and title of disputed agricultural property has been finally decided in favour of Smt. Bharpai (plaintiff of original suit no. 423/1989 through successors), therefore the ancillary dispute regarding authenticity and cancellation etc. of sale-deed relating to such property will also be dependent on the judgment of such main dispute finally decided by consolidation court; and after completion of consolidation proceedings by competent revenue court. In such circumstances, ancillary dispute relating to relief sought in original suit regarding sale-deed in question also comes within jurisdiction of competent consolidation/revenue court. **(Indraj (Dead) @Talewar and others v. Smt. Bharpai (Dead) and others, 2015 (113) ALR 904)**

S. 9- Land Acquisition Act- Suit –Seeking declaration for compensation in terms of Land Acquisition Act- Barred and not maintainable

For the purpose of deciding this appeal, there are three points for determination:

(I) Whether the suit claiming compensation alleging that certain land has been acquired under Act, 1894 is maintainable under Section 9 C.P.C.?

(II) Whether a suit for mere declaration that the plaintiff is entitled for certain amount of compensation, damages, solatium and interest without seeking relief of recovery of such amount from defendant after paying court fees, is maintainable?

(III) Whether the suit in question was barred by limitation?

So far as question no. 1 is concerned, learned counsel for the parties fairly stated that this issue has been answered by Apex Court in Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, AIR 1996 SC 523, wherein

Court in para 3 of the judgment has said:
"3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the case arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court." (emphasis added)
Therefore, the suit seeking declaration for compensation in terms of Act, 1894 was barred and not maintainable. The issue is answered in favour of appellant. **(State of U.P. v. Baijnath Prasad (Dead) By L.Rs., 2015 (129) RD 352)**

Sec. 10—Scope of—Suit u/s. 229-B of UPZALR Act cannot be stayed u/s. 10, CPC on the ground of pendency of civil suit.

The question as to whether Civil Court, where various civil suits are pending between the parties has jurisdiction to grant the relief for partition, which is prayed in these revenue suit. Section 331 of the U.P. Act No. 1 of 1951, specifically barred the jurisdiction of other Courts in respect of suits, which are provided under Schedule II of the Act. The partition suit has been provided Serial No. 16 of Schedule-II as such Civil Court is not competent to grant relief for partition in respect of agricultural land. Thus revenue suits are not liable to be stayed under Section 10 C.P.C. This Court in Krishna Bihari Mishra Vs. Additional District and Sessions Judge and others, 2013 (120) RD 311, after considering various case law of the subject, has held that suit under Section 229-B of the Act cannot be stayed under Section 10 C.P.C. on the ground of pendency of Civil Suit. Ratio of that case is fully applicable in this case also. The orders of trial court do not suffer from any illegality. **[Ram Lakhan vs. Board of Revenue, U.P. at Allahabad, 2015 (129) RD 676 (All.)]**

Sec. 11—Resjudicata- Judgment of civil court in injunction suit is not resjudicata between the parties in revenue suit.

Supreme Court in Sajjadanashin Vs. Nazudala, (2003) 3 SCC 350, Gram Panchayat Vs. Ujajir Singh, 2001(92) RD 53 (SC), Williams Vs. Lourdu Sami, 2008 (71) ALR 787 (SC) and Haryana State Electricity Board Vs. Hanuman Rice Mill (2010) 9 SCC 154, held that judgment of Civil Court in injunction suit is not res-judicata between the parties in revenue suit.**[Ram Lakhan vs. Board of Revenue, U.P. at Allahabad, 2015 (129) RD 676 (All.)]**

S. 11- Res Judicata- Applicability of – To operate bar of res judicata the litigating parties must be same and the subject matter of the suit must also be identical

For the bar of res judicata to operate in the subsequent original suit proceedings, the litigating parties must be the same, and the subject matter of the suit must also be identical. Further, it has also been held by this court in the case of Ram Gobinda v. Bhakta Bala 3 that for the bar of res judicata to operate in the subsequent original suit proceedings, the decision in the former suit must have been decided on merits on the same substantial questions both on facts and in law that would arise in the subsequent original suit. (City Municipal Council, **Bhalki v. Gurappa (D) by L.Rs. and another, 2015 (113) ALR 720) (SC)**

Ss. 13 (2) and (4) – Issuance of auction notice by Bank –Auction sale- Bank is duty bound to sell the property mortgaged at the market cost and not at throw away price

It is important to point out that bid of the petitioner was of Rs. Two crore and one lac even than in the re-auction notice reserve minimum cost of the property was fixed as Rs. One crore seventy lacs only by the Bank. In court's considered view, minimum reserve cost of the property should have not been fixed less than Rs. Two crore one lac in view of the earlier bid cost as offered by the petitioner. Bank is supposed and duty bound to sell the property mortgaged at the market cost and not on throw away price. This action of the Bank is also arbitrary and is hit by Article 14 of the Constitution of India. **(Mohd. Shariq v. Punjab National Bank and others, 2015 (129) RD 24)**

S. 20—Territorial jurisdiction—Deciding factors—Convenience of Lawyers or their expertise are irrelevant for deciding the territorial jurisdiction

In this case, it was also submitted that as the bulk of litigation of such a nature is filed at Delhi and lawyers available at Delhi are having expertise in the matter, as such it would be convenient to the parties to contest the suit at Delhi. Such aspects are irrelevant for deciding the territorial jurisdiction. It is not the convenience o f the lawyers or their expertise which makes out the territorial jurisdiction. Thus, the submission is unhesitatingly rejected. **[Indian Performing Rights Society Ltd. vs. Sanjay Dalia, 2015 (3) ARC 776 (SC)]**

S. 80- Requirement of- Municipal council is not a public office, Hence no requirement of giving notice u/s 80, CPC

At this stage, the court also direct his attention to the contention raised by Mr. Basava Prabhu S. Patil, learned senior counsel appearing on behalf of the appellant Municipality that the suit in O.S. No. 39 of 1993 was not maintainable, as the notice was issued under Section 80 of CPC in suit O.S. No. 255 of 1984 could not be said to be sufficient notice for the institution of the suit in O.S. No. 39 of 1993. Court cannot agree with the said contention. The High Courtof Karnataka in the Second Appeal had dismissed the contention on the ground that the notice issued in the suit O.S. 255 of 1984 can be said to be constructive notice. The High Court considered that the object of the Section is the advance of justice and securing of public good. In court's opinion, this issue does not arise at all, as a municipal council is not a public officer, and no notice is necessary when a suit is filed against a municipality. Thus, the question of sufficiency of notice under Section 80 of the CPC does not arise at all. **(City Municipal Council, Bkalki v. Gurappa (D) by L.Rs. and another, 2015(113) ALR 720) (SC)**

S. 100 and Order XL, Rule 1—Whether second appeal against order passed in review application would be maintainable—Held, "No"

In any case, if the appellant is satisfied with the decree and has only grievance that respondent is not complying the compromise of decree then he had option to get the decree executed in accordance with procedure mentioned in order 21 CPC, but in present case, instead following regular procedure, the appellant had moved review application before the first appellate court. The first appellate has considered the arguments of the parties and rightly held that judgement on merit cannot be changed by exercising powers of review. This finding of first appellate court is correct, and is being confirmed. The review application, in such circumstances was not maintainable. Therefore, there is no error or irregularity in the impugned order dated 19.09.2015. In this case, the second appeal is not maintainable. **[Surya Dutt vs. Suresh Chandra, 2015 (3) ARC 726]**

S. 114- Review –Scope- Review jurisdiction is not an appeal in disguise and it does permit rehearing of the matter on merits

The scope of review has been discussed by the Hon'ble Supreme Court in a case reported in (2013) 15 SCC page 534, N. Anantha Reddy Vs. Anshu Kathuria and others. In this case the Hon'ble Supreme Court has held that the review jurisdiction is extremely limited. Unless there is a mistake apparent on the face of record, the judgement does not call for review. The mistake apparent on the face on record means that mistake is still evident and needs no search. Review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.

Thus in view of the law laid down by the Hon'ble Supreme Court, this Court while exercising the power of review cannot rehear the matter on merit. The grounds taken by the review-petitioner require the court to re-examine the entire matter on merit which is not permissible, while exercising the power of review. The learned counsel for the review- petitioner has failed to indicate any error apparent on the face on record or any mistake in the judgment.

For the aforesaid reasons, court does not find any sufficient ground to admit this review petition and the same is accordingly dismissed at the admission stage. **(Shri Chandra Gupta v. Additional District Judge, Court No. 1, Hardoi and others, 2015 (33) LCD 2966)**

Ss. 151 and 24(5), Order VII, Rules 10 and 10-A- Whether see 24(5) CPC absolutely independent of provisions contained in O. 7, R. 10 CPC –Held "Yes"

On combined reading of the aforesaid provisions of Section 24 (5) C.P.C. and Order VII Rule 10 of C.P.C., it comes out that Section 24 (5) is absolutely independent of the provision contained in Order VII Rule 10 C.P.C., which was also added by the same Amendment Act No. 104 of 1976. In Order VII Rule 10 (1) (2), 10-A, 10-B C.P.C., the legislature specifically provided a procedure for the court to follow in case the plaint is to be returned to be presented to the Court in which the suit should have been instituted. It relates to the suits which are instituted before a Court which has no jurisdiction to try the same. In order to cure the defect in jurisdiction, the legislature in these provisions empowered the Court where the plaint is instituted, to pass orders for returning the plaint and its institution and trial. In such cases, the trial is always de novo. However, the legislature while incorporating the provision under Order VII Rule 10 C.P.C., incorporated a separate and independent provision in the shape of sub-section (5) of Section 24 C.P.C. conferring power upon the District Judge and the High Court to exercise the same for transfer of a suit or proceedings, from a Court which has no jurisdiction to try. This applies to the case where the suit or proceedings has been instituted in a Court which has no jurisdiction. In other words, the initial lack of jurisdiction or inherent lack of jurisdiction to entertain the suit or proceedings is being allowed to be cured by an order which can be passed only by the District Judge or the High Court under this provision. This provision does not carry any qualification or restriction. The legislature has not provided any conditions on the District Court or the High Court for such transfer under Section 24 (5) C.P.C., while in a transfer of a suit under Order VII Rule 10 C.P.C., the legislature has provided specific conditions, procedure and the manner in which the power can be exercised.

At the cost of repetition, it is relevant to mention here that the conditions

contained in sub-section (2) of Section 24 C.P.C. shall apply only in respect of those cases or situation where a suit or proceeding is being transferred on an application filed by any of the parties under Section 24 (1) C.P.C.. In other words, the re-trial of a suit or proceeding could only be made when a case is transferred under Section 24 (1) C.P.C. and not otherwise. **(Madhusudan Das Agarwal and others v. Banaras Hindu University and another, 2015(129) RD 317)**

Order 1, R. 10- Impleadment of party- application made by son and daughter of deceased tenant for their impleadment all heirs succeeded tenancy as joint tenants –Widow of deceased tenant already on record and contesting claim-Not necessary to implead all heirs

SCC suit no.1 of 1996 was instituted by the plaintiff/respondents 1 and 2 against Anand Bihari Lal Saxena for recovery of arrears of rent and for ejectment. He contested the suit by filing a written statement. However, during pendency of the suit, he died. The plaintiff/landlords moved an application for substitution Paper No.133-A, stating that after the death of the tenant, his widow alone is occupying the demised premises and she be substituted in his place. It was further stated in the application that no other heir of the deceased tenant is in possession of the demised premises. The application was allowed and the widow Smt. Indra Saxena was brought on record. Thereafter Smt. Indra Saxena filed an application 142 C for brining on record her son and two daughters (petitioners herein) alleging that they were also in occupation of the demised premises and have inherited the tenancy right after the death of Anand Bihari Lal Saxena. The application was rejected by the Judge Small Causes Court by order dated 25.11.2014. While rejecting the application, the Judge Small Causes placed reliance on the judgement of this Court in the case of ***Pooja Gupta v. Pushkar Kumar, 2008 (72) ALR 762***, wherein this Court has held that after the death of the original tenant, his heirs inherit the tenancy as joint tenants. For taking such view, this Court has placed reliance on the judgement of the Supreme Court in the case of ***Harish Tandon v. Additional District Magistrate, Allahabad and others, 1995 (25) ALR (SC) 184***, wherein the Supreme Court has held that the heirs of the deceased tenant succeed to the tenancy as joint tenants. Further reliance has been placed on another judgement of the Supreme Court in case of ***H.C. Pandey v. G.C. Paul, 1989 (15) ALR (SC)*** wherein similar view has been taken. Accordingly, it was held that after the death of the original tenant, it was not necessary to implead all his heirs as long as even one of the heirs is already on record. It was found that the widow of the deceased tenant is already on record and is duly contesting the claim of the landlord.

The right claimed by the mother of the petitioners in moving application 142C seeking their impleadment was a right which had allegedly devolved on the petitioners consequent to the death of the original tenant. In the application filed by

the petitioners for their substitution, the same right has been set up. The petitioners also claim themselves to be joint tenants after the death of their father. Thus, the petitioners herein, when they had filed the application for their impleadment, were litigating under the same title as was their mother when she filed the application 142C. Thus, I do not find any illegality in the orders passed by the courts below rejecting the present application filed by the petitioners for their impleadment by placing reliance on the earlier order dated 25.11.2014. **(Sanjeev Saxena and others v. Nitin Paliwal and others, 2015 (6) ALJ 71)**

Order VI, Rule 17- Application for Amendment of plaint- Rejected – Validity of –Petitiner wants to incorporate the facts by way of amendment after the evidence is over and which was is his knowledge such earlier- Rejection was proper

In view of Order 6 Rule 17 of the Code of Civil Procedure no application for amendment shall be allowed after the trial has commenced unless the court comes to conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. In the instant case, the petitioners want to incorporate the facts by way of amendment after the evidence is over and which was in his knowledge much earlier. Therefore, there is no illegality in the impugned order by which amendment application of the petitioners which has been rejected by the Trial Court and affirmed by the Trial Court. **(Shiv Poojan and 3 Ors. V. District Magistrate Ambedkar Nagar Distt. Ambedkar Nagar & Ors., 2015 ARC 572)**

Order VI, Rule 17 –Amendment –Application for- Consideration of –Not to be allowed after trial had commenced unless Court comes to conclusion that inspite of due diligence party could not have raised matter before commencement of trial

In view of Order VI Rule 17 of the Code of Civil Procedure, no application for amendment shall be allowed after the trial has commenced unless the court comes to conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. Moreover, there is no explanation in the application for amendment as to why it could not be brought on record at the first instance and why there was such a long delay. In the circumstances narrated above, the case laws relied upon by the respondents are of no help to them.

In veiw of the legal proposition enunciated in Ram Roop Vs. The Deputy Director of Consolidation [2002(20) LCD192], Usha Balashaheb Swami and others vs. Kiran Appaso Swami and others (2007)5 SCC 602 and Gautam Sarup vs. Leela Jetly and others (2008)7 SCC 85, Revajeetu Builders and Developers vs. Narayanaswamay and sons and others (2009)10 SCC 84, it is

imminently clear that the facts, which were within the knowledge of the plaintiff at the time of filing of original plaint but were not pleaded in the original plaint, cannot be permitted to be set up by way of amendment. **(Jai Prakash Singh and others v. Additional District Judge and others, 2015 (33) AWC 5401)**

Order VII, Rule 1—Written statement—Consideration of—To be filed within thirty days from date of service of summons—In event of failure to file W.S. period of 90 days can be extended in appropriate circumstances.

Order VIII, Rule 1 of the Code of Civil Procedure provides that written statement is to be filed within thirty days from the date of service of summons. According to the proviso to this Rule, in case, the defendant fails to file written statement within thirty days, it may be filed after extension of the time granted by the court but not later than ninety days from the date of service of summons.

While interpreting Order VIII, Rule 1 of the Code of Civil Procedure, this Court in Smt. Muneshra Devi and others vs. Smt. Chandrawati Devi @ Chanara Devi and another, 2013 (9) ADJ 574, taking note of the decision of the Apex Court in Smt. Rani Kusum vs. Smt. Kanchan Devi and others, AIR 2005 SC 3304 : Salem Advocate Bar Association Tamil Nadu vs. Union of India, 2005 SC 3353 : 2005 (3) AWC 2996 (SC) and Kailash vs. Nanhku and others, AIR 2005 SC 2441 : 2005 (2) AWC 1490 (SC), has held that in the event of failure to file written statement as required under Order VIII, Rule 1 of C.P.C., the period of ninety days can be extended in appropriate circumstances. **[Ali Mohammad vs. State of U.P., 2015 (6) AWC 5681 (All.)]**

Order IX, R. 9- Filing of restoration application– Son's substitution application by applicants to implead themselves as heirs of original lessee- Restoration application filed by them by itself was not maintainable

The petitioners are the heirs of the original tenure holder Nathu whose land was declared surplus under Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Act'). The original lessee filed an appeal, and during its pendency, died on 6.5.1995. The appeal was dismissed for want of prosecution on 22.12.1997. Thereafter, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into existence with effect from 18.3.1999. The petitioners, being the heirs of Nathu, filed a restoration application no. 207 of 2001 in the year 2001. The District Judge, by an order dated 18.1.2002, rejected the restoration application on the ground that in view of the Repeal Act the appeal stood abated as a consequence of which the restoration application could not be considered.

In the opinion of court the petitioners could not file the restoration application

without filing a substitution application in the proceedings before the District Judge. In the absence of any substitution application being filed to implead themselves as the heirs of the original lessee Nathu, the restoration application filed by them by itself was not maintainable.**(Roop Chand and others v. The District Judge, Meerut and others, 2015 (6) ALJ 344)**

Order XV, Rule 5- Striking off defence- Deposit made u/s 30 of Act 1972, before the date of first hearing in the case only to be adjusted

The sole question for consideration is whether the tenant is entitled to the benefit of deposits made in proceeding under Section 30 in misc. case no. 27/7/08.

A Division Bench of this Court in Haider Abbas vs. Additional District Judge (Court No.3) Allahabad and others1 while considering the provisions of Order XV Rule 5 CPC and the decision of the Supreme Court in Atma Ram2 observed as follows:-

"The aforesaid decision of the Supreme Court in the case of Atma Ram (supra) emphasizes that if the tenant wishes to take advantage of the beneficial provisions of the Rent Control Act, he must strictly comply with the requirements and if any condition precedent is required to be fulfilled before the benefit can be claimed, the tenant must strictly comply with that condition failing which he cannot take advantage of the benefit conferred by such a provision. It has further been emphasised that the rent must be deposited in the Court where it is required to be deposited under the Act and if it is deposited somewhere else, it shall not be treated as a valid payment/tender of the rent and consequently the tenant must held to be in default.

In view of the aforesaid principles of law enunciated by the Supreme Court in the aforesaid case of Atma Ram (supra), it has to be held that the tenant must comply with the requirements of Order XV Rule 5 CPC and make the deposits strictly in accordance with the procedure contained therein. A deposit which is not made in consonance with the aforesaid Rule cannot enure to the benefit of the tenant and, therefore, only that amount can be deducted from the "monthly amount" required to be deposited by the tenant during the pendency of the suit which is specifically mentioned in Explanation 3 to Rule 5 (1) of OrderXVCPC.

.....

It, therefore, follows that the amount due to be deposited by the tenant throughout the continuation of the suit has to be deposited in the Court where the suit is filed otherwise the Court may strike off the defence of the tenant since the deposits made by the tenant under Section 30 (1) of the Act after the first hearing of the suit cannot be taken into consideration."

In Ram Kumar Singh Vs. IIIrd Additional District Judge, Ghaziabad4, after placing reliance on the decisions rendered in Basant Kumar Chauhan and Sayeed Hasan Jafar alias Shakil Ahmad Vs. Rurabal Haq and others, this Court observed as follows:-

"In view of the aforesaid decisions of this Court, it is evident that the deposit of the monthly rent/compensation by the petitioner (defendant) under Section 30 of the U.P. Act No. XIII of 1972 during the continuance of the said S.C.C. Suit No.26 of 1977 were illegal, and the same could not be said to be made in compliance with the provisions of Order XV Rule 5 of the Code of Civil Procedure. Once the "first hearing" in the said S.C.C. Suit No.26 of 1977 arrived, it was no longer open to the petitioner to continue to deposit the monthly rent/compensation under Section 30 of the U.P. Act No. XIII of 1972 in the Court of Munsif, Ghaziabad. The said monthly deposits should have been made in the said S.C.C. Suit No.26 of 1977 before the respondent No.2. Thus, the petitioner failed to comply with the requirements of the second part of Order XV Rule 5(1) of the Code of Civil Procedure namely, head (B) above."

It thus follows that while deposits made under Section 30, before the date of first hearing are to be adjusted but any rent deposited thereafter in proceeding under section 30 would not enure to the benefit of the tenant for adjudging compliance of the provisions of Order XV, Ryle 5, C.P.C. **(More Singh v. Chandrika Prasad, 2015 (113) ALR 1)**

Order XVI, Rule 2 and Order XX, Rule 5- Preliminary issue- After amendment Act, 1976- Apart from the issue relating to the jurisdiction of court or a bar to the suit crated by any law –No issue can be tried as a preliminary issue

After the Amendment Act, 1976, the consideration of an issue and its disposal as a preliminary issue has been made permissible only in a limited case. Though, the issues are of law relating to (i) the jurisdiction of the court, or (ii) a bar to the suit created by any law for the time being in force. Apart from this, no issue can be tried as a preliminary issue.

If there is a pure question of law and the same relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force, it can be decided as a preliminary issue, but when there is a mixed question of law and fact, it cannot be treated as a preliminary issue.

It was held by Hon’ble Allahabad High Court of Judicature of Allahabad, Lucknow Bench in Smt. Thakura vs. District Judge, Sitarpur & others, AIR 2002 Allahabad 356 that an issue of law may be tried as a preliminary issue,

provided it relates to the jurisdiction of the Court or to a bar to the suit created by law for the time being in force. However, the said provision gives discretion to the Court to try an issue as preliminary issue or not. The Court is not duty bound to decide any issue as preliminary issue. This is evident from the words "it may try" occurring in the said provision.

The issue regarding the territorial jurisdiction of the Court ought to be tried as a preliminary issue. The facts and circumstances of the case may warrant the Court to refrain itself from giving findings on all issues as it may prejudice the trial of the case in the court where it is filed after the plaint is returned.

Once the court gave a finding that it had no jurisdiction to try the suit, it would be an exercise in futility to decide other issues on the merits of the case. The findings on other issues after the plaint is directed to be returned for presentation in a appropriate court would prejudice one of the parties and the trial court is justified in not giving findings on other issues framed by it.

What will be the import of Order 20 Rule 5 CPC in the context of the Order 14 Rule 2(2) CPC? In appealable cases courts should pronounce their opinion of all important issues. **(Kanti Ballabh Satyawali v. Kanti Ballabh Styawali, 2015 (112) ALR 553)**

Order XVIII, Rules 2 and 4- Application for taking or record the documents – What constitutes- Permission for filing the documents by the court below does not means that same are admissible in evidence which will be adjudicated by at the appropriate time

Filing of document is one thing and the admissibility of documents is another. If the court below has permitted the defendant no.1 to file certain documents, it does not mean that the same are admissible in evidence, inasmuch as, the same will be adjudicated by the court be low at an appropriate stage . In other words, the admissibility of the alleged documents will be considered at an opportune moment. What the court below has exactly done in the matter is that it has simply permitted the defendant no.1 to file documents. Learned court below has not said that the alleged documents are admissible in evidence.

Learned counsel for the revisionist contended that since the unregistered and unstamped documents cannot be read in evidence, then what is the relevancy to file the alleged documents

by the defendant no.1? This Court has already noted in the foregoing paragraphs of this judgment that filing of document is one thing and the admissibility of documents is another. The Court below has only permitted the defendant to file documents only and has nowhere said that the document is admissible in evidence, which can be adjudicated by the court below at a

befitting stage.
Needless to say that, according to Order 13 Rule 3 C.P.C., the Court may at any stage of the suit reject any document, which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection. In the instant case, the court below has not yet applied its mind with regard to the admissibility or relevancy of the documents thus filed on behalf of the defendant no.1. Hence, this issue is still open to be adjudicated by the court below. **(Smt. Rekha Devi v. Buniyad Husain and another, 2015 (113) ALR 858)**

Order XXIII- Compromise decree- Application for setting aside of – Allowed –Legality

A perusal of the application for setting aside the compromise decree shows that the defendant had alleged that in the suit, the summons were not issued to him and he had not appeared before the Court, nor filed any vakalatnama or compromise. He has alleged that the compromise has been filed through some imposter. The petitioner appeared before the court below and filed his objection in the application for setting aside the compromise decree. On the denial of the signature on the vakalatnama as well as compromise, the burden was shifted upon the petitioner to prove that the compromise as well as vakalatnama was genuine and has been signed by the respondents, but no evidence has been adduced in this respect. Thus, the Commissioner has rightly set aside the compromise as the signatures on the vakalatnama and compromise, have been denied by the respondents. The Commissioner further remarked that the suit was filed on 11.6.1975, summons were not issued by the Trial Court and the suit was decided on 27.6.1975. Thus, genuineness of the proceeding taken by the Trial Court has been doubted by the Commissioner and the finding recorded in this respect does not suffer from any illegality. So far as the delay is concerned, the arguments of counsel for the petitioner as well as the objection of the petitioner before the Trial Court was that the survey and record operation was started in the year 1995 and the application for setting aside the compromise decree was filed on 27.2.1999. The start of survey and record operation is immaterial. It is only when the substantive measures have been taken and the defendant was given notice of the proceeding, then he inspected the record and came to know about the fraudulent decree and in such circumstances, the Commissioner has rightly condoned the delay as there is nothing on the record to show that prior to filing the application for setting aside the compromise decree, the respondents had knowledge of the compromise decree. In such circumstances, the revision had no merit. **(Dhanpal Yadav and others v. Shiv Narain Pandey and others, 2015 (129) RD 237)**

Order XLI, Rule 25- Powers under- Appellate Court is competent to remand the matter- For proving the pedigree the hearsay statement is admissible according the Sec. 50 of the evidence Act

Under order XLI Rule 25 of CPC provides: where the court from whose the decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to be appellate court essential to the right decision of the suit upon the merit, appellate court may, if necessary, frame issues, and refer the same for trial of the court from whose decree the appeal is preferred, and in such cases shall direct such Court to take the additional evidence required. Thus the appellate court is the competent court to remand the matter under Order XLI, Rule 25 of CPC.

So far as the findings of the trial court is concerned, the trial court has disbelieved the statement of Ram Kanti only on the ground that her statement was hearsay. Although for proving the pedigree the hearsay statement is admissible according to Section 50 of the Evidence Act. Thus the statement of Ram Kanti has been wrongly ignored by the trial court. So far as the other witnesses of Ram Kanti is concerned, they by their opinion had stated that Mihi Lal died on 21-22 years ago while the age of Ram Kanti was noted in her statement as 21 years as such their statement have been ignored. The statement of the witnesses was not a fix statement but it was proximate evidence. Thus the statement of witnesses has been wrongly ignored by the trial court.

Since the matter has been remanded to the trial court, the petitioners have liberty to raise their grievances before the trial court afresh and no prejudice has been caused to them. No interference is required by this Court. The writ petition has no merit, it is dismissed. **(Sushil Kumar and others v. Board of Revenue and others, 2015 (129) RD 267)**

Order XLI, Rule 27- Additional Evidence –Cannot be allowed at the appellate stage except in three situations mentioned in rule 27

The additional evidence cannot be allowed at the appellate stage except in the three situations mentioned in Rule 27, and any evidence given in Appellate Court not covered under the Rule shall not be read in evidence. Permission to adduce additional evidence can be given by Appellate Court subject to such conditions and limitations as are prescribed in Order XLI Rule 27 CPC. Mere ground that the document can be produced at any time before the decision of the appeal is not sufficient to allow additional evidence. In the instant case, addition al evidence thus filed by respondent no. 1 / plaintiff relate to the period of pendency of present second appeal. In other words, such documents were not available either at the stage of trial or during the pendency of first appeal. Since the documents so filed have a bearing on the merits of the instant case,

therefore, permission can be granted to the respondent no. 1 / plaintiff to produce such additional evidence under Order XLI Rule 27 CPC . Possibly, the Appellate Court may require such additional evidence to enable it to pronounce judgment or for any other substantial
cause. Production of additional evidence cannot be allowed where the party applying for it does not satisfy the court that such evidence was not within his knowledge or could not be produced with due diligence. It is only when the Appellate Court 'requires it' that additional evidence can be admitted. **(Swami Ram Nivas Ram Saneshi v. Swami Ram Vinod and another, 2015 (113) ALR 783)**

Order XLI, Rule 27—Cross-examination of witness—Discretion of Court for allowing—The discretion has to be exercised in a judicial manner and court has to be cautious and power should be exercised only in the exceptional circumstances.

Although the court has a discretion under Order 18 Rule 17 CPC to recall a witness, but the discretion has to be exercised in a judicial manner specially when the conduct of the opposite party was such that they did not conclude the cross-examination even for a period of four years and after the closure of cross-examination, they waited for further long time and after the closure of the evidence of the revisionist, they applied for recall of the order. The purpose of recalling a witness as observed by the Hon'ble Supreme Court is to remove any doubt if arisen during the course of the examination. It is not the purpose of Order 18 Rule 17 CPC to fill up the lacuna or lead a fresh evidence which was earlier in the knowledge of the parties. Therefore, the court has to be cautions and this power should be exercised only in exceptional circumstances. **[Vilayat Jafri vs. High Definition Television Pvt. Ltd. Mumbai & Another, 2015 (3) ARC 726]**

Order XLIII, Rule 1 –Appeal is maintainable under Order XLIII CPC against order refusing or granting stay in partition suit

So far as the question as to whether the order granting or refusing the interim stay in the proceedings under section 176 of U.P.Z.A. & L.R. Act is concerned, it is to be noted that the order XLIII Rule 1 CPC deals with the orders which are appealable. Order XLIII, Rule 1(r) CPC provides that an appeal shall lie from an order under Rule 1, Rule 2-A Rule 4 or Rule 10 of Order XXXIX.

As such, it is very much clear that an appeal shall be filed against an order passed in exercise of powers under Rule 1, Rule 2, Rules 2-A, rule 4 or Rule 10 of Order XXXIX.

In view of above, it is held that an appeal shall lie against an order granting or

refusing temporary injunction/ stay in the proceedings under section 176 of U.P.Z.A. & L.R. Act. **(Darshan Singh and others v. Addl. Commissioner (J) Lucknow Division and others, 2015 (129) RD 508)**

Order XLVII- Scope of- Term "sufficient reason" used there in includes a misconception of Law or facts by a Court or even by an Advocate- Discussed

The point that requires consideration thereafter is as to whether a review application could be filed and maintained on an allegation of misconception of facts. In this connection, it would be relevant to refer to Order XLVII of Code of Civil Procedure which provides amongst other, that a review can be filed on account of "some mistake or error apparent on the face of the record, or for any other sufficient reason" The aforesaid provision has been interpreted by the Apex Court in the case of Board of Control for Cricket,, India and another v. Netaji Cricket Club and others AIR 2005 SC 592 wherein it has been held that the term "sufficient reason" is wide enough to include a misconception of law or fact by a Court or even by an advocate. An Advocate is a mere representative of the parties and therefore, misconception on the part of the parties would also make a review maintainable. **(Ram Sukh and another v. Addl. Commissioner II, Varanasi Division, Varanasi and others, 2015 (129) RD 528)**

Constitution of India

Art. 227—Supervisory jurisdiction—Suit for eviction of tenant from open piece of land would not be maintainable before Judge Small Causes—Such suit triable by regular Civil Court.

The petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution in challenging the order dated 8 August 2014 whereby, the Judge, Small Causes, Gorakhpur rejected the application 262 Ga seeking amendment in the written statement in SCC Suit No. 15 of 1998, as well as the order dated 28 April 2015 passed by the Additional District Judge, (E.C. Act), Gorakhpur in SCC Revision No. 30 of 2014, dismissing the revision.

A perusal of the original pleadings would show that the specific case of the plaintiffs was that the shop was constructed by the plaintiffs themselves and was let out to the petitioner. In the written statement filed by the petitioner, the aforesaid fact was not denied. It was rather admitted that the petitioner is tenant

of one of the shops. All that was claimed by the petitioner was that there was no relationship of landlord and tenant between the petitioner and the plaintiff No. 1, as the shop was let out by plaintiff No. 2. In such view of the matter, in case the amendment, if allowed, would change the entire nature of the defence and would amount to withdrawal of the admission made by the petitioner.

The trial Court rightly held that though it is permissible in law to seek an amendment in the written statement explaining the admission, but it is not permissible to raise a plea which would displace the plaintiff completely from the admission made by the defendant in the written statement. The Supreme Court, in the case of Heera Lal Versus Kalyam Mal, 1998 (1) ARC 1 has approved an earlier three Judge Bench judgment in Modi Spinning and Weaving Mills Co. Ltd. Versus Ladha Ram & Co. (1977) 1 SCR 728 in ruling that an amendment which completely displaces the plaintiff's case cannot be allowed. While so holding, there Lordships of the Supreme Court disagreed with decision of a Bench of two Judges in the case of Akshaya Restaurant Versus P. Anjanappa & another (1995) Suppl (2) SCC 303, taking a contrary view. It is observed as under: -

> "Consequently it must be held that when the amendment sought in the written statement was of such nature as to displace the plaintiff's case it could not be allowed as ruled by a three member Bench of this Court. This aspect was unfortunately not considered by latter Bench of two learned Judges and to the extent to which the latter decision took a contrary view qua such admission in written statement, it must be held that it was per incuriam being rendered without being given an opportunity to consider the binding decision of a three member Bench of this Court taking a diametrically opposite view."

The effort on part of the petitioner in raising such a plea is to oust the jurisdiction of Judge, Small Causes to try the suit, inasmuch as, a suit for eviction of a tenant from an open piece of land would not be maintainable before Judge, Small Causes. Such a suit is triable by a regular Civil Court. Thus, allowing such an amendment at this stage would totally displace the plaintiffs, and would cause serious prejudice to them. The amendment sought is, wholly mala fide.

In view of the aforesaid discussion, this Court does not find any error in the orders passed by the Courts below. **[Jamal Ahmad vs. Aadil Ahmad Khan, 2015 (6) AWC 5949 (All.)]**

Contempt of Courts Act

S. 20 –contempt proceeding –Limitation- Proceedings for contempt shall

not be initialed after expiry of period of one year from date on which contempt alleged to have been committed

one of the requirements of Rules is that the date or dates, on which contempt is alleged to have been committed, must be specified in Reference made under Section 15(1) of Act, 1971. The reason being that this date is relevant to determine whether criminal contempt proceedings, when initiated, are within the period of limitation of one year under Section 20 or not? Section 20 makes it very clear that proceedings for contempt shall not be initiated after expiry of period of one year from the date on which contempt is alleged to have been committed. The learned Judicial Officer while making Reference in this case had completely failed to notice this statutory provision and no date on which the alleged contempt is said to have been committed, has been mentioned therein. The question of limitation is an important relevant issue and if the proceedings have not been initiated within the period prescribed in the statute, the Court would not be justified in going ahead in a criminal contempt proceedings which are not initiated within one year from the date alleged contempt has been committed. In this regard, though learned counsel for Contemnor has placed reliance on the decisions in Baradakanta Mishra Vs. Mr. Justice Gatikrushna Misra, Chief Justice of The Orissa High Court, (1975) 3 SCC 535; Ashok Kumar Aggarwal Vs. Neeraj Kumar and another, (2014) 3 SCC 602; Rajeev Dhavan Vs. Gulshan Kumar Mahajan and others, (2014) 12 SCC 618, but we do not find anything therein which may help him on this question.

A Division Bench of Karnataka High Court in N. Venkataramanappa Vs. D. K. Naikar, AIR 1978 Karnataka 57, has, however taken a view and we are in agreement therewith that the date, the contempt is alleged to have been committed, would be the date on which contempt is committed and not the date of knowledge to the complainant. The starting point of limitation was the date on which date contempt is alleged to have been committed and, therefore, its mention in Reference was necessary.

Be that as it may, the fact remains that the alleged article said to have committed contempt, was published sometime in the year 2008 and the Reference has been made vide letter dated 01.07.2010. The Reference also did not mention any date on which the alleged contempt was committed in order to bring in the Reference within the period of one year of limitation prescribed under Rule 20 of Act, 1971.

Court, therefore, find that the aforesaid Reference is incompetent and barred by limitation as prescribed under Section 20 of Act, 1971. Since the contempt proceedings, in court view, are barred by limitation, court did not find any reason to proceed to discuss other issues raised. The Reference dated

01.07.2010 is, therefore, rejected. **(Sri Nahar Singh Yadav, Advocate, Ghaziabad and others, 2015 (113) ALR 907)**

Court Fee Act

S. 7 (1)- Court Fee- Question of- Must be considered in the light of the allegation made in the plaint

It goes without saying that the question of Court-Fee must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. All the material allegations contained in the plaint should be construed and taken as a whole, as has been observed by Hon'ble Apex Court in Neelavathi and others v. N. Natarajan and others, AIR 1990 SC 691 **(Miss M.K. Mamik v. Welham Girls High School, 2015 (129) RD 421)**

Criminal Procedure Code

Sec. 88- Applicability- S. 88 of Code can be availed only in case person for whose appearance or arrest summon or warrant has been issued to be present in such Court- Accused not appearing personally before Court cannot get benefit of S. 88 of Code.

As far as the provisions of Section 88 Cr.P.C. are concerned, as quoted above, such provisions can be availed only in case the person for whose appearance or arrest the summon or warrant has been issued to present in such Court. Section 88 Cr.P.C. also does not speak to exempt the accused without executing the bond with or without sureties for his appearance in the Court. In view of the provisions of Section 90 Cr.P.C., this provisions is also applicable only to every summon and every warrant of arrest issued under this Code. Admittedly, the petitioner has not yet appeared personally before the Court. Therefore, he cannot get the benefit of Section 88 Cr.P.C. **(Arvind Kejriwal v. The State of U.P. & others, 2015 (6) ALJ 542)**

Section 125(2) –Maintenance allowance – Order making maintenance payable from the date of application- if recourse to the exception is taken the order must be supported by reasons

Hon'ble Court observed that it is clear from this sub section makes it clear that ordinary rule is that maintenance to wife is payable from the date of order .exception to this ordinary rule is an order making maintenance payable form the date of application. When an exception has to be made in the ordinary rule

making the maintenance payable from the date of application by an order, the order must be supported by reason or reasons.

In Satish Chandra Gupra v. Amt. Aneeta and others, 1994 (31) ACC 563 this Court has held that - - "ordinary rule is that maintenance to wife is payable from the date of order and exception to this ordinary rule is an order making maintenance payable from the date of application and if recourse to the exception is taken the order must be supported by reasons."

Propriety demands that the Courts should give reasons for granting maintenance allowance from the date of application. Any direction of maintenance should generally be prospective. If direction is made retrospective in nature, the person bearing burden of it may be prejudiced unnecessarily, and without any fault. But if it appears to Magistrate that person against whom direction of maintenance is being passed had unnecessarily been delaying the proceedings of the case of misusing process of the Court, then direction for maintenance from retrospective effect (from the date of application) may be passed, but that too after recording specific reasons. **(Smt. Pooja v. State of U.P. and others, 2015 (91) ACC 498)**

Sec. 154 – Cr.PC – Delayed FIR- Non-explanation of delay in lodging of FIR fatal for the prosecution case- Entire prosecutions story not to be discarded on the score of delay

The first point regarding delay in lodging of the FIR is being considered. Hon'ble the Apex Court has propounded principles for appreciation of the aspect of delay, if any, caused in lodging of the FIR.

The Hon'ble Apex Court has laid down the following proposition recently in the case of Jai Prakash Singh vs State of Bihar & Another reported in (2012) 4 SCC 379. The relevant paragraph 12 is being reproduced herein below :-

"The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question."

It is settled law that if delay in lodging the FIR cannot be explained satisfactorily it is fatal to the case of prosecution. However, it is obligatory on

the part of the Court to take notice of delay and examine the same in the backdrop of the case as to whether any acceptable explanation has been offered by the prosecution and, if such an explanation has been offered whether the same deserves acceptance of being satisfactory.
In view of propositions cited above inference can safely be drawn that the delay should be explained and if, not explained even then the Court has to consider the aspect of delay in the light of totality of evidence and draw inference about the veracity of prosecution version considering the facts and circumstances of the case, which varies from case to case. Mere on the score of delay, the entire story of prosecution cannot be discarded. **(Ahibaran v. State of U.P., 2015 (91) ACC 553)**

Sec. 157- Faulty or defective investigation- Testimony of eye-witness account cannot be brushed aside only on that ground
In the present matter, place of occurrence was the field of Jwala even though the investigating officer had prepared the defective and wrong sketch map (site plan). He prepared the site plan on the basis of imagination without inspecting the spot that is why adverse comments were made by the trial Court against or illegality is found in the finding recorded by the trial Court.
It may also be mentioned here that only on the ground of faulty or defective investigation in the present matter, as court has recorded above, the testimony of the eyewitness accounts cannot be brushed aside. The law laid down in the case of Kailash Gour (AIR 2012 SC 786) is not applicable in this mater, as the fact of the present case differs from the facts of Kailash Gour's case.
In the case of Bhawani (AIR 2003 SC 4230). Full Bench by the Hon'ble Supreme Court has held that on the ground of defective investigation the prosecution case cannot be thrown out. In the case of Bhawani on the point of preparing of defective site plan and mentioning of wrong details in the inquest report can safely be applied in the present matter as the prosecution witnesses have clearly and cogently established the date, time and place of occurrence. **(Kali Charan Prabhoodayal and others v. State of U.P., 2015 (6) ALJ 147)**

Sec. 161 – Statement under S. 161 –Maker of statement subsequently dies- Statement can be relied as dying declaration
In the present case Hon'ble Court held that the trial court has not placed reliance on the statement of deceased Suresh recorded under Section 161 Cr.P.C. as dying declaration on the ground that at the time of recording of statement under Section 161 Cr.P.C., PW-1 was also said to be present. Learned counsel for the appellants has submitted that the statement recorded under Section 161 Cr.P.C. is of no value if the maker of the statement

subsequently dies. This submission cannot be accepted. Dying declaration made orally in the presence of any person may be proved in court by the oral evidence of that person. The declaration becomes admissible, if the declarant subsequently dies. If he survives, it will be useful, if made before a Magistrate, or any one other than a Police Officer, to corroborates his oral evidence as a witness in court **(Harihar Singh and others v. State of U.P., 2015 (6) ALJ 354)**

Sec.174- Inquest report- Non-mentioning of crime number, sections, name of accused and other particulars in inquest report- There is no such requirement under S. 174- Inquest report not invalid on that ground.

So far as the argument of non-mentioning of the crime number, sections, name of the accused and other particulars in the inquest report is concerned, the same is not required under law. Inquest report is prepared under the provisions of Section 174 Cr.P.C. and as per the provisions of said Section, there is no such requirement as submitted by the learned counsel for the appellants. **(Harihar Singh and others v. State of U.P., 2015 (6) ALJ 354)**

Sec. 190 (1) (b), 200,202 and 204- Taking Cognizance on the protest petition and summoning of the accused

On hearing the present case the Hon'ble Court had discussed the various case laws it is clear form that case laws that if in any case the final report is submitted by the police, against which protest petition is filed by first informant then magistrate has following three options:-

1- He may accept the final report and drop the proceedings, or
2- He may direct the police for further investigation, or
3- He may summon the accused on further two grounds:

(A) If he chooses to summon the accused on the bases of evidence collected by the Investigation officer, he may do so directly without any further evidence. or
(B) If accused is summoned on the basis of protest petition, relying on extraneous material filed with protest petition, then he has to follow the procedure laid down under chapter XV of Cr. P.C. i.e. to treat the protest petition as complaint and record the evidence u/s 200 and 202 Cr P.C. and cognizance cannot be taken on the basis of extraneous material u/s 190 (1)(b) Cr .P.C, without following the aforesaid procedure.

In the matter in hand the impugned order shows that the Magistrate summoned accused persons presuming that oral evidence on behalf of first informant was adduced on protest petition, which is possible only when the protest petition was ordered to be treated as a complaint. The record shows that neither protest petition was ordered to be registered as complaint not any oral evidence of the

witnesses was recorded. Summoning of the accused persons on the basis of the oral evidence indicates that the magistrate was satisfied with the fact that in evidence collected by the I.O. there was not sufficient material for taking cognizance. The learned magistrate has also observed that the I.O. has committed a mistake in not recording the evidence of other witnesses. Summoning is also based on facts mentioned in the protest petition and documentary evidence, as mentioned in the order impugned which is erroneous in view of the law cited above.

Going through the aforesaid discussions, it comes out that learned Magistrate has committed a wrong in summoning the accused persons on extraneous evidence without following the procedure as envisaged in chapter XV of Cr. P.C. Though reference of oral evidence of prosecution witnesses is given but no any such witnesses were ever examined and protest petition was never treated as complaint. Hence setting aside the impugned order, protest petition deserves to be decided afresh, consequently revision succeeds. **(Mukeem and others v. State of U.P. and another, 2015 (6) ALJ 610)**

Sec. 190 (1) (b) and 482 –Charge Sheet has been filed in the Sections of I.P.C., 1860- S. 147, 323, 504, 506 and 452 – Magistrate must applied his judicial mind at the time of taking cognizance

In the present case it is true that the charge-sheet has been filed for the offence punishable under section 147, 323, 504, 506 and 452 IPC but the cognizance has been taken only for the offence punishable under sections 147, 323, 504 and 452 IPC, which in itself is sufficient to show that the learned Magistrate has applied his mind and he has not summoned the accused for the offence punishable under Section 506 IPC. There may not be sufficient evidence available for taking cognizance under section 506 IPC.

As various judgments of Hon'ble the Apex Court, which discussed in the present case it is clear that a detailed orders are not required to be passed at the stage of issuing process and even it was not necessary to pass a speaking order at the stage of taking cognizance. The only requirement is that he has to satisfy that there is sufficient ground for proceeding against the accused persons.

In these days of computerization, the computer typed orders cannot be said to be bad, nor the inference can be drawn that the mind has not been applied while passing such computer typed orders. However, all the courts of State of U.P. are advised to refrain from passing fill-in-the gap orders i.e. either the whole order should be typed by the type machine or the computer or the whole order should be handwritten but in no case, the rubber stamp can be used even for the routine orders.

As far as the quashing of the entire criminal proceedings are concerned, I do

not find any other grounds to quash the proceeding of the criminal case no. 1768 of 2015. **(Aquil Ahmad and others v. State of U.P. and another Opp. Parties, 2015 (91) ACC 527)**

Secs. 205, 317 – Exemption from personal appearance – Application for – Not maintainable in case of warrant trial unless accused has been granted bail and he had furnished bail bonds.

The question whether after taking cognizance and issuance of the process, may be summon or warrant, the exemption application under Section 205 or under Section 317 Cr.P.C. is maintainable without personal appearance and without furnishing bail bonds is, therefore, decided accordingly that in case of an accused is warrant trial, the provisions of Section 205 or Section 317 Cr.P.C. will not apply unless the accused has been granted bail and he has furnished bail bonds. **(Arvind Kejriwal v. The State of U.P. & others, 2015 (6) ALJ 542)**

Sec. 294- Post-mortem report- Relevancy of - It can be admitted as substantive piece of evidence to prove its concern without doctor concerned being examined.

It is settled position of law that document of which genuineness is not disputed can be read in evidence as genuine without formal proof of such documents by examining the author thereof. As has been mentioned in the earlier part of this judgement, the defence has admitted the genuineness of post mortem report, inquest report, charge-sheet and other police papers, therefore, these papers, admitted by the accused appellant under Section 294 Cr.P.C., become admissible in evidence. Hon'ble Supreme Court in Akhtar and Ors. vs. State of Uttaranchal, (2009)13 SCC 722 ; "it is settled position of law that if genuineness of any document filed by a party is not disputed by one opposite party it can be read as substantive evidence under Sub- Section (3) of Section 294 Cr.P.C. Accordingly, the post mortem report, if its genuineness is not disputed by the opposite party, the said post mortem report can be read as substantive evidence to prove correctness of its contents without a Doctor concerned being examined".

23. Plea has been taken by the learned counsel for the appellant that prosecution has not examined the doctor therefore, it shall be presumed that deceased was not in a condition to speak at the time of making of such dying declarations. It is true that the prosecution had not examined the doctor conducting the post mortem and the investigating officer, who conducted the investigation in the matter. In the facts and circumstances of the case and the

proposition of law laid down by the Apex Court in Akhtar and others case (supra), there was no requirement for examining the doctor and the investigating officer, particularly when the papers prepared by them were admitted by the accused appellant as genuine. **(Shambhoo Dayal v. State of U.P., 2015 (6) ALJ 740)**

Sec. 437- Statutory bail- After grant of statutory bail if accused is charge sheeted- Tenure of proceedings gets altered –Accused has to get regular bail in respect of substantive offences whereof charge sheet had been filed –He cannot insist upon continuation of statutory bail

This application under Section 482 Cr.P.C. has been filed contending that the applicant cannot be compelled to seek a fresh bail under the substantive offences punishable under Sections 409, 420 IPC and Section 13(2) read with Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 inasmuch as the applicant is already on bail pursuant to the orders passed by the trial court on 10.9.2012 in terms of Section 167 (2) Cr.P.C. for the alleged commission of offences as defined under Section 120-B IPC read with Section 409, 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

In my opinion, the arguments of the learned counsel for the C.B.I. has force inasmuch as the applicant has been subsequently charge sheeted and it is the offences thereunder in which he has been formally charged and has therefore to seek bail. There cannot be a presumption in relation to the charges at the stage of Section 167 Cr.P.C. The charges are framed only after completion of investigation and the filing of the charge sheet. It is quite possible in any case that the allegations if not made out, such a charge should be dropped while filing of the charge sheet. In view of this the arguments of the learned counsel for the applicant cannot be accepted as such a presumption cannot come to the aid of the applicant at the stage of Section 167 Cr.P.C.

Thus, the charge sheet having been subsequently filed the applicant has to have regular bail in respect of the substantive offences in respect whereof the charge sheet has been filed. The tenor of the proceedings gets altered after the charge sheet is filed and consequently once a formal charge is altered and offences are added then the accused has to get himself bailed out under the said section.

This is necessary inasmuch as unless the learned Special Judge proceeds to pass any orders on the allegations of offences as contained in the charge sheet, it will not be possible to treat an accused to be deemed on bail as per the order under Section 167(2) Cr.P.C. which is only in relation to the offences during the period of remand and not in relation to any charges added in the charge sheet. **(Abhay Kumar Bajpai v. C.B.I., 2015 (5) ALJ 552)**

Section 439- Indian Penal Code, 1860- Sections 323 , 308 and 506- Bail- Grant of- Some important factors must be consider like as- circumstances of case, nature of evidence, period of detention already undergone, unlikelihood of early conclusion of trial and also absence of any convincing material to indicate possibility of tampering with evidence

After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of unlikelihood of early conclusion of trail and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this court is of the view that the applicant may be enlarged on bail. **(Munna v. State of U.P., 2015 (91) ACC 146)**

Criminal Trial

Criminal Trial – appreciation of evidence regarding Child witness and related witness

The Hon'ble Court held, that it can safely be discerned that for appreciating the evidence of child witness it must be kept in mind that the testimony of a child witness could be credible, truthful and it should inspire confidence. Corroboration by an independent witness is a rule of prudence and it is not a cogent precedent for discarding the evidence of a child witness. Reliance can be placed upon the solitary statement of a child witness if, the statement is true and correct and is of quality and her deposition is found to be reliable and is away from the shadow of tutoring.

Further Hon'ble Court observed that the matter of appreciation of evidence of related witness has from time to time been considered by the Hon'ble Apex court in the case of Shiv Ram and another v. State of U.P., 1997 (35) ACC 866 (SC) wherein it has been opined that nowadays it is common tendency that not outsider would like to get involved in a criminal case much less in the crime of present magnitude. Therefore, it is quite natural that no independent witness will come forward to assist the prosecution. It is will settled that the evidence of witnesses cannot be discredited only on the ground that they are close relatives of the deceased person. But, what is required is that the Court must scrutinize the evidence with utmost care and caution.

In the present case, Hon'ble High Court further discussed the case of Hon'ble Supreme Court Kuria an another v. State of Rajasthan, (2012) 10 SCC 433 it has been held in paragraph no. 34 as under:

"the testimony of an eyewitness, if found truthful, cannot be discarded merely because the eyewitness was a relative of the deceased. Where the witness is

wholly unreliable, the Court may discard the statement of such witness, but where the witness is wholly reliable or neither wholly reliable nor wholly unreliable (if his statement is fully corroborated and supported by other ocular and documentary evidence), the court may base its judgment on the statement of such witness.

It can safely be deduced that the testimony of related or interested witness as a whole cannot be discarded but, a heavy duty is cast upon the Court to appreciate the evidence with utmost care and caution. **(Asif v. State of U.P., 2015 (91) ACC 96)**

Appreciation of evidence in Criminal Trial- Regarding delayed FIR, related witnesses and identification of accused

In this case, Hon'ble Court held that if, there is delay in lodging of the FIR, the delay should be explained and if, not explained even then the Court has to consider the aspect of delay in the light of totality of evidence and draw inference about the veracity of prosecution version considering the facts and circumstances of the case, which varies from case to case. Mere on the score of delay, the entire story of prosecution cannot be discarded. But, in such a situation an onerous duty is cast upon the Court to scrutinize the version with utmost care and caution and to eliminate the element of embellishment or exaggeration or colouration. In the instant case, it has been stated in the FIR that the incident took place on 31.1.1999 at about 9 pm. The FIR of the case has been lodged on 1.2.1999 at 6.10 am. The distance of police station from the place of occurrence has been mentioned as 7 km in the Chik FIR. There is a categorical explanation on behalf of PW 1 in his examination-in-chief that the road or way to the police station from the place of occurrence was in bad shape and he was terrified, therefore, he did not proceed for police station in the night. In the morning he got the report inscribed by one Awadhesh Singh and lodged FIR early in the morning at 6.10 i.e. on the very next day of the incident. The explanation regarding not lodging of FIR in the night has also been disclosed in the Tehriri report (Written report) i.e. Ext Ka.1. This factual situation cannot be denied that the psychology of the son cannot remain intact when his further is murdered in his presence and he witnessed the incident. So far as the aspect of fear as has been disclosed in the oral testimony by PW 1 is concerned, it also does not appear to be unnatural and disbelievable. As such, we are of the considered opinion that the delay in lodging FIR has sufficiently been explained and even presuming for argument sake, if there is any delay, it would not demolish the FIR.**(Ahibaran v. State of U.P., 2015 (91) ACC 553)**

Failure of justice –It has two aspects one procedural and the other is result

of trial Discussed

Failure of justice has two aspects one procedural and the other is result of the trial. In the present case, we find that trial of the case has not been conducted in accordance with fact of the case and procedure regulating the same. This is a rare eventuality that the first informant had got what he wished to get and the appellant has been sentenced to life imprisonment in addition to other sentences. If we take into account procedural defect and the mandate of the Hon'ble Supreme Court quoted hereinabove, it will be crystal clear that in the present case, failure of justice in law has been occasioned. From careful examination of the defence evidence court find that during the trial the appellant tried to need the charge of dowry death. Court has satisfied our self that this is not a case where in spite of non framing of charge the accused had full notice of the offence to which he had to defend himself. Prejudice likely to be suffered by the appellant persuades us that in the present case failure of justice in fact has also occasioned and court is convinced that here recourse to the provisions of sub-section (1) of section 464 is not called for. Sub-section (2) of section 464 gives us two options by way of Clause (a) to order the new trial after addition of charge and Clause (b) to direct after framing of charge new trial in whatever manner court think fit **(Rajesh Jha v. State of U.P., 2015 (91) ACC 393)**

Evidence Act

Section 60 –Aimed to ensure that whatever is offered as evidence shall itself sustain the character of evidence –Discussed.

Question arises whether law of evidence has been correctly followed here? The law of evidence has been divided in two parts by eminent Jurist Salmond. According to him first part consists of rules for the measurement and determination of the probative force of evidence the second consists of rules determining the modes and conditions of the production of evidence. Here we have to consider whether law of evidence has been substantially complied with in reference to the testimony of (DW1). The second part i.e. the manner in which the evidence is produced will be first discussed by us.

The wisdom underlying the provisions contained in Section 60 of the Evidence Act is not far to see. 'This Section is aimed to ensure that whatever is offered as evidence shall itself sustain the character of evidence. It must be immediate. It may not involve an intermediate agency or delivered through a medium, second hand or to use the technical expression "hearsay'.

As for example when the purpose is merely to ascertain what the deponent had heard from the dying person in such a case the evidence adduced to prove that

would not be called hearsay, but if the purpose is to inquire as to whether the dying person was murdered by A or B, such evidence will amount to "hearsay'. In this way application of the provisions of Section 60 of the Evidence Act has to be ensured, i.e. with reference to the purpose for which the oral evidence is being given. **(Rajesh Jha v. State of U.P., 2015 (91) ACC 393)**

Family Court Act

S. 7- Muslim Women (Protection of Rights on Divorce) Act- Sec. 3 –An application under Muslim women Act 1986 would not be maintainable before family court

From a perusal of Section 3 of Act of 1986, it is clear that the application thereunder can be filed before the Magistrate under the Code of Criminal Procedure 1973 (hereinafter referred to as Cr.P.C.1973)

From a perusal of Section 7 of Act, 1984 and in particular, sub Section (2), it can not be doubted that application under Act, 1986 was not maintainable before Family Court.

This very question came to be considered by a Division Bench of this Court in Anjum Hasan Siddiqui V Smt. Salma AIR 1992 Allahabad 322 Bombay High Court in Noor Jamaal V Haseena (1992) 2 Crimes 46 and Orissa High Court in Sk. Allauddin V Shamima Akhtari , 1995, Cr.L.J. 228.

In Anjum Hasan Siddiqui after considering Section 3 of Act 1986 and Section 7 of Act 1984 this Court held as under :

"10. Thus , we have seen that neither under sub Section (1) nor under Sub Section (2) of Section 7 of Family Court Act has any jurisdiction to entertain an application of the nature contemplated by Section 3 of 1986 Act .

"13. Having considered the matter therefore we are of the view that an application under Section 3 of `1986 Act can lie only before the Magistrate concerned and the Family Court established under the 1984 Act can not exercise jurisdiction unless the same had been specifically conferred upon the Family Court under the provisions of Section 2(b) . The family Court in this Case was therefore ,not competent to deal with the application moved the respondent for want of jurisdiction.

This Court finds in respectful concurrence of the aforesaid view in absence of anything argued at the bar to pursue, this court to take a different view. Since the power was possessed by Magistrate and not Family Court, the order passed

by Principal Judge,family Court lacked patent jurisdiction, hence illegal and void ab initio.

In the result the appeal is allowed The order dated 2.11.2002 passed by the Principal Judge, Moradabad is hereby set aside. **(Mohd. Yaseen v. Smt. Mehrajunnisha, 2015 (113) ALR 611)**

Sec. 19 (3)- Limitation for appeal- 30 days from the date of the judgment or order of a family court

The mode to challenge the judgements /decree/orders passed by a Family Court has been provided under section 19 of F.C. Act, which reads as under :-

"19. Appeal.--(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code or Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgement or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) :

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991].

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgement or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for an examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.]

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6)An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

This section clearly speaks that the provisions of the Cr.P.C. or the C.P.C. or any other law have been excluded to challenge the orders passed by the Family Court. An aggrieved person who wishes to challenge the judgement/decree/order passed by the Family Court has remedy only available in section 19 of the F.C.Act.**(Mohammad Nadeem v. State of U.P. and Another, 2015 (33) LCD 2791)**

Hindu Marriage Act

S. 13- Divorce petition filed on ground of desertion By the plaintiff/appellant u/s 13 of above Act, had been dismissed by Principal Judge, family court, Kaushambi –Consideration of- For holding desertion as proved, two conditions must be proved

Section 13(1) (ib) of Act, 1995 provides for grant of divorce on the ground of desertion for a continuous period of not less than two years immediately preceding the presentation of the petition. The aforesaid provision stipulates that a husband or wife would be entitled to a dissolution of marriage by decree of divorce if the other party has deserted the party seeking the divorce for a continuous period of not less than two years immediately preceding the presentation of the petition. Desertion, as a ground for divorce, was inserted to Section 13 by Act 68/1976. Prior to the amendment it was only a ground for judicial separation. Dealing with the concept of desertion, this Court in Savitri Pandey Vs. Prem Chandra Pandey (2002) has ruled thus:

"Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to a host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbai Shah v. Prabhavati held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.

In the said case, reference was also made to Lachman Utamchand Kirpalani Vs. Meena @ Mota AIR 1964 SC 40, wherein it has been held that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the

intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

The plaintiff-appellant, Lallu Prasad, was examined as PW-1, who has alleged that his marriage took place with defendant-respondent in the year 1980 according to Hindu customs. Respondent had gone to husband's house but always behaved abnormally. One son was born out of wedlock who died and another issue was also born who is 14 years of age and is with the respondent. He has also asserted that respondent was always treating him with cruelty and subsequently left with all her belongings for parents' house. In spite of request of appellant, respondent did not come. A Panchayat was also summoned, but it yielded no result. On flimsy grounds a maintenance suit was filed and certain amount of maintenance was granted by competent Court of law, which is being given by appellant. The witness has specifically admitted that his wife was not of unsound mind. No such specific incident has been brought on record which can show the abnormal behavior of respondent. It also appears from record that in the year 1998, the appellant had filed a Petition under Section 9 of Hindu Marriage Act, but it was subsequently withdrawn by appellant. An inference can be drawn that appellant was not interested to keep the respondent.

Ramhans has been examined as PW-2. This witness has alleged that respondent has not contracted any other marriage and the appellant appears to be literate. So as far as desertion is concerned, it appears that appellant had deserted the respondent. There is nothing on record, which may indicate that respondent has deserted appellant. From whatever facts have been placed on record, it is very difficult to assume cruelty in the light of those circumstances.

The respondent appears to be illiterate. In the light of evidence recorded, we are compelled to conclude that Trial Court has correctly appreciated the factual assertions and has rightly drawn the conclusion. The conclusions drawn by Court below cannot be said perverse or arbitrary keeping in mind those factual assertions. The petition was, therefore, rightly dismissed by Court below and in our considered opinion, it does not warrant any interference. **(Lallu Prasad v. Smt. Rampatiya, 2015 (113) ALR 386)**

Indian Stamp Act

Nature of –Discussed- no stamp duty is liable to be charged on assumptions and conjectures or surmises

In the case in hand also, the instrument, namely, agreement executed between the petitioner and its borrowers does not, in itself, evidences or contain terms regarding the deposit of title deed. The loan agreement only provides for a future eventuality requiring the giving of security, which necessarily would not fall within the ambit of Article 6 of Schedule 1-B of the Act. The Stamp Act is a fiscal statute and its provisions are to be strictly construed. No stamp duty is liable to be charged on assumptions and conjectures or surmises. The stamp duty is to be paid on the tenor of instrument and not at any future possibility. The Article meant in the agreement for security does not spell out even the nature of the security that may be required to be furnished sometimes in future. Stamp duty also cannot be charged on an assumptions that at any future time, the security by creation of equitable mortgage by deposit of title deeds would be executed. **(Housing Development Finance Corporation Ltd. V. Assistant Commissioner Stamps, Ghaziabad and another, 2015 (113) ALR 483)**

Ss. 33 and 47-A Stamp duty- Imposition of

The facts of the case are that the petitioners purchased a residential plot vide registered sale deed dated 6.5.2003 at Civil Station (City), Allahabad, Municipal No.17-B, Elgin Road, Allahabad. The stamp duty was paid at the residential rates. Thereafter, a show cause notice was given to the petitioners showing the stamp deficiency on the basis of spot inspection report dated 02.08.2003. The petitioners filed their objection on 19.10.2003 stating that the plot has been purchased as a residential piece of land and proper stamp duty has been paid on it. Proceedings had been initiated under Section 33/47A of the Indian Stamp Act.

After having perused the material on record it becomes clear that even though a serious objection was raised by the petitioners with regard to the use and value of the land on the proximate time, the same has not been discussed by the respondents in their orders and even though the entire proceedings were initiated on the basis of an exparte report. A proper hearing was not given to the petitioners and no proper findings have been recorded with regard to the existing value of the land on the date of execution of the instrument.

The matter, therefore, requires reconsideration by the Collector. The matter is remanded to the Collector for re-examination. He will consider the objections of the petitioners as filed on 19.10.2003 and will also examine the exemplars

filed along with it. The impugned orders are, therefore, set aside. The matter on remand may be re-examined by the Collector within a period of three months from the date a certified copy of this order is being placed before it. Certified copy of this order may be placed before the Collector within the next ten days. No frivolous adjournment will be granted to the petitioners. **(Anand Kumar Agarwal and another v. State of U.P. and others, 2015 (129) RD 41)**

Sec. 47-A—Powers of Collector—Explained and manner in which powers conferred to be exercised.

The manner in which the power under sub-section (3) of Section 47-A of the Act is to be exercised stands encapsulated in rule 7 of the Rules. Sub-rule (1) thereof enjoins the Collector to issue notice to the parties to the instrument to show cause as to why the market value of the property set forth in the instrument and the duty payable thereon be not determined by him. The notice to show cause comes to be issued by the Collector on receipt of a reference or where action is proposed to be taken suo motu, of course, upon being satisfied that the market value of the property comprised in the instrument has not been truly set forth. In terms of sub-rule (2), the Collector is empowered to call for and examine the original instrument to satisfy himself as to the correctness of the market value of the subject matter of the instrument and for determining the duty payable thereon. In terms of the provisions of sub-rule (3), the Collector is empowered to call for any information, examine and record the statement of any public officer, or authority and inspect the property after due notice to the parties to the instrument. Sub-rule (4) mandates that after examining the record and other evidences, the Collector shall proceed to determine the market value of the subject matter of the instrument and the duty payable thereon. In terms of sub-rules (5) and (6), if as a result of such enquiry, the market value is found to be fully and truly set forth in the instrument and adequate duty paid thereon, the same is liable to be returned to the person who made the reference with a certificate to that effect. If as a result of enquiry, the instrument is found to be undervalued and not duly stamped, further action is liable to be taken in accordance with the relevant provisions of the Act.

Admittedly the gift deed executed on 17 December 2012 was duly registered and returned to the appellant. The instrument thereafter appears to have been scrutinized by the Sub Registrar, Gautambudh Nagar and the Assistant Inspector General of Registration, Gautambudh Nagar who submitted confidential memos to the second respondent on 4 January 2013 and 20 February 2013 respectively. It was on the consideration of the above confidential memos that the notice came to be issued by the Collector, Gautam Budh Nagar on 9 September 2013. The notice called upon the appellant to

show cause why deficit stamp duty of Rs. 8,89,000 be not recovered from her.

In Court's opinion a notice of this nature must necessarily disclose to the person concerned the basis and the reasons upon which the Collector has come to form an opinion that the market value of the property has not been truly set forth. In the absence of a disclosure of even rudimentary details on the basis of which the Collector came to form this opinion, the person concerned has no inkling of the case that he has to meet. A notice in order to be legally valid and be in compliance with the principles of natural justice must necessarily disclose, though not in great detail, the case and the basis on which action is proposed to be taken against the person concerned. Not only this and as is evident from a bare reading of rule 7, at the stage of issuance of notice, the Collector has to proceed on the basis of material which may tend to indicate that the market value of the property has not been truly and faithfully disclosed in the instrument. The stage of computation of market value comes only after the provisions of sub rules (2) (3) and (4) of rule 7 come into play. At the stage of issuance of notices, the Collector calls upon the person concerned to show cause "as to why the market value of the property.... be not determined by him". **[Smt. Vijaya Jain vs. State of U.P. Through Its Principal Secretary (Stamp & Revenue) Govt. of U.P., Lucknow, 2015 129) RD 703 (All.)]**

Indian Succession Act

Sec. 284—Objection to grant of letters of administration—Person intending to oppose grant of Probate or Letters of Administration has to file caveat in prescribed form.

Section 284 of the Indian Succession Act, 1925 provides for caveats against the grant of probate or letters of administration. Under sub section (1) of Section 284, caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate. Sub section (4) of Section 284 provides that the caveat shall be made as nearly as circumstances admit in the form which is set out in Schedule V. The form of a caveat in Schedule V essentially provides that nothing be done in the matter of the estate of the deceased without notice to the caveator. The Rules framed by the High Court in Chapter XXX of the Allahabad High Court Rules, 1952 govern the testamentary and intestate jurisdiction. Section B of Chapter XXX of the Rules deals with non-contentious business, whereas Section C deals with contentious business. Under Rule 3, non-contentious business includes the business of obtaining probate and letters of administration, with or without the will annexed and where there is no contention as to the rights thereto, or in a

situation where there has been a contention, the contest is terminated. Non-contentious business also includes all ex parte business to be taken in the Court in matters of testacy and intestacy not being proceeded in any suit, and also the business of lodging caveats against the grant of probate or letters of administration. Rule 7 of the Rules provides for an application for letters of administration with a will annexed. Where an application is made for letters of administration with a will annexed, the application has to set out the names and addresses of the legal representatives of the deceased, unless the Court has seen it fit to dispense with them. Rule 21 of the Rules stipulates that all citations unless otherwise ordered, shall direct the persons cited to show cause on such day as the Judge shall direct and would be in the prescribed form. Section C of Chapter XXX of the Rules deals with contentious business.

The respondents clearly stated their interest as the three daughters of the deceased testatrix. Their right as well as the grounds of objection were clearly stated. The respondents stated that they were filing the caveat to contest the proceedings indicating that they were intending to resist the grant of letters of administration to the appellants. The grounds on which they intended to do so was that according to them the will was forged and fabricated since all the properties were bequeathed to the appellants, whereas according to them, the deceased mother had a limited right over the properties. The learned Single Judge was, in this view of the matter, justified in coming to the conclusion that the requirement of filing an affidavit together with an objection setting out the right and interest of the caveator and the grounds of objection was duly fulfilled. Neither the Succession Act nor the Rules framed by this Court provide any statutory form for the filing of an objection or for the lodging of a caveat. The affidavit which was filed, contained a clear statement of objection and fulfilled the requirement of stating the right and interest of the caveator and the grounds of objection for the grant of letters of administration.

Before concluding, Court may also deal with an ancillary submission that since Rule 39 of the Rules contemplates that the objection should be treated as a written statement, the learned Single Judge was not justified in granting three weeks' time to the respondents to file their objections/written statements. The learned Single Judge has, in Court's view, correctly held that the affidavit which was filed by the respondents was in substantial compliance with the requirements of Rule 36 of the Rules and should be treated as the objection to the grant of letters of administration. The direction by the learned Single Judge in the concluding part of the order has only operated ex-abundanti cautela and in any event does not cause any prejudice to the appellants. Court found no reason to entertain the special appeal. **[Ashok Kumar Shukla vs. Smt. Karuna Tiwari, 12015 (129) RD 614 (All.)]**

Indian Trust Act

Trust deed- Cancellation of- Suit had been filed by three trustee for decree of cancelation of the trust deed against two of the eleven trustees- Petitioners who were trustees moved application for being impleaded which was rejected–Validity of- where a suit is instituted against a trustee, all the trustee should be impleaded as party

Vijay Pratap Singh, son of late Arjun Singh Bhadauria and Smt. Radha Devi, widow of Rajendra Singh, residents of Village Sarai Manihar, Post Officer Sumerpur, Pargana Bhagwant Nagar, Tahsil Bighapur, District Unnao created a trust known as Radha Devi Rajendra Singh Dharmarth Nyas by executing a trust deed on 14.09.2006 which was registered in the office of the Registrar concerned on 15.09.2006. The trust deed mentions 9 other persons other than Vijay Pratap Singh and Smt. Radha Devi as trustees of the trust in question.

Smt. Radha Devi instituted a suit impleading Smt. Chandra Prabha, Vijay Pratap Singh and Radha Devi Rajendra Singh Dharmarth Nyas as defendants with a prayer for decree of cancellation of the trust deed dated 15.09.2006. The petitioners, who were trustees as per trust deed in question, moved an application before the learned trial court below under Order I Rule 10 of the C.P.C., praying therein that they be ordered to be impleaded as parties to the suit. The said application was moved on 11.04.2008. While pressing the said application, it was urged on behalf of the petitioners that in view of the provision contained under Order XXXI of the C.P.C., the petitioners, being trustees as per the trust deed, are the necessary parties and hence, they should be ordered to be impleaded in the suit. However, the said application of the petitioners did not find favour by the learned trial court which rejected the same by means of impugned order dated 22.04.2008. The learned trial court while rejecting the application moved by the petitioners has given two reasons; (i) that issue no.5, which was framed to the effect as to whether the suit filed by the plaintiff suffers from the vice of non-joinder of all the trustees, has been decided in negative, hence the petitioners' application cannot be allowed and (ii) that under Order XXXI Rule 1, all the trustees are not to be impleaded necessarily as parties to the suit.

The revision petition preferred by the petitioners against the aforesaid order dated 22.04.2008, passed by the learned trial court has also been dismissed, by means of order dated 11.08.2009, by the learned Additional District & Sessions Judge, Unnao stating therein that the term of the office bearers of the trust is three years which is coming to an end shortly on 15.09.2009, hence the petitioners are not necessary parties.

The question for consideration, which has arisen in this petition, is as to whether the facts and circumstances of the present case attract the provision contained in Rule 1 of Order XXXI or Rule 2 of Order XXXI of the C.P.C. The provisions in Order XXXI Rule 1 of the C.P.C. state that in a suit relating to property vested in a trustee, executor or administrator, where the dispute is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and in such a situation, it shall not ordinarily be necessary to make them parties to the suit. Rule 2 of Order XXXI clearly states that where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them.

In the instant case, the suit for a decree of cancellation of the trust deed has been filed by Smt. Radha Devi, who is trustee No.2 as per the trust deed, against Vijay Pratap Singh and Smt. Chandra Prabha, who are trustee Nos. 1 and 5 respectively. Thus, as per the provision of Rule 2 of Order XXXI of the C.P.C. in a suit against one or more of the trustees all the trustees of the trust are to be made parties. Admittedly, the suit has been filed by one trustee against two other trustees, thus, in view of the provision contained in Rule 2 of Order XXXI of the C.P.C., all the trustees, in my considered opinion, are to be made parties. I also hold that the provision contained under Order XXXI Rule 1 of the C.P.C. does not have any application to the facts and circumstances of the case for the reason that suit in the instant case has not been filed where there is any dispute between the persons who are beneficially interested in the trust property and any third person. The suit has been filed for cancellation of trust deed against two of the eleven trustees. Thus, it is clear that in the instant case, provisions contained in Rule 2 of Order XXXI are clearly attracted and hence, the application moved by the petitioners, who are trustees as per the trust deed ought to have been allowed and by not doing so, learned trial court has erred.

To hold that the view taken by the learned courts below is erroneous, regard may be had to a judgment of this Court in the case of Ram Ghulam and another Vs. Shyam Sarup and others, reported in AIR 1934 Allahabad High Court, page 1 wherein it has been held that where a suit is instituted against a trustee, all the trustees should be impleaded. This is laid down in Order XXXI Rule 2 of the C.P.C.

For the reasons given above, the impugned orders passed by the learned trial court and the learned revisional court below cannot be allowed to be sustained. **(Amar nath Singh And Others v. Additional District Judge, Unnao and others, 2015 (113) ALR 447)**

Interpretation of Statutes

Principle of Interpretation – the words of statute must be given meaning and effect and in interpretation should not be adopted which would render any past of the statutory provision meaningless

The well settled principle of interpretation, the words of statute must be given meaning and effect and an interpretation should not be adopted which should render any part of the statutory provision meaningless. The words which the legislature uses cannot be regarded as being without any meaning or implication and must be imparted some significance. A contextual and purposive interpretation must in these circumstances be adopted. **(Ram Sewak Shukla v. State of U.P. Through Chief Secretary, U.P. Government , 2015 (113) ALR67)**

Juvenile Justice (Care and Protection of Children) Act

S. 7A (as inserted by Act 33 of 2006) –Juvenile Justice (Care and Protection of Children) Rules (2007), R. 12- Claim of juvenility – Age determination enquiry- Scope of-

The law that emerges from the discussion of various judgment of the Apex Court in the present matter is that where there are certificates available, as contemplated by Rule 12 (3) (a) (i) of the Rules, 2007, the date of birth entered in such certificate is to be accepted for determining the age of the juvenile in conflict with law and the other evidences including opinion of the medical board would not be required unless it is shown that those documents or certificates are fabricated or manipulated. The age determination inquiry is to be conducted as per the Rules, 2007 and not as in the case of a trial.

A careful perusal of the decision of the apex court in Abuzar Hossain's case (supra), particularly the context in which it was made, would go to show that it no where dilutes the view taken by it in Ashwani Kumar Saxena's case. Rather, a perusal of the observations made in paragraph 39.5 of the judgment in Abuzar Hossain's case confirms the view taken by the apex court in Ashwani Kumar Saxena's case that there should not be a roving inquiry with regard to the correctness of the entry made in the certificates.

In view of the discussion made above, neither the law laid down in Ashwani Kumar Saxena's case is contrary to the larger bench decision in Abuzar Hossain's case nor it has been diluted in any way. Therefore the entry in a matriculation or any equivalent certificate, in view of the law as it stands, can be discarded only if it can be shown that the certificate is fabricated or manipulated.

To prove that the certificate was obtained by manipulation cogent evidence

must be led to demonstrate such manipulation. In a case where by cogent evidence the Court is apprised of such manipulation, the Court can always enter into the correctness of the entries by taking such evidence as it may deem necessary. But where there is no challenge with regards to the authenticity of the matriculation or equivalent certificate produced by the claimant, or where there is no stand that the claimant had obtained the certificate through manipulation, the correctness of the date of birth entered in such certificate cannot be tested in an age determination inquiry of a juvenile in view of the provisions of Section 7-A of the Act, 2000 read with Rule 12 (3) of the Rules, 2007 as has been held by the Apex Court in Ashwani Kumar Saxena's case (AIR 2013 SC 553) **(Smt. Leena Katiyar v. State of U.P. & others, 2015 (6) ALJ 1)**

Sec. 7 A - Juvenile Justice (Care and Protection of Children) Rules (2007), R. 12 (3) –Age of Juvenile – Determination- Mandatory on part of Board/Court to follow hierarchy stipulated under R. 12 (3) of Rules and to adhere to same in determination of age of juvenile

The most relevant portion of the Rules (2007), Rule-12 is contained under sub-Rule-3 (a) (i) (ii) (iii) and (b). This sub Section virtually predicates the hierarchy to be followed by the court/Board, as the case may be, and to be adhered to in determination of the age of juvenile

Obviously, the language contained under aforesaid Rule (Rule-12) is not directory but mandatory, meaning thereby that in the presence of the higher option the lower option loses significance and the same will be discarded and will never form part of consideration while deciding the matter of juvenility. The aforesaid principle has been settled in a catena of cases pronounced by the Hon'ble Apex Court as well as by this Court.

On the basis of factual and legal position, that in the presence of High School Certificate, trial Judge was not justified in jumping over to second preferential option while first preferential option was available; it was manifest error committed by the learned trial Judge and he ought not to have overlooked the substantial piece of evidence so appearing on record and approved by first preferential option in the form of High School mark-sheet and certificate. Therefore, the order impugned becomes erroneous and perverse and the same cannot be sustained as such. The principle of the aforesaid case of Ashwani Kumar are very much applicable in this case and the trial Judge cannot avoid and bypass the categorical guidelines so provided for conducting due inquiry within the specified legal sphere, in the matter of determination of juvenility.

For the reasons aforesaid, the order impugned dated 10.12.2013 passed by Additional Sessions Judge, court no.4, Bulandshahar in S.T. No.546 of 2011

(State Vs. Jai Kumar) is set aside and quashed and the case is remanded back for consideration afresh in the light of the observations made in the body of this judgment. **(Jai Kumar v. State of U.P. and another, 2015 (6) ALJ 34)**

Sec. 12-Bail –Juvenile allegedly involved in gang rape opposed simpliciter on ground of gravity of offence when his parents/ guardian are ready to do reformative act on their part for upliftment of their child- Bail, granted

Even as per settled position of law, the merits/gravity of the offence will not be the sole guiding factor for disposal of the bail application of the delinquent juvenile in conflict with law. It is true that the first information report has been lodged against the revisionist under Section 376(2) (g) and 364 I.P.C. but gravity of the offence loses significance in view of the report of the District Probation Officer dated 30.10.2013 annexed as annexure no.11 to the affidavit filed in support of this revision, wherein, it has been specifically stated that the parents of the minor are willing to reform their child. This positively indicates that parents are ready to take custody of their son with a will to improve upon his life.

However, it has been opined by the District Probation Officer that the prayer for bail is opposed, but there is no supporting material regarding above observations as to why the bail application is opposed by the District Probation Officer without there being any supporting material giving rise to the possibility of the minor falling into company of the known criminal or there being physical or psychological danger to the safety of the minor or otherwise to secure ends of justice. Therefore, it can be conveniently observed that the bail application of the minor cannot be opposed simpliciter on the ground of gravity of offence when parents/guardian of the delinquent juvenile in conflict with law are ready to do reformative act on their part for upliftment of their child.

In view of the above, the prayer for bail made on behalf of the delinquent minor is liable to be allowed. **(Ashu Kumar (minor) v. State of Uttar Pradesh and another, 2015 (6) ALJ 238)**

Land Acquisition Act

Sec. 11 – To Award compensation –Nature of- Award under L.A. Act is an offer made by state cannot be treated as judgment of Trial Court

It is responsibility of Collector to determine market value which is payable to tenure holder/land holder in respect of acquired land and this is nothing but an offer made by the State to the owner as consideration, proposed by the State, for acquiring land forcibly. The Collector, therefore, passes an order which is

called 'award', determining market value on which, compensation of the acquired land is to be calculated.

An Award passed by Land Acquisition Officer is like an offer and not to be treated as a judgment of trial Court. It is well settled, when the land holders are not agreeable to accept the offer made by Land Acquisition Officer, they have a right to approach Collector under section 18 of the Act 1894, by a written application, for referring the matter to Court, for determination of the amount of compensation or if there is any dispute regarding measurement of land for that also. In the present case the references in question were made at the instance of claimants for determining to the amount of compensation. **(Rajendra Prasad and another v. State of U.P. and another, 2015 (129) RD 332)**

Ss. 18 and 11(2)—Rejection of application for making reference—Ground for—Once agreement was entered into by petitioners, the question to receive compensation under protest did not arise—They having no right to seek reference to Civil Court u/s. 18 of Act.

The entitlement to seek reference by an interested person would arise only when the amount of compensation is received under protest in writing which would manifest the intention of the owner of non-acceptance of the award. Section 11 (2) opens with an non-obstinate clause "notwithstanding anything contained in sub-section (1)". It further provides that if the persons interested the land agreed in writing on the matters to be included in the award, the Collector may, without making any further enquiry, make an award according to the terms of such agreement.

In view of the specific contract made by the petitioners in terms of Section 11 (2), they are not entitled to seek a reference and the civil court would be devoid of its jurisdiction to go into the adequacy of compensation awarded by the Collector or prevailing market value under Section 4 (1) or to grant any other statutory benefits in view of the agreement entered into by the petitioners. Once an agreement was entered into by the petitioners, the question to receive compensation under protest does not arise. So, they will not have any right to seek a reference to the civil court under Section 18 of the Act.

In view of the above facts and discussions, the application made by the petitioners under Section 18 of the Act for making reference has rightly been rejected. **[Kailash Nath Sharma and Anr. vs. State of U.P., 2015 (6) AWC 5851 (All.)]**

Legal Services Authorities Act

S. 22(6)- Permanent Lok Adalats –Authority empowered to adjudicate

disputes between parties- must be creature of statute and adjudicate disputes after giving reasonable opportunity to the parties –Guidelines issued which are not exhaustive but merely illustrates

The Permanent Lok Adalats under the 1987 Act (as amended by 2002 Amendment Act) are in addition to and not in derogation of Fora provided under various statutes.

It is settled law that an authority empowered to adjudicate the disputes between the parties and act as a tribunal may not necessarily have all the trappings of the court. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice. It is not a constitutional right of any person to have the dispute adjudicated by means of a court only. Their procedures may differ, but the functions are not essentially different. Both courts and tribunals act "judicially".

Sub-section (1) of Section 22-C speaks of settlement of disputes. The authority has to take recourse to conciliation mechanism. One of the essential ingredients of the conciliation proceeding is that nobody shall be forced to take part therein. It has to be voluntary in nature. The scope of voluntary settlement through the mechanism of conciliation is also limited. If the parties in such a case can agree to come to settlement in relation to the principal issues, no exception can be taken thereto as the parties have a right of self determination of the forum, which shall help them to resolve the conflict, but when it comes to some formal differences between the parties, they may leave the matter to the jurisdiction of the conciliator. The conciliation only at the final stage of the proceedings would adopt the role of an arbitrator.

Here, however, the Permanent Lok Adalat does not simply adopt the role of an Arbitrator whose award could be the subject matter of challenge but the role of an adjudicator. The Parliament has given the authority to the Permanent Lok Adalat to decide the matter. It has an adjudicating role to play.

This Court is constrained to observe that the PLAs in the State are not functioning within the parameter of the 1987 Act, erratic orders are being passed even on matters which do not fall within their domain, it is, therefore, expected that the PLA while exercising power under 1987 Act would observe the following points and must at the outset formulate the questions before proceeding to adjudicate. The guidelines are not exhaustive but merely illustrative.

(1) Whether PLA has jurisdiction on the subject matter;

(2) Primary role of PLA is that of conciliation upon failure of the parties to reach an agreement, PLA mutates into an adjudicatory body;

(3) PLA should not give an impression to the disputants that it from the beginning has an adjudicatory role; 4) PLA being a Tribunal lacks the inherent power of a Court, therefore, cannot grant injunction/interim orders;

(5) The role assigned to PLA is to settle/adjudicate "most of the petty cases which ought not to go in the regular courts would be settled in the pre-litigation stage itself";

(6) Matters where genuineness of the claim itself is in dispute, parties have taken extreme positions, the same, prima facie, may not be the subject matter of conciliation/adjudication,

(7) Whether or not an offence, which is non compoundable or compoundable in nature, has indeed been committed would fall outside the jurisdiction of PLA; **(Life Insurance Corporation of India v. Syed Zaigham Ali and another, 2015 (112) ALR 694)**

Limitation Act

S. 18, Articles 24 and 70 –Acknowledgement in writing- Effect of- A suit could be filed after three years from date of breach of contract if there is acknowledgment u/s 18 of above Act

As per section 18, acknowledgment can be with respect to not only property or right but it can be even with respect to the liability. A suit could be filed after three years from the date of breach of contract only if there was acknowledgment under section 18 of the Limitation Act, 1963. **(Mamraj Sing v. General Manager (P&A), B.H.E.L., Ranipur and others, 2015 (129) RD 577)**

Motor Vehicles Act

S. 149 (4), Proviso- Pay and recover proviso –This proviso subject to owner to furnish security-owner, however, fails to furnish security either due to incapability or other reasons- Award should not be allowed to be frustrated, insurer should promptly move Executing Court which shall take steps to make payment to third party while balancing concern of Insurer

Where the insurer is directed to pay the amount in the first instance despite having been held not to be under a legal liability to pay the awarded amount, while permitting the insurer to recover the amount from the owner, the

procedure which has been laid down in decision reported in AIR, 2004 SC 4882 would have to be followed. This would envisage that before the amount is released to the claimant, the owner of the offending vehicle shall furnish security for the amount which the insurer has to pay to the claimants. The offending vehicle is to be attached as a part of the security for the purpose of recovering the amount from the insured. The insurer shall not be required to file a suit and may initiate a proceeding before the executing Court. The executing Court may pass appropriate orders in accordance with law as to the manner in which the insured, namely the owner of the vehicle, shall make payment to the insurer. In the event that there is any default, it is open to the executing Court to direct realisation by the disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle. In the event that the person on whose behalf payment has been made by the insurer, does not furnish security or is not in a position to furnish security to the insurer, the insurer should promptly move the executing Court. The executing Court shall then duly ensure that it exercises all its available powers in execution in accordance with law so that while on one hand payment is made to the person to whom it is due, the concerns of the insurer are duly balanced. All necessary and proper steps should be taken by the executing Court to ensure that the intent and object of the legislature in enacting the beneficial provisions of the Act is duly preserved and are expeditiously implemented. **(United India Insurance Co. Ltd. v. Smt. Shashi Prabha Sharma & others 2015 (5) ALJ 661)**

Sec. 166- Whether limitation is relevant for filing Claim petition- Held "No" - Rejection of claim on ground of limitation – Is illegal and erroneous

While deciding the relevancy of limitation Hon'ble Court discussed and considered in Dhannalal's case (AIR 1996SC 2155), the Supreme Court in paragraph 10 of the decision has laid down as under:

"10. The ratio laid down in Dhannalal's case (supra) applies with full force to the facts of the present case. When the claim petition was filed sub- section (3) of Section 166 had been omitted. Thus, the Tribunal was bound to entertain the claim petition without taking note of the date on which the accident took place. Faced with this situation, Mr. Kapoor submitted that Dhannalal's case does not consider Section 6A of the General Clauses Act and therefore, needs to be reconsidered. We are unable to accept the submission. Section 6A of the General Clauses Act undoubtedly provides that the repeal of a provision will not affect the continuance of the enactment so repealed and in operation at the time of repeal. However, this is subject to "unless a different intention appears". In Dhannalal's case the reason for the deletion of sub-section (3) of Section 166 has been set out. It is noted that the Parliament realized the grave injustice and

injury caused to heirs and legal representatives of the victims of accidents if the claim petition was rejected only on ground of limitation. Thus "the different intention" clearly appears and Section 6A of the General Clauses Act would not apply."

From the aforesaid decision, it is quite clear that the date of accident, whether it is prior to 14.11.1994 or thereafter, would not be relevant since after deletion of sub-section (3) of Section 166 of the Motor Vehicles Act, there is no limitation for filing a claim petition. **(Asgar Khan & another v. New India Insurance Co. Ltd. & others, 2015 (6) ALJ 603)**

Ss. 169 and 176- Power of review –whether invested with Motor Accident claim Tribunal- Held, "No"

The petitioner has challenged an order dated 18.5.2015 passed by Motor Accident Claims Tribunal, whereby the application filed by the petitioner for review of the award dated 6.12.2010 passed in Claim Petition No.24 of 2009, has been rejected. It has been held that there is no clerical error in the award and there being no power with the Tribunal to review its award on merits, the application cannot be accepted.

The core question for consideration is regarding the nature and scope of the power of review of Motor Accident Claims Tribunal constituted under the provisions of the Motor Vehicles Act, 19881

Thus, under the Act and the Rules framed thereunder, the Motor Accident Claims Tribunal has not been invested with the power of substantive review given to a civil court by Section 114 and Order 47 C.P.C. There is even no provision under the Act or the Rules wherefrom such power can be said to be impliedly conferred on a Motor Accident Claims Tribunal. Thus, the Motor Accident Claims Tribunal can only make changes in the award if the case falls under the first three categories delineated above and not where a substantive review is sought on merits.

The petitioner thus wants the evidence to be re-examined. In the opinion of the Court, such a mistake, if committed by the Tribunal, even if apparent on the face of record, would be a case of substantive review and not correction of a clerical error. The other ground, though not pleaded before the tribunal, is that in Claim Petition No.36 of 2009, relating to the same accident, the license of the driver was held to be valid. Thus, the petitioner seeks to rely on a piece of evidence coming into existence after the award was rendered. This again can only be a ground of substantive review. Since, as noted above, the Tribunal does not have the power of substantive review and, therefore, in the opinion of the Court, the Tribunal was justified in rejecting the application filed by the petitioner. **(R.K.B.K. Ltd. V. Sushila Devi and others, 2015 (5) AWC 5008)**

S. 169- Procedure- Proof of Documents –Strict rules of evidence are not applicable to the proceedings under

The facts, in short, giving rise to the present case, are that an accident occurred with a bus running on undertaking of Uttar Pradesh State Road Transport Corporation (in short 'UPSRTC') bearing no. UP 42 T-1066, which was driven rashly and negligently by the driver, as a result of which the father of the claimant Dinesh Pratap Singh, who was traveling alongwith his wife on Hero Honda Motorcycle bearing No. UP 41 F 7260, on the left side of Lucknow-Faizabad National Highway and when he reached near Village Udhauli, Police Station Safdarganj, District- Barabanki at about 10.30 hours and when he was talking to somebody his motorcycle was hit from the back side by the alleged bus in which Dinesh Pratap Singh and his wife received grievous injuries, as a result of which, they died. The First Information Report was lodged at Police Station Safdarganj, District Barabanki at Crime No.480/06, under Section 279/304A/427 I.P.C. and their bodies were sent for postmortem. The investigation followed and the claimants filed claim petition for claiming compensation by impleading insurance company as one of the respondents. The evidence was led by the parties and after considering the evidence of the respective parties, the award was passed by the Motor Accident Claims Tribunal on 16.07.2011. Hence, these appeals.

The said award has been challenged primarily on the ground that the permit which was filed before the Tribunal was a photostat copy and the same was not got proved and the said permit also does not indicate vehicle number and therefore, the said permit cannot be said to be in respect of the vehicle which was involved in the accident.

Once the requirement for issuance of permit for notified route or notified area has been made, the argument of learned counsel for the appellant that bus number must be mentioned on the permit cannot be accepted and neither termed to be statutory requirement as contemplated under the Act or Rules. The further argument of learned counsel for the appellant is that the said permit has not been proved. It is to be noted that photostat copy of the permit was filed by UPSRTC. The UPSRTC happens to be a public body. The custodian of the original record is the said public body and, therefore, attested photostat copy of the same has been filed by UPSRTC before the Tribunal, therefore, it cannot be said that it is not a correct document and the same cannot be considered.

Section 169 of the Act contemplates that the Tribunal is supposed to make an inquiry under Section 168 of the Act. The Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure, as it thinks fit. The aforesaid provision provides power to the Tribunal to make inquiry

regarding the factum of accident, however, there is no hard and fast rule for the Tribunal to make such an inquiry. The strict rules of evidence does not apply in the case of Motor Vehicles Act and, therefore, the permit filed by the UPSRTC cannot be said to be doubtful or requiring further elaboration in any manner. **(The Oriental Insurance Co. Ltd. V. U.P.S.R.T.C. and others, 2015 (33) SCD 2814)**

National Security Act

Section 3(3) –Detention order- Sustainability of-

A perusal of the impugned order passed by the respondent no.1 detaining authority/ District Magistrate, Gautam Budh Nagar in the exercise of his power under Section 3(3) of the National Security Act and the grounds of detention under Section 8 of the Act shows that while the petitioner was in judicial custody on account of his being accused in two criminal cases registered against him at P.S. Dadri, District Gautam Budh Nagar, namely, case crime no. 321 of 2014, under Sections 147, 148, 149 and 302 IPC and case crime no. 889 of 2014, under Section 25/27 Arms Act, he had moved a bail application in main case, namely, case crime no. 321 of 2014 only and the detaining authority was satisfied on the basis thereof that there was all likelihood of the petitioner's bail application being allowed and in case he was released on bail, he would again indulge in activities prejudicial to the maintenance of public order, and in order to prevent him from indulging in any such activities, it was imperative to pass an order for his detention under the National Security Act. There is neither any recital in the grounds of detention nor any tangible material on record which may indicate that the petitioner had moved bail application in the other criminal case, namely case crime no. 889 of 2014 also which was pending against him on the date of the passing of the impugned order, thus even if the petitioner was granted bail by the learned Sessions Judge in case crime no. 321 of 2014, there was no possibility of his coming out of the jail on account of his being accused in another criminal case, namely, case crime no. 889 of 2014 as he had not applied for bail in the aforesaid case and hence the subjective satisfaction recorded by the detaining authority/ District Magistrate, Gautam Budh Nagar, respondent no.1 in the impugned order and in the grounds of detention that there was strong possibility of the petitioner coming out of the jail and indulging in activities prejudicial to maintenance of public order, in our opinion is not based upon any cogent and reliable material and the impugned order which has been passed on nonexistent and irrelevant grounds suffers from the vice of total non application of mind. **(Arun @ Alli @ Arun Kumar Arya v. District Magistrate and others, 2015 (91) ACC 760)**

Practice and procedure

Mentioning of wrong facts in the impugned judgment –Consideration of-judgment unsustainable and liable to be set aside on this ground alone

In writ petition No. 83 (RC) of 2015, it has been argument of Sri Mohd. Arif Khan, Senior Advocate appearing for the petitioner is that the impugned judgment of the appellate court suffers from legal infirmities and the findings recorded by the Appellate Court are contrary to record. Elaborating his submission, learned Counsel for the petitioner submitted that the appellate court while deciding the appeal preferred by the present petitioner has taken into consideration the facts of the appeal filed by the Sardar Manjeet Singh, as would be evident from the perusal of paragraph 16 of the impugned judgment wherein it has been observed that in response to survey report filed by the contesting respondent, no survey report has been filed by the petitioner/appellate, which is wholly erroneous as the Prescribed Authority in its judgment dated 10.1.2014 has made discussions and observation with respect to the survey report filed by the present petitioner.

The aforesaid factual position and mentioning of incorrect facts in the appellate judgment has not been disputed by Sri Manish Kumar, Advocate appearing for the respondent.

Before proceeding further, it is relevant to point out that it has been informed at the Bar that Rent Appeal Non 28/13 and Rent Appeal Non 14/2014 have been decided while the third appeal is still pending in the appellate court.

In view of the aforesaid undisputed facts, the impugned judgment and order dated 4.8.2015 passed by the Addl. District Judge cannot be sustained and is liable to be set aside on the ground alone. **(Nirmal Chandra Mukherjee v. Smt. Ritu Bansal, 2015 (3) ARC 641)**

Only the operative part of the order constitutes decree which alone binds the parties

It is settled that only the operative portion of the order constitutes decree which alone binds the parties.**(Shyama Singh (Dead) Through LRs v. Sarv Deo Singh and others, 2015 (129) RD 467)**

Exemplary cost—Imposition of

Revisionist-tenant urged that landlord is Senior Advocate and owns much property, as such, sympathetic view may be taken towards him. Sri Bireshwar Nath, learned counsel for the respondent brought to the notice of this

Court the conduct of the revisionist who has employed all possible tricks to delay the matter and even to make application against the Presiding Officer as is apparent from the order passed by trial court dated 22/11/2011. Nearly, 130 dates were fixed and Small Cause Suit which ought to have been decided in few months, has taken seven years for final disposal. This can't be allowed to go on for long. In the pleadings, most intemperate and offensive language was used by the defendant. Use of such language in pleadings was not expected from defendant, who was also a lawyer. Court takes serious exception to this mode. Order sheet of the Court reveals that allegations were made against Presiding Officer. They have expressed their helplessness yet granted adjournment after adjournment. Even after defence evidence was over, third party appeared claiming title. Nobody should take courts for a ride and court cannot remain moot spectator to abuse of process of court. This is a case which shows all possible tactics a tenant/defendant can use. Court does not approve this conduct. Even in this Court, sometime revisionist no. 1 appeared in person and sometimes his counsel Sri Zainul Aabdin.

Everybody has a right to hold property and augment income through lawful means. If plaintiff no. 2 is a successful lawyer, how can defendant feel aggrieved. Landlord has a right to pick up the tenant seeking his eviction under law. No exception can be taken to this approach. Tenant cannot be heard to plead that he alone is being sought to be evicted that too, on the ground of default. Conduct of revisionist in trial court as well in this Court calls for imposition of exemplary costs. Court will be failing in its duty if in order to retain and sustain faith of people in judicial system, exemplary cost is not imposed. **[Mohammad Ibrahim Abid & Ors. Vs. Sameer Om, 2015 (3) ARC 703]**

Protection of Women from Domestic Violence Act

S. 3(a) –Domestic Violence –What constitutes- Economic abuse of aggrieved person constitutes domestic violence

The said Act has been enacted as an Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Section 3 of the D.V. Act, 2005 defines domestic violence as follows:-

"Section 3. Definition of domestic violence.-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
(d) otherwise injures or causes harm, whether physical or mental,to the aggrieved person.
Explanation I.-For the purposes of this section,-
(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
(iii) "verbal and emotional abuse" includes-
(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
(iv) "economic abuse" includes-
(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

From a perusal of clause (a) of section 3 it becomes clear that even economic abuse of the aggrieved person by the respondent would constitute domestic violence. Clause (iv) of Explanation I to section 3 defines 'economic abuse'. Sub-clause (a) of clause (iv) of the Explanation I to Section 3 of the Act provides that economic abuse would include deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance. Under the circumstances, if the wife/aggrieved person alleges that she has been deprived of all or any economic or financial resources to which she is entitled under the law, it would amount to an economic abuse within the meaning of the aforesaid clause. Continued deprivation thereof would give recurring cause of action and, therefore, an application under Section 12 of the D.V. Act, 2005 seeking protection orders by such an aggrieved person cannot be said to be barred by limitation. In fact, the Apex Court in the case of V.D. Bhanot v. Savita Bhanot, reported in (2012) 3 SCC 183 had observed that the conduct of the parties even prior to the coming into force of the D.V. Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. The apex court in that case observed that the High Court rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the D.V. Act, 2005. Under the circumstances, there being no limitation provided for filing an application under section 12 of the D.V. Act, 2005, the application of the opposite party no.2 seeking various protection orders on ground of being deprived of the benefits of matrimonial home, which she shared with the applicants till the date she was driven out of her matrimonial home, as well her Stridhan, cannot be said to barred by limitation or bad in law. **(Santosh Kumar Yadav and othr v. State of U.P. and another 2015 (5) ALJ 466)**

Sec. 23- Ex-parte interim order granting maintenance- Powers of magistrate- magistrate is empowered to pass ex-parte interim order even on affidavit, if situation of case so requires –Giving opportunity of hearing to opposite party not necessary

Power to pass ex parte interim order has statutory sanction which is very much clear from a reading of Section 23 (2) itself and it leaves no room for any doubt.

A reference of paragraph nos.8 and 9 of the aforesaid case is extracted hereinbelow:

> "8. Sub-section 2 of Section 23 of the Protection of Women from Domestic Violence Act, 2005, makes it clear that Magistrate can pass ex parte order, on the basis of affidavit, if he is satisfied that prima facie respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence.
>
> 9. For example, if a legally wedded wife is being threatened by the husband or relative(s) of the husband to leave the house immediately and there is immediate danger of her dispossession forcefully; likewise, if wife is at the stage of starvation and she needs immediate maintenance and wife cannot be left to die in starvation, then of course, learned Magistrate would be justified in granting ex parte interim protection and maintenance while invoking powers under Section 23 of the Act."

By virtue of the aforesaid mandate as contained under Section 23 of the Act, the power has been vested with the Magistrate to pass any interim ex parte order and it was not proper on the part of the appellate court to have straightway quashed the impugned order dated 28.09.2013 without passing direction for presentation of proper application by the appellant Vinod Agarwal (opposite party no.2) for cancellation/variation of the interim order so passed. **(Shiva Agarwwal (Shiwani) daughter of Rakesh Gupta v. State of U.P. and another, 2015 ((6) ALJ 345)**

Provincial Small Causes courts Act

Small Causes Courts- Revisional Jurisdiction –Scope of –Examination of finding of fact by the Revisional courts is limited to satisfy itself that the decision is according to law

This is a tenants petition under Article 226 of the Constitution of India. The writ petition is directed against the order dated 18 August 2004 passed by the Additional District Judge Court No. 10, Kanpur Nagar in SCC Revision No. 82 of 2003 (Raj Kumar Rathore vs. Ramesh Kumar Ghai and others). The Court below allowed the landlords revision, set aside the judgment and decree

dated 30 September 2003 passed by the Small Causes Court, Kanpur Nagar, thereby decreeing the suit for eviction against the petitioner.

However, in dealing with the findings of fact, the examination of findings of fact by the Revisional Court is limited to satisfy itself that the decision is "according to law". Whether or not a finding of fact recorded by the subordinate court is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. (Ram Dass vs. Ishwar Chander, (1988) 3 SCC 131).

In Shiv Sarup Gupta vs. Mahesh Chand Gupta, (1999) 6 SCC 222, the Apex Court with reference to revisional jurisdiction of the High Court under the Delhi Rent Control Act observed that the High Court, on the touchstone of "whether it is according to law" for that limited purpose, may enter into reappraisal of evidence but cannot enter into appreciation or reappreciation of evidence merely because it is inclined to take a different view on the facts. The evidence is examined by the High Court to find out whether the Court/authority below has ignored the evidence or proceeded on a wrong premise of law or derived such conclusion from the established facts which betray lack of reasons and/or objectivity which renders the finding not according to law. **(Ramesh Kumar Ghai v. Raj Kumar Rathore and others, 2015 (33) LCD 2834)**

S. 17 –Permission sought to deposit the decretal amount as per the ex-parte eviction decree- Refused –Legality of- Application to set aside ex-parte decree without deposit of amount due, is incompetent

It is not disputed by the learned counsel for the petitioner that the application under Order 9 Rule 13 was filed on 19 October 2006 to recall the ex parte judgment and decree dated 28 August 2006, no application for compliance in terms of Section 17 of the Act, 1887 was filed. The application under Section 17 was moved much later on 3 September 2011.

In the case in hand, the application for setting aside ex parte decree was not accompanied by deposit of the amount due and payable by the applicant under the decree. The applicant also did not move any application for dispensing with deposit and seeking leave of the court for furnishing such security for the performance of the decree as the court may have directed. The application for setting aside the decree was therefore incompetent. It could not have been entertained or allowed.

In the facts of the present case, there is no compliance, what to say of substantial compliance, of the proviso to Section 17 of the Act, 1887. The defendant-tenant had not deposited the amount nor furnished security

towards the decretal amount on the date of the filing of the application under Order 9 Rule 13 for setting aside the ex parte decree or subsequent there to. The fact that the application was time barred is of no consequence as regard compliance of the terms contained in proviso to Section 17 of the Act 1887 which is mandatory and cannot be condoned, its compliance is sine quo non before the application of recall/review of the judgment & decree can be entertained.

In view of the legal position stated herein above, it leaves no room for doubt that view taken by the trial Court is justified. The argument of the respondent/landlord is well founded and deserves acceptance. **(Smt. Kusum Devi v. Ram Ji Verma 2015(129) RD 313)**

Sec. 23 – Return of plaint –Discretion of –If it is satisfied that a question of title is involved –Court has discretion to return the plaint.

The short question involved in this petition is as to whether in a suit for eviction filed by the lessor against his lessee, the court is obliged to return the plaint for presentation to the proper Court, if the lessee denies the title of the lessor and sets up the title in himself?

On a reading of sub-section (1) of Section 23, it is apparent that the direction has been conferred on the Court to return the plaint if it is satisfied that a question of title is involved in the suit which it cannot finally determine. It is only in such a situation that it is open to the Court to return the plaint. A mere allegation in the written statement that the title vests in a defendant, is by itself not sufficient to establish that the question of title is involved in a suit. Only after the evidence has been produced and the Court is of the opinion that a question of title is involved in a suit which the Court of Small Causes cannot determine, it is open to the Court to return the plaint. **(Ayodhya Prasad v. Additional District Judge, Unnao, 2015(112) ALR 522)**

Registration Act

Secs. 17 and 49- Suit for partition- Scope and ambit of sections 17 and 49 of above Act- In a suit for partition, an unregistered document can be relied upon for collateral purpose, i.e, severancy of title nature of possession of various shares but not for the primary purpose, i.e. division of joint properties by metes and bounds

The 1st respondent/plaintiff filed O.S No. 10 of 2004 on the file of Senior Civil Judge Court, Anakapalle against the appellants and others for the relief of partition claiming ¼th share in Item No. 1, ½ share in Item No. 2 of the suit schedule properties.

It is the specific case of the1st respondent/plaintiff that one Jaggayya, who is the foster father of the plaintiff, had acquired certain properties during his life time and executed a Registered Will dt. 22/05/1964 in a sound and disposing state of mind bequeathing his immovable properties in favour of the plaintiff/respondent and 1st defendant/appellant No.1 by giving life estate in favour of his wife Mahalakshmamma, and the said Mahalakshmamma died on 20/05/2001, as such plaintiff/respondent No.1 and the defendant Nos.1 & 2/appellants became entitled to the plaint Schedule properties in equal shares. On his demand, when the defendants failed to partition the properties by giving him his legitimate right, he has approached the Court by filling the above suit.

The appellant No.1/defendant No.1 filed her chief examination affidavit and sought to mark Exhibits B1 to B 48.The plaintiff/respondent No.1 raised objection with regard to admissibility of Exhibits B-21 and B- 22. Exhibit B-21, dated 05/06/1975 according to the defendant/appellant is Deed of Memorandum witnessing earlier partition effected between the plaintiff/respondent No.1 and the defendant No.1/appellant No.1. Exhibit B-22 is the Agreement dated 04/06/1975 entered between Late Mahalakshammma, plaintiff/respondent No.1 and the defendant No.1/appellant No.1.

The plaintiff/respondent No.1 took objection with regard to admissibility of Exhibits B-21 and B-22 on the ground that whole contents referred to in the Memorandum dated 05/6/1975 discloses that the second party thereto relinquished her right through the said documents. Therefore, the Agreement dated 04/06/1975 and Memorandum dated 05/06/1975 have to be construed as relinquishment deeds. A relinquishment deed which is compulsorily registerable document under Sec 17 (b) of the Registration Act, 1908 and hence, the unregistered document is not admissible in evidence.

Both the Trial Court and the High Court upheld the objection raised by the plaintiff/respondent No.1 and came to a conclusion that two recitals i.e. Exhibit B21 and Exhibit B22 are not evidencing the past transaction, but they prima facie disclose the partition of the property and relinquishment of rights by one of the parties. As such, both documents require stamp duty under the Indian Stamp Act, 1899 and registration under the Registration Act, 1908. As Exhibits B21 and B22 are unregistered and unstamped documents, they are not admissible in evidence. The Trial Court gave a specific finding that even both the exhibits are not admissible for collateral purpose also. Aggrieved by that, the present appeal is filed.

Section 17 (1) (b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an

immovable property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered u/s 17 of the Act.

It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exhibits B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exhibits B-21 and B-22 are the documents which squarely fall within the ambit of section 17 (i) (b) of the Registration Act and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B 21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.

Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy , AIR 1969 A.P. (242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance. **(Yellapu Uma Baheswari and another v. Buddha Jagadheeswararao and others, 2015 (6) AWC 6019)**

Rent Laws

Eviction suit –In respect of waqf property would be maintainable before the small causes Court

Learned counsel for the petitioners submits that SCC Suit wherein decree for eviction has been passed itself was not maintainable as landlord-respondent herein was a waqf and the matter could be tried only by the tribunal created under Waqf Act. Submission is that though such objection has been raised, but neither any issue has been framed nor the same has been appropriately considered by both the courts below. Learned counsel further submits that notice under section 106 of the Transfer of Property Act was inconsequential as landlord continued to receive rent thereafter, and there is otherwise no default in payment of rent. Reliance has been placed upon a decision of this court in Maulvi Abdul Rahman Siyai v. Sardar Maqbool Hasan:2009 (2) ALJ 71 as well as decision of Madras High Court in I. Salam Khan v. Tamil Nadu Wakf Board: 2005 AIR (Madras) 241 to contend that eviction suit was not maintainable before Small Cause Court.

Having considered the aforesaid submissions, this court finds that the issue as to whether suit for eviction could be filed, in respect of waqf property, before the waqf tribunal or before the civil court, is no longer res integra, in view of law laid down by the Apex Court in Ramesh Gobindram (supra). Para 21 & 22 of the said judgment is reproduced:-

"21. There is, in court's view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or 29 Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the Civil Courts stands completely excluded by reasons of such establishment. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is 30 not,

the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

In view of the law settled by the Apex Court, it is no longer open for the petitioners to contend that eviction suit would not be maintainable before the Small Cause Court. **(Smt. Saira and others v. Additional District Judge and others, 2015 (129) RD 292)**

Service Laws

Constitution of India, Arts. 16 and 21 –Retiral benefits- Delay in payment- employer liabls to pay interest on such dues

After serving the qualifying period of service, the employee does not ordinarily have any other means of livelihood, when he needs them more other than his dues. It is extremely unjust and harsh to allow a retired employee to wait to receive the dues, and to depend upon his friends, relatives and children. The right to receive retiral dues/terminal dues is closely linked to his right to self-respect, and human dignity, which is included in right to life guaranteed by Art. 21 of the Constitution of India. Awarding of interest for delay in paying retiral dues would be justifiable to make good the loss caused by the employer inaction in making payments in time.

In instant case employee retired from service on 31-1-1997 and at that time the disciplinary enquiry was pending against him and the disciplinary proceeding was concluded by authority on 15-2-2003 exonerating him with deduction of Rs. 54600/- .Admittedly department deducted that amount from his gratuity, even though it is impermissible as per law, but he has not challenged the said recovery, therefore, it has become final. The retiral benefits thus became due on the date of retirement. Delay in this regard was not attributable to employed. Despite he had made representations for payment of retiral benefits in the years 1999, 2001 and 2003, employer had not taken timely action on the representations made and had given excuse of procedural delay. Sing the date of retirement is known to the employer/authority well in advance, there was no reason for the employer for not making arrangement for payment of retiral benefits to the employee well in advance so that as soon as he retires, his retiral benefits were paid on the date of retirement or within reasonable time thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but culpable delay on part of employer warranting liability of interest on such dues **(Bihari Lal v. State of U.P. and others 2015 (5) ALJ 417)**

Constitution of India, Art 16- Pension –Qualifying service- Computation of- Service rendered by petitioner as work charged employee would be

counted in his regular services for determination of minimum period of 10 years qualifying services for grant of pension

In the case of ***Parmatma Ram v. State of U.P and others***, another Division Bench of this Court while deciding the appeal filed against the order granting relief of pensionary benefits to the work charged employee has held as follows:

> "6.....Thus, the dispute has attained finality to the extent that the work charged employees are entitled for pensionary benefits and other retiral dues as they have otherwise worked continuously for the qualifying period of 10 years or more.
> 8. In view of the above, the matter is no longer res-integra. The ratio has already been propounded by the Hon'ble Supreme Court that work charged employees are entitled for pensionary and other benefits if they have worked continuously for the qualifying period.
> 9. Hence, in the facts and circumstances aforesaid, the appeal is allowed. The order dated 22.10.2013 passed by the writ Court is quashed. The State Government is granted three months time for processing the pension and other retiral benefits, which may be permissible to the petitioner."

For the discussion made above, answer to question arisen before the Court for consideration is in the affirmative, i.e., despite the provisions of Regulation 370 of Civil Services Regulations, services rendered by the petitioner as work charge employee will be counted in his regular services for determination of minimum period of 10 years qualifying services, for grant of pension and other retiral benefits.

In the result, writ petition is allowed and the respondents are directed by issuing writ in the nature of mandamus to complete the necessary formalities for grant of pension and other retiral benefits to the petitioner, by counting the services of the petitioner rendered as work charge employee in his regular service for the purposes of determination of regular qualifying services of the petitioner as required for pension. **(Ram Bagina Lal Srivastava v. State of U.P. and others. 2015(5) ALJ 510)**

Constitution of India, Art.-16 –Order of transfer if passed in public Interest and for administration reasons cannot be interfered with on basis of any policy/circular

The appellant is presently posted as Inspector in the Crime Branch in district

Varanasi. The appellant is due to retire from service on 17 July 2016 on attaining the age of superannuation. On 11 May 2015, the appellant was transferred from Varanasi to Vindhyachal, which led to the filing of writ proceedings resulting in the impugned judgment and order of the learned Single Judge. Prior thereto, on 30 October 2014, the appellant was transferred from Mirzapur to Varanasi. The order of transfer recorded that the appellant had less than two years to retire and that bearing in mind the difficulties which were expressed by him, it had been sympathetically considered and decided to transfer him to Varanasi on humanitarian grounds.

The grievance before the learned Single Judge and in the special appeal is that the policy circular dated 4 June 2014 contained a provision, inter alia, under which some benefit is being granted to government servants who have less than two years to retire.

There can be no doubt that transfer is an exigency of service. In the present case, the policy circular, which has been relied upon by the appellant, indicates certain conditions in the case of a person who has less than two years to retire. Learned Standing Counsel has sought to distinguish the policy circular on the ground that it applies to government servants.

For the purpose of these proceedings, we need not enter upon a wider area of dispute as to whether the policy circular applies. Even on the assumption that it does, it is a well settled principle of law that a policy circular by itself does not confer any vested right. Interest of the administration is paramount. With due deference to the directions issued by the Division Bench in Badri Prasad Misra (supra), we are constrained to reiterate what was held by the Hon'ble Supreme Court of India in ***Shilpi Bose (Mrs) v. State of Bihar, 1991 Supp. (2) SCC 659.*** Dealing with the contention of a transfer order being in violation of administrative instructions, it was held that a transfer order made in public interest and for administrative reasons should not be interfered with unless the same is stated to have been made in violation of any mandatory statutory rule or on the ground of malafides. It was further held that even if a transfer order is passed in violation of executive instructions or orders, the Court should not interfere and leave the affected party to approach the higher authorities in the department. The above law and principles declared in Shilpi Bose (supra) were reiterated by the Apex Court in *State of Haryana v. Kashmir Singh, (2010) 13 SCC 306*.

All that Court can observe, at this stage, is that since the appellant was, on 30 October 2014, transferred from Mirzapur to Varanasi specifically bearing in mind the difficulties which were expressed by him and he has less than two years to retire and he has again been transferred by an order dated 11 May 2015 from Varanasi to Vindhyachal, the Inspector General of Police may have due

regard to the facts and circumstances of the case while passing an appropriate order in accordance with law, as directed by the learned Single Judge. The appellant has sought to highlight his personal grievance that he is suffering from a kidney ailment, which will be duly considered. Since we have held that a policy circular itself does not confer any vested right, there is no reason to pass any order staying the operation of the order of transfer. The order of the learned Single Judge does not suffer from any error. **(Ashok Kumar Mishra v. State of U.P. and others 2015 (5) ALJ 515)**

Art. 16, 309- U.P. Recruitments of Dependants of Government Servant Dying in Harness Rules, Rule 5- Compensate appointment- Claimed by married daughter- Held, "not liable to be considered for grant of compensate appointment u/r 5

A Full Bench of this Court in the case of Km. Shehnaj Begum vs. State of U.P. & others, AIR 2014 Alld. 66 while considering the question whether the definition of 'family' in Rule 2(c) of U.P. Recruitment of Dependants of Government Servant Dying-in-Harness Rules, 1974 is inclusive or exhaustive referred to it has answered the same as under :

"Whatever may be the fathom of our compassion for the bereaved family of a deceased employee, howsoever high may be our anxiety to help such family to get out of penury, we cannot over step being bound by dictates of law, the mandate of the constitution and the law declared by the Hon'ble Apex Court.

In view of the above discussions, the irresistible conclusion is that word 'include' used in the definition clause has been used by the Rules Framers in the sense of 'means' and the definition, as it stands, is exhaustive. It is, however, always open to the appropriate Government to amend the definition of the family so as to include any other relations of the deceased Government servant which it thinks fit to be included for fulfilment of the purpose and object of the Rules.

Thus, our answer to the reference is that definition of the family in rule 2 (c) of U. P. Recruitment of Dependants of Government Servant Dying-in-Harness Rules, 1974 is exhaustive."

In view of the aforesaid Full Bench decision the definition of 'family' contained in rules 1974 being exhaustive the same cannot be interpreted to mean and include any other relationship except the one who have been defined therein.

In Aparna Narendra Zambre, 2011 (5) ABR 352 the petitioner therein was not considered for appointment on compassionate grounds by virtue of being married. Though it was urged on behalf of the petitioner therein that exclusion of a married daughter from consideration for appointment on compassionate basis was discriminatory, the Court did not go into the said larger issue as it was found that name of the petitioner had been rejected despite the fact she was unmarried at the time of consideration of claim. The said case is thus also distinguishable on facts and cannot be said to be an authority for the proposition sought to be urged before us.

It being well settled that appointments on compassionate ground since are granted with a view to relieve the family of the economic distress being faced on account of sudden death of the bread earner and is an exception to the principles of equality of opportunity in public appointment guaranteed by Articles 14 & 16 of the Constitution of India and thus no exception can be created and the rules are to be strictly construed. Compassionate appointment is not a right but a concession and thus is to be made strictly in accordance with the Rules, Policy or Scheme framed by the employer.

In view of the law laid down by the Hon'ble Apex Court that compassionate appointment is to be made strictly in accordance with the rules, and the Full Bench decision of this Court that definition of 'family' in rules 1974 is exhaustive and since married daughter is not included in the definition of family, there can be no exception to the view taken by the learned single Judge that being a married daughter the petitioner was not liable to be considered for grant of compassionate appointment. **(Poonam Sharma v. State of U.P. & others. 2015 (5) ALJ 494)**

Constitution of India, Art. 233(2), 16, 309 –U.P. Higher Judicial Service Rules, 1975, Rr, 5(a), 5(b), 5(c),- Appointment of District Judges- source of recruitment –R. 5(c) prohibiting Judicial officer from participating via direct recruitment is not arbitrary.

The Constitution itself in Article 233(2) prohibits in Judicial Officers from participating in the recruitment to the service by direct recruitment. The petitioner who belong to the judicial service can be considered for recruitment to the service by promotion either under sub-rule(a) or sub-rule (b) of Rule 5 of the 1975 Rules and not under sub-rule(c) of Rule 5. Thus, when Articles 233 itself provides that a person not already in the judicial service shall only be eligible to be appointed as a District Judge if he has been for not less than 7 years an advocate or a pleader, the petitioners cannot be permitted to plead that

prohibiting a judicial officer from applying to the recruitment for service would result in violation of Articles 14,16, 19 and 21 of the Constitution.
The plea of the petitioners that excluding the judicial officer from participating in the recruitment to the service by direct recruitment would be arbitrary as it seeks to exclude persons who are better suited for the service is also not tenable. Thus Rule 5© of the 1975 Rules is neither discriminatory not or arbitrary for the reasons that it excludes judicial officers from recruitment to the service by direct recruitment. **(Krishna Kumar and others v. State of U.P. and another 2015(5) ALJ 564)**

Police Act,, Sec. 2- Police Regulations, Regulation 541- U.P. Temporary Govt. Servants (Termination of Service) Rules,- A person, a temporary Police Constable not on probation –Can be terminated from service
A person who is appointed as a temporary police constable and who has not been placed on probation, can be terminated from service. Such a person is not governed by the provisions of Regulation 541 which applies to probationers. The rules which have been framed under the provision to Article 309 of the Constitution, to wit, the Rules of 1975 would not be applicable to members of the police force. However, the power to terminate the serious of a person who has been appointed on a temporary basis inheres in the power to appoint. The mere mention of the rules of 1975 will not invalidate an order of termination. The question which has been referred to the Full Bench for adjudication shall, accordingly, stand answered in these terms. **(State of U.P. and others v. Rajendra Singh and others, 2015 (113) ALR 124)**

Disciplinary Proceedings –Mode and Manner- An authority lower in rank than appointing authority of an employee can initiate departmental proceeding but authority or its higher authority
The departmental proceeding can be initiated by a person lower in rank than the appointing authority but the final order can be passed only by the appointing authority or an authority higher than it. (Surender v. State of Haryana, (2006) 12 SCC 373, 375 **(Sunil Kumar Gupta v. State of U.P. and others, 2015 (33) LCD 3070)**

Cumulative Effect- Meaning of- Explain
The word "cumulative effect" means that he will not draw the next annual increment for a period of two years and at the end of two years he will draw the next increment and therefore the penalty which has been imposed in not in excess of the major penalty which have been provided under CCS (CCA) Rules 1965, the punishment is strictly in clauses 11.5 of CCS (CCA) Rules 1956 (sic-

1965) **(G.S. Dhiman v. The Union of India and others, 2015 (33) LCD 2968)**

Regularization –Daily Wages employee- Entitlement of

The case of the petitioner was rejected along with others including that of Shri Tulsi Ram by means of the same impugned order dated 11.03.2006. Shri Tulsi Ram, challenging the said order dated 11.03.2006 filed Writ Petition No.6467 (S/S) of 2008, which has finally been allowed by this Court by means of the order dated 17.08.2015. While allowing the said writ petition by means of the judgment and order dated 17.08.2015, it has been observed by this Court that respondents shall consider the claim of the petitioner therein for regularization in service under the statutory Rules, 2001 expeditiously. It has further been directed by this Court that if any person junior to the petitioner has been regularized in service according to the Rules, 2001, notional benefit of service shall be granted to the petitioner of the said writ petition as well except difference of past salary from the date juniors were regularized but current salary admissible to him shall be fixed at par.

At this juncture, learned Standing Counsel has pointed out that the impugned order clearly says that the petitioner was not engaged against any vacant post and as such in absence of any vacant available post, his case cannot be considered for regularization.

I may point out that for the purposes of regularizing the daily wage employees, the State Government itself has issued a Government Order dated 08.09.2010 prescribing therein that for the purposes of regularization of the daily wagers, supernumerary post shall be created and in accordance with relevant rules, the cases of the daily wagers shall be considered for being regularized in service.

In view of the provisions of the aforesaid Government Order, even at present, even if no vacancy of class-IV employees is available, the supernumerary post has to be created for the purposes of regularizing the services of the petitioner.

Accordingly, this writ petition is also allowed. The impugned order dated 11.03.2006, so far as it relates to the petitioner, is hereby quashed. **(Sant Ram v. State of U.P. and others, 2015 (33) LCD 2622)**

Departmental Proceedings- Continuance of after retirement – Not provided under Rules- Not permissible

The petitioner, who was working as Regional Manager in the Regional Office, District Meerut, has retired from service on 31.12.2006. Prior to his retirement departmental proceedings were initiated against him on 08.02.2005 on allegations of causing storage loss of Rice in the U.P. State Warehousing Corporation. The enquiry could not be concluded and thereafter the petitioner retired from service on attaining the age of superannuation on 31.12.2006. By

the impugned orders dated 19.08.2010 damages amounting to Rs.72,123.75/- has been imposed against the petitioner by way of penalty and by the order dated 08.11.2013 recovery of Rs.1,15,753.50/- has been issued against the petitioner.

The contention of the learned counsel for the petitioner is that the provisions of Article 351 -A of the Civil Service Regulations do not apply to the employees of the State Warehousing Corporation and therefore after the retirement of the petitioner no recovery can be made by way of penalty.

This controversy has already been settled by the Supreme Court in the case reported in AIR (SCW) 2014-0-5271, Dev Prakash Tiwari Vs. U.P. Co-operative Institutional Service Board, Lucknow and Ors, wherein the Supreme Court relying upon its earlier decision in the case of Bhagirathi Jena Vs. Borad of Directors, O.S.F.C. and Others (1999) 3 SCC 666 has held that no disciplinary proceedings can be continued in the case of such employees after retirement.

Paragraphs 4, 5 and 6 of the judgment of the Supreme Court read as follows:

"4. Per contra the learned counsel appearing for the respondents contended that pursuant to the liberty given by the High Court in its order dated 10.01.2006 fresh disciplinary proceeding was initiated and as held by this Court in its decision rendered in U.P. Coop. Federation Ltd. Case (supra) the right of the employer to hold a fresh inquiry cannot be denied on the ground that the employee has since retired from service and the impugned order is sustainable.

We have carefully considered the rival submissions. The facts are not in dispute. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10.1.2006 granted liberty to initiate the fresh inquiry in accordance with the Regulations. The appellant who was reinstated in service on 26.4.2006 and fresh disciplinary proceeding was initiated on 7.7.2006 and while that was pending, the appellant attained the age of superannuation and retired on 31.3.2009. There is no provision in the Uttar Pradesh Co-operative Employees Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor there is any provision stating that in case misconduct is established a deduction could be made from his retiral benefits. An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumstance in Bhagirathi Jena's case (supra) and it was laid down as follows:

" 5. Learned Senior Counsel for the respondents also relied upon Clause (3) (c) of Regulation-44 of the Orissa State Financial Corporation Staff Regulations, 1975. It reads thus : "When the employee who has been dismissed, removed or suspended is reinstated, the Board shall consider and make a specific order :-

(i) Regarding the pay and allowances to be paid to the employee for the period of his absence from duty, and (ii) Whether or not the said period shall be treated as a period on duty."

It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.

In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

Thus, in view of the law laid down by the Supreme Court in Dev Prakash Tiwari (supra) no departmental proceedings can be initiated or continued against the petitioner after his retirement and therefore the impugned orders dated 08.11.2013 and 19.08.2010 cannot survive and are accordingly quashed. **(Chatter Sen v. State of U.P. and another, 2015 (33) LCD 2724)**

Retirement –Recovery of the amount of salary paid in excess to the entitlement of an employee –Sustainability- Held, "Not sustainable", Respondent directed to refund the amount recovered from the petitioner

The petitioner has assailed the Office Memo dated 20.11.2009 issued by the Deputy Registrar (Accounts) communicating the decision of Hon'ble the Chief Justice dated 02.11.2004 to recover a total sum of Rs.34,955/- paid to the petitioner in excess to his entitlement on the post of Assistant Registrar as well as the Deputy Registrar. The period for payment in excess has been enumerated as w.e.f. 14.08.2003 to January, 2004 and February, 2004 to September, 2004.

The petitioner while working on the post of Deputy Registrar retired from service on 28.02.2005. The impugned order was issued to the petitioner on 20.11.2009 i.e. after about four and a half years from the date of his retirement.

In view of the aforesaid facts, learned counsel for the petitioner has submitted that such a case has been dealt with by the Hon'ble Supreme Court in the case of State of Punjab and others v. Rafiq Masih (White Washer) and others; (2015) 4 SCC 334. The Hon'ble Supreme Court had discussed each and every

aspect on the point of recovery of the amount paid in excess of their entitlement to the employees and has laid down the following proposition of law, which is reproduced below:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

Learned counsel for the petitioner urged that the petitioner's case is fully covered under clause-ii as enumerated above. He is retired employee, therefore, the proposed recovery should not be made from him. The petitioner's retirement from service is not disputed.

In view of the law laid down by the Hon'ble Supreme Court, we are of the view that the recovery notice issued to the petitioner after about four and a half years from his retirement, is unsustainable. **(Mata Prasad v. The Principal Secy. Finance Civil Sectt., Lko and others, 2015 (33) LCD 2812)**

Societies Registration Act

S. 3A- unregistered society- Jurisdiction of Assistant Registrar over such society –Determination of

It is not disputed that both sides sought renewal of registration by making of appropriate applications and deposit of requisite fee. Therefore it does not lie in the mouth of the Petitioner to now assert that the Assistant Registrar could not have assumed authority over the affairs of a society which had become unregistered. Nevertheless since the issue has been raised this Court proceeds to deal with the same.

The fact that the society had become unregistered is not disputed by either faction. The only issue therefore which falls for consideration is whether in such a situation the Assistant Registrar stands denuded of all jurisdiction and authority over such a society. The answer in the opinion of this Court must be in the negative. Here are the reasons.

Admittedly the provision for renewal of registration of a society stands engrafted in the Act, 1860 by virtue of insertion of Section 3-A4. Sub section (1) of the above provision mandates that a certificate of registration issued under section 3 would remain in force for a period of two years. Sub section (2) thereof then provides that an application for renewal would have to be made within a period of one month from the expiry of the above period. The "above period" necessarily meaning the period of two years. Significantly however section 3-A (2) covers all societies which seek to register under the Act after coming into force of the above provision as also societies which may have been registered prior to its insertion. Therefore a society which came to be registered prior to the promulgation of U.P. Act 26 of 1979 saw its period of registration being restricted to two years. The inherent fallacy in the argument advanced on this score is therefore apparent. Would a society which became unregistered by virtue of Section 3-A (1) go out of the ambit of the Act, 1860. The Court negatives such a proposition and holds that this is surely not the ethos of the provision nor for that matter of the Act, 1860.

Secondly in terms of sub section (5) of the Act, 1860 a society which fails to apply for renewal within one year from the expiry of the period for which the certificate was operative is stated to have become unregistered. However the proviso thereof empowers the Registrar to entertain an application for registration even after the expiry of the above period subject to sufficient cause being shown. This clearly indicates that even an "unregistered society" can apply to the Registrar for renewal in terms of the proviso to section 3-A (5). If such an application is made, the Registrar is bound to consider the same subject to sufficient cause for the delay being shown and established. It cannot therefore be said that the Registrar looses jurisdiction over the affairs of an "unregistered society." **(Shahganj Public School Thru' its C/M and another v. State of U.P. and others, 2015 (5) ALJ 502)**

Specific Relief Act

Sec. 13 – Defect in title- Plea of- Defendant cannot be permitted to plead defect in his own title

This Court finds substance in the judgment relied upon by the learned counsel for the plaintiff-respondent wherein it had been held that the defendant cannot be permitted to plead defect in his own title. Reliance has been placed upon a Division Bench judgment of Patna High Court in Diwali Lal and Others Vs. Sardar Baldev Singh and another, AIR 1985 Patna 344 in order to contend that question of title in a suit for specific performance is not required to be gone into. It is to be noticed that this Court, in Civil Revision No.602 of 1978, arising out of orders passed in the instant suit had clearly observed that question of title of defendant is not required to be gone into in the facts of the present case.**(Raghukul Narain Mehta v. Praduman Kumar, 2015 (3) ARC 560)**

Secs. 16 and 28- C.P.C. Sec. 47- Execution proceeding –Decree of specific performance of agreement to sell –Objection –That Decree Holder vendee has not deposited the balance amount with in time nor seeking any time of extension- Held, Decree of specific performance cannot be sustained in absence of deposit of balance amount within time

The writ petition is directed against the order of the revisional Court allowing Civil Revision No. 396 of 2002 holding that the executing court has exceeded in its jurisdiction in allowing the application 3Ga2 under Section 47 CPC read with Section 151 CPC filed by the respondents thereby dismissing the execution case.

So far as the objection under Section 47 CPC filed by the defendants is concerned, the petitioners/judgment debtors had objected to the execution of the decree on the ground that the balance sale consideration was not paid by the decree holder. The decree for Specific performance is a preliminary decree. The Court passing the decree did not cease to have power after decreeing the suit for specific performance rather final decree is to be passed only after the conditions of the preliminary decree have been complied with. The time specified in the decree for specific performance of the conditions of the decree has to be adhered to. In case of failure to deposit the money, the Court has power to extend the time on the application of the decree holder. The decree holder did not file any application seeking extension of time. On the other hand, in the objection under Section 47 CPC, the judgment debtor had pleaded that the final decree could not be passed as the decree holder did not pay the balance sale consideration in compliance of the preliminary decree. The Executing Court had adopted correct approach of law in looking into the facts that whether the decree for specific performance can be executed by giving extension of time to the decree holder to deposit the balance sale consideration. In its discretion, it has refused to accept the deposits made beyond the period of four years, without any explanation of delay by the decree holder. The

revisional Court ought not to have interfered in the matter in its limited jurisdiction.

This Court, therefore, is of the opinion that the impugned judgment and orders dated 24.2.1996 and 30.9.2008 cannot be sustained and are accordingly set aside. **(Radhey Shyam and others v. Harendra Pall Rathi, 2015 (129) RD 144)**

Sec. 31- For Cancellation of an instrument –Ingredients –Elaborated

Section 31 of the Specific Reliefs Act, 1963 provides for the cancellation of a written instrument if it is void and voidable an if left outstanding may casus the party a serious injury. An instrument can be declared to be voidable or void for the reasons the it has been executed by a person not legally competent or under coercion by exercise of under influence, misrepresentation without free consent, fraud or for unlawful purpose etc. but these are not the grounds pleaded for seeking the cancellation of the above sale deed. **(Lalpari Devi (Smt.) v. Shiv Mohan Misra, 2015 (3) ARC 533)**

Statutory Provisions

The Uttar Pradesh Civil Laws (Amendment) Act, 2015

[U.P. Act No. 14 of 2015]

(As passed by the Uttar Pradesh Legislature)

An Act further to amend the Bengal, Agra and Assam Civil Courts Act, 1887 and the Provincial Small Cause Courts Act, 1887 in their application to Uttar Pradesh

It is hereby enacted in the Sixty –sixth Year of the Republic of India as follows-

Prefatory Note- Statement of Objects and Reasons- Whereas the value of the subject matters brought to the courts has increased substantially, the pecuniary jurisdiction of the Civil Courts as well as those of Small Cause Courts in the State of Uttar Pradesh requires to be raised for institution of Civil Suits and appeals. It has, therefore, become necessary to amend the Bengal, Agra and Assam Civil Courts Act, 1887 and the Provincial Small Cause Courts Act, 1887 to increase the pecuniary jurisdiction of Civil Courts and those of Small Cause Courts in the State of Uttar Pradesh for securing better administration of Justice.

The Uttar Pradesh Civil Law (Amendment) Bill, 2015 is introduced accordingly.

CHAPTER I
PRELIMINARY

1. **Short title and extent. –** (1) This Act may be called the Uttar Pradesh Civil Laws (Amendment) Act, 2015

(2) it shall extend to the whole of Uttar Pradesh.

CHAPTER II

AMENDMENT OF THE BENGAL, AGRA AND ASSAM CIVIL COURTS ACT, 1887

2. **Amendment of Section 19 of Act No. XII of 1887.-** In Section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887 hereinafter in this Chapter referred to as the principal Act,-
   (a) In sub-section (1) for the words "ten thousand rupees" the words "one lakh rupees" shall be substituted;
   (b) In sub-section (2) for the words "twenty –five thousand rupees" the words "five lakh rupees" shall be substituted.
3. **Amendment of Section 21.-** In Section 21 of the principal Act, in sub-section (1), in clause (b),-
   (a) For the words "one lakh rupees" the words " five lakh rupees" shall be substituted" and
   (b) For the words "five lakh rupees" the words "twenty-five lakh rupees" shall be substituted.

CHAPTER III
AMENDMENT OF THE PROVINCIAL SMALL CAUSE COURTS ACT, 1887

4. **Amendment of Section 15 of Act No. IX of 1887.-** in Section 15 of the Provincial Small Cause Courts Act, 1887,-
   (a) In sub-section (2) for the words "five thousand rupees" the words "twenty-five thousand rupees" shall be substituted;
   (b) In the proviso to sub-section (2) for the words " twenty-five thousand rupees" the words "one lakh rupees" shall be substituted.

* * * * *

100-English translation of Rajaswa Anubhag-8, Noti. No. 346/1-8-2015-Ra-8, dated August 12, 2015, published in the V.P. Gazette, Extra., Part 4, Section (Ka), dated 12th August, 2015, p. 2 IA.P. 5271

In exercise of the powers conferred by the proviso under Section 54 of the Uttar Pradesh Consolidation of Holdings Act, 1953 (U.P. Act No.5 of 1954), the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Consolidation of Holdings Rules, 1954.

1. Short title and commencement.-(1) These rules may be called the Uttar Pradesh

Consolidation of Holdings (23rd Amendment) Rules, 2015.

(2) They shall come into force with effect from the date of their publication in the Gazette.

2. Insertion of new Rule 17-A.-In the Uttar Pradesh Consolidation of Holdings
(Amendment) Rules, 1954 after Rule 17 the following rules shall be *inserted,* namely-

"17-A. *Disposal of cases filed under Section 6-A of the Act-(1)* Order shall be passed on applications filed with respect to undisputed mutation/undisputed succession by Assistant Consolidation Officer/Consolidator respectively, in consultation with Consolidation Committee after making a due inquiry.

(2) At any stage of procedure as provided in sub-section (1) if it comes to the notice of the Assistant Consolidation Officer/Consolidator, that the matter of mutation/ succession is disputed, then he shall pass order to register the matter in Consolidation of Holding Form 4 to be prepared before the publication under Section 9 and the matter shall be referred to the Consolidation Officer under sub-section (2) of Section 9-A.

(3) If order is passed under Section 6-A in disputed matters, then either such matter comes into the cognizance suo moto or being brought into cognizance by any person, the Settlement Officer Consolidation/Deputy Director Consolidation shall expeditiously quash the same on administrative grounds."

*** * * ***

362- Ministry of Home Affairs, Noti. No. S.O. 2279(E), dated August 21, 2015, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st August, 2015, p. 2, No. 1777

(F. *No. 12015/1/2015-PP-III/IC-III)*

Whereas arrangements have been made by the Central Government with the Government of the Republic of Indonesia for service or execution of summons or warrant in relation to criminal matters, on any person in the Republic of Indonesia.

Now, therefore, in pursuance of clause (ii) of sub-section (I) of Section 105 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby specifies that-

(a) a summons to an accused person, or

(b) a summons to any person requiring him to attend and produce documents or other thing, or to produce it, or

(c) a search-warrant.

may be issued by a Court in India in duplicate, to the Court, Judge or Magistrate in the Republic of Indonesia, having authority under the law for the time being in force in that country, through the Central Authority, that is, the Ministry of Law and Human Rights of the Government of the Republic of Indonesia to serve such summons or execute such warrant on the person named therein.

2. The concerned court, Judge or Magistrate of India while issuing Summons or warrants shall comply with the comprehensive guidelines issued vide Ministry of Home Affairs Letter No. 250 16/17/2002-Legal Cell, dated lith Feb., 2009.

3. The Central Government further directs that such summons or warrant shall be sent to the IS-II Division of the Ministry of Home Affairs, Government of India, New Delhi, for transmission to the Central Authority, that is, the Ministry of Law and Human Rights of the Government of the Republic of Indonesia.

* * * *

363-Ministry of Home Affairs, Noti. No. S.O. 2280{E), dated August 21, 2015, published in the Gazette oflndia, Extra., Part II, Section 3(ii), dated 21st August, 2015, p. 2, No. 1777

(F. No. 12015/1/2015-PP-1I/1C-1I1)

Whereas arrangements have been made by the Central Government with the Government of the Republic of Indonesia for services or execution of summons or warrant in relation to criminal matters on any person in the Republic of Indonesia;

Now, therefore, in pursuance of the proviso to sub-section (2) of Section 105 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby specifies that in case where a Court in India executes any summons or search warrant received from a court, Judge or Magistrate in the Republic of Indonesia, having authority under the law for the time being in force in that country, the documents or things produced or things found in search shall be forwarded to the court issuing such summons or search warrant through the IS-II Division of the Ministry of Home Affairs, Government of India, New Delhi.

* * * *

364-Ministry of Home Affairs, Noti. No. S.O. 2281{E), dated August 21, 2015, published in the Gazette of India, Extra., Part II, Section 3{ii), dated 21st August, 2015, pp. 3-4, No. 1777

(F. No. 12015/1/2015-PP-1I/1C-1I1)

Whereas arrangements have been made by the Central Government with the

Government of the Republic of Indonesia, for services or execution of summons or warrant in relation to criminal matters on any person in the Republic of Indonesia;

Now, therefore, in pursuance of sub-section (2) of Section 105-B of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby specifies that a summons for attendance of a person in the course of an investigation or inquiry in any criminal case, to be served or executed in any place in the Republic of Indonesia, shall be issued in the form annexed hereto, and such summons shall be sent to the IS-II Division of the Ministry of Home Affairs, Government of India, New Delhi, for transmission to the Central Authority, that is, the Ministry of Law and Human Rights of the Government of the Republic of Indonesia.

FORM

SUMMONS TO WITNESS

[See sub-section (2) of Section 105-8 of the Code of Criminal Procedure, 1973]

To

The Court or Judge/ Magistrate in the Republic of Indonesia ……

(Through the Central Authority, that is, the Ministry of Law and Human Rights of the Government of Republic of Indonesia)

Whereas an application has been made before me that (Name of the accused) of (address) has (or is suspected to have) committed the offence of (state the offence concisely with time and place) and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution;

You are hereby summoned to appear before the Court on the …….day of…..... .....at A.M./P.M. to produce such document or thing or to testify what you know concerning the matter of the said pplication, and not to depart then without the order of the Court, and you are hereby warned that, if you shall without just cause neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court this .....…….day of……20…..... Seal of the Court.

Signature of the Judge/Magistrate

* * * *

365-Ministry of Home Affairs, Noti. No. S.O. 2282(E), dated August 21, 2015, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st August, 2015, pp. 5-6, No. 1777

(F. No. 12015/1/2015-PP-1II/1C-1I1)

Whereas arrangements have been made by the Central Government with the Government of Republic of Indonesia for taking the evidence of witnesses residing in the Republic of Indonesia in relation to criminal matters in Courts in India.

Now, therefore, in pursuance of sub-section (3) of Section 285 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby specifies that-

(a) commission for examination of witnesses in Republic of Indonesia shall be issued by the Courts in India in the form annexed hereto, to any competent criminal court of the Republic of Indonesia having authority under the law for the time being in force in the Republic of Indonesia; and

(b) such Commission shall be sent to IS-II Division of the Ministry of Home Affairs, Government of India, New Delhi for transmission to the Central Authority, that is, the Ministry of Law and Human Rights of the Government of Republic of Indonesia.

FORM

COMMISSION TO EXAMINE WITNESS OUTSIDE INDIA

[See sub-section (3) of Section 285 of the Code of Criminal Procedure, 1973 (2 of 1974)]

IN THE COURT OF ..... .

To

……..

(Through the Government of India. Ministry of Home Affairs. New Delhi.)

Whereas it appears to me that the evidence of is necessary for the ends of justice in case

No ..... Vs ....……..in the Court of and that such witness is residing within the local limits of your jurisdiction and his attendance cannot be procured without unreasonable delay. expense or inconvenience. I ..... have the honour to request and do hereby request that for the reasons aforesaid and for the assistance of the said Court. you will be pleased to summon the said witness to attend at such time and place as you shall appoint and that you will cause such witness to be examined upon the interrogatories which accompany this Commission (for viva voce);

Any party to the proceeding may appear before you by his/her Counselor agent or, if not in custody. in person. and may examine, cross-examine or re-

examine (as the case may be) the said witness;

And. I. further have the honour to request that you will be pleased to cause the answers of the said witness to be reduced into writing and all books. letters. papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by your official seal and signature and to return the same together with this Commission to the undersigned through IS II Division of the Government of India. Ministry of Home Affairs. New Delhi.

Given under my hand and the seal of the Court this ..... day of ……20 ……. Seal of the Court

Signature of the Judge/Magistrate

366- Ministry of Home Affairs, Noti. No. S.O. 2283(E), dated August 21, 2015, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st August, 2015, p. 6, No. 1777

(F. No. 12015/1/2015-PP-1II/1C-1I1)

Whereas arrangements have been made by the Central Government with the Government of the Republic of Indonesia for service or execution of summons or warrant in relation to criminal matters on any person in the Republic of Indonesia.

Now, therefore, in pursuance of clause *(b)* of sub-section (2) of Section 290 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby specifies all Courts, Judges or Magistrates exercising jurisdiction in the Republic of Indonesia having authority under the law in force in the Republic of Indonesia as the Courts by which the Commission for the examination of witnesses residing in India may be issued.

* * * *

367-Ministry of Home Affairs, Noti. No. S.O. 2284(E), dated August 21, 2015, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 21st August, 2015, p. 7, No.1 777

(F. No. 12015/1/2015-PP-1II/1C-1I1)

Whereas arrangements have been made by the Central Government with the Government of the Republic of Indonesia for service or execution of summons or warrant in relation to criminal matters on any person in Republic of Indonesia.

Now, therefore, in exercise of the powers conferred by Section I05-L of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby directs that the provisions of Chapter VII-A of the said Code shall apply without any condition, exception or qualification in relation to the Republic of

Indonesia with effect from the date of publication of this notification in the Official Gazette.

* * * * *

The Negotiable Instruments (Amendment) Second Ordinance, 2015[1]

[No.7 0f 2015]

(Promulgated by the President in the Sixty-sixth Year of the Republic of India)

An Ordinance further to amend the Negotiable Instruments Act, 1881

Whereas the Negotiable Instruments (Amendment) Ordinance, 2015 was promulgated by the President on the 15th day of June, 2015;

And whereas the Negotiable Instruments (Amendment) Bill, 2015 to replace the Negotiable Instruments (Amendment) Ordinance, 2015 has been passed by the House of the People and is pending in the Council of States;

And whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (I) of Article 123 of the Constitution. the President is pleased to promulgate the following Ordinance-

1. Short title and commencement.-(1) This Ordinance may be called the Negotiable

Instruments (Amendment) Second Ordinance, 2015.

(2) It shall be deemed to have come into force on the 15th day of June, 2015.

2. Amendment of Section 6.-In the Negotiable Instruments Act, 1881 (26 of 1881)

(hereinafter referred to as the principal Act), in Section 6,-

(i) in Explanation I, for clause *(a)*, the following clause shall be *substituted*, namely-

'(a) "a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometric signature) and asymmetric crypto system or with electronic signature, as the case may be;';

(ii) after Explanation II, the following Explanation shall be *inserted*, namely-

'Explanation Ill.-For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000 (21 of 2000).'.

3. Amendment of Section 142.-ln the principal Act, Section 142 shall be numbered as sub-section (I) thereof and after sub-section (1) as so numbered,

the following sub-section shall be *inserted*, namely-

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.-For the purposes of clause *(a)*, where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.".

4. Insertion of new section.-In the principal Act, after Section 142, the following section shall be *inserted*, namely-

"142-A. *Validation for transfer of pending cases.-(1)* Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or directions of any court, all cases transferred to the court having jurisdiction under sub-section (2) of Section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (6 of 2015), shall be deemed to have been transferred under this Ordinance, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shalI be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of this Ordinance, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of2015), before which the first case was filed and is pending, as if that sub-

section had been in force at all material times."

Transfer of Property Act

S. 52- Scope of- Suit for specific performance –Interim injunction- Sale of property in dispute during pendency of suit by son of the dependent – Transfer of Property by son in the teeth of injunction is unlawful and void

Learned counsel further submits that the transfer of property by the son was clearly in teeth of the injunction operating against the defendant and even otherwise in view of the provisions of Section 52 of the Transfer of Property Act. Such a transfer would have to abide by the out come of the suit proceedings, and no equity in favour of the defendants can be set up on such count. Learned counsel submits that once the finding on issue no. 1 and 2 had been returned against the defendant, it was not open for the defendant to set up a defect in his title over the property just to defeat the rights of the plaintiff.

So, the transfer of property by son in 1976 in teeth of injunctin is held to be unlawful and void. (**Raghukul Narain Mehta v. Praduman Kumar, 2015 (33) LCD 3052)**

Sec. 53-A- Benefit- Availability of- Discussed

It was also stated that the protection of Section 53-A would not be available once transaction of sale itself had not materialized and the belated attempt to secure it by filing a suit for specific performance failed. So far as the question of jurisdiction is concerned, it has been held that suit under section 209 of U.P.Z.A. & L.R. Act could be filed only against trespasser whereas in the facts of the present case, possession was voluntarily given to different by the plaintiff, as such, the defendant could not be treated as trespasser, and as such a revenue suit under section 209 of the Act was not maintainable.

So far as the other aspect of the matter is concerned, court is of the opinion that the finding returned by the Courts below that the defendant is not entitled to retain possession by virtue of section 53-A of the Transfer of Property Act, is based upon correct appreciation of facts and law, which requires not interference. No substantial question of law arises in the present second appeal. **(Sharif Ahamad and another v. Faiz Mohammad and others, 2014 (129) RD 531)**

Sec.111 –Scope of –forfeiture of lease- Unless there is an express condition in lease, there cannot be forfeiture of lease.

Section 111 of the Transfer of Property Act sets out when a lease of immovable property is determined. Sub- section (g) of Section 111 of Transfer of Property Act, apart from other stipulations lays down that a lease of immovable property

determines by forfeiture, that is, to say in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter. Two things are necessary before the aforesaid provision under sub-section (g) of Section 111 of the Transfer of Property Act can come into operation, firstly, there should be an express condition in the lease for the payment of rent and secondly, there should be a clause for re-entry in the case of default. It is, therefore, obvious that unless there is an express condition in the lease for payment of rent and as a consequence of failure, to re-enter, there cannot be forfeiture of the lease. **(Ramakant v. Om Prakash, 2015 (113) ALR 889)**

U.P. Cooperative Societies Act

Sec. 113 (2)- Public authority- Right to Information Act, Ss. 8 and 2 (h)- within definition of Public Authority under R.T.I. Act?

The issue as to whether the first petitioner is a public authority within the meaning of Section 2(h) of the RTI Act has to be decided by the State Information Commission. This is abundantly clear from the observations of the Supreme Court in Thalappalam Service Cooperative Bank Limited (supra) where it was held as follows:

"65. The court have found, on facts, that the Societies, in these appeals, are not public authorities and, hence, not legally obliged to furnish any information sought for by a citizen under the RTI Act. All the same, if there is any dispute on facts as to whether a particular Society is a public authority or not, the State Information Commission can examine the same and find out whether the Society in question satisfies the test laid in this judgment." (emphasis supplied)

Insofar as the Registrar of Cooperative Societies is concerned, the right to access information was dealt with in the following observations of the Supreme Court:

"67. The Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a "public authority" within the meaning of Section 2(h) of the Act. As a public authority, the Registrar of Cooperative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. The information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. The Registrar can also, to the extent law permits, gather information from a society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from

the society, to the extent permitted by law. The Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a society could be said to be the information which is "held" or "under the control of public authority". Even those information, the Registrar, as already indicated, is not legally obliged to provide if those information fall under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of a society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing."

The issue as to whether the Registrar is bound to disclose the information which has been sought by the fourth respondent or whether the information falls within the categories of exemptions contemplated by Section 8 of the RTI Act would have to be determined in the primary instance by the State Information Commission. Hence, at the outset, we make it clear, while defining the scope of the controversy before this Court, that the issue as to whether the first petitioner is a public authority within the meaning of Section 2(h) as well as the issue as to whether the information which has been sought from the Registrar is liable to be disclosed under the RTI Act, is a matter which will be resolved by the State Information Commission having due regard to the objections which have been submitted by the petitioners. **(Mecon Indraprashta Sahakari Avas Samiti Ltd. And another v. State of U.P. and others, 2015 (113) ALR 144)**

U.P. Consolidation of Holdings Act

Sec. 4(2) –Notification for consolidation –Effect of –All the proceedings pending before Revenue or civil courts shall stand abated in view of Section 5(2) (a) of the above Act

In this case, Learned counsel for the petitioners submits that it is not in dispute that the proceedings for consolidation operations were initiated in the concerning village where the land in question is situated pursuant to notification under Section 4 (2) of U.P.C.H. Act. As such, all the proceedings pending before any revenue or Civil Court stood abated in view of Section 5 (2)

(a) of U.P.C.H. Act. However, the opposite party no.2 by the impugned order while declaring the suit as abated has committed an error as he has allowed the revision preferred against the order dated 9.8.2005 and has set aside the order dated 9.8.2005. The Board of Revenue has not properly considered the submissions made by petitioner and has also rejected the revision. It is submitted that the suit under Section 229-B of U.P.Z.A. & L.R. Act was filed on 8.9.1995 by opposite parties which was allowed ex-pate without issuing any notice to the petitioners vide order dated 15.9.1995. On coming to know about the said order petitioners had preferred an application for recall under Order 9 Rule 13 CPC which was allowed after hearing the parties concerned vide order dated 9.8.2005. Against the said order respondents had preferred a revision under Section 333 of U.P.Z.A. & L.R. Act before opposite party no.2. During pendency of revision notification under Section 4 (2) of U.P.C.H. Act was issued in the village concerned on 14.11.2005.

Section 5 of U.P.C.H. Act deals with the effect of notification under Section 4 (2) of U.P.C.H. Act. Under Section 5 (2) (a) of U.P.C.H. Act it has been provided that upon the publication of notification under sub-Section (2) of Section 4 U.P.C.H. Act the consequence would be that every proceeding for correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stand abated, meaning thereby that all the proceedings pending before any revenue or Civil Court shall stand abated on the issuance of a notification under Section 4 (2) of U.P.C.H. Act. The Court in this regard is required to pass an order to that effect. In the present case in view of Section 5 (2) (a) of U.P.C.H. Act the decree and order dated 15.9.1995 shall also stand abated after issuance of notification under Section 4 (2) of U.P.C.H. Act. The Consolidation Authorities in exercise of their powers shall not take cognizance of any such orders said to have been passed in the suit file under Section 229-B of U.P.Z.A. & L.R. Act. **(Ramzan Ali and others v. Board of Revenue,, U.P. and others, 2015(33) LCD 3046)**

Sec. 6- U.P. Consolidation of Holdings Rules R. 17- Notification – Cancellation– Ground for- Explained

The issue as to whether Courts can enter into any such dispute was considered in the case of Sazid and other v. Commissioner of Consolidation and others 1999 (4) AWC 2788 and it was held that Courts should not take over the task of

examining the validity of the notification issued under section 4 of the U.P.C.H. Act.

However, when orders are passed under section 6 a judicial review may be permissible to a limited extent if the action taken is arbitrary or is against the interest of public at large in view of the provisions of the U.P.C.H. Act, 1953.

In the instant case the petitioners contend that they have approached the State Government and, therefore, this writ petition be entertained.

Unfortunately, in the opinion of the Court, this petition amounts to a premature exercise and is otherwise an abuse of the process of Court as an interim order has been passed staying the proceedings of consolidation operations until further orders of this Court without allowing the State Government to apply its mind. The stay of a notification under Section 4 amounts to staying the not permissible. The State Government should be allowed to exercise his discretion before any interference is caused in the exercise of jurisdiction under Article 226 of the Constitution of India. **(Dinesh Pratap Singh and others v. State of U.P. and others , 2015 (129) RD 233)**

Sec. 9-A -Whther consolidation Authorities have jurisdiction to adjudicate title over abadi land- Held, "No"

Admittedly, the land in dispute belonged to Zamindar as such after date of vesting, it was vested in State of UP free from all encumbrances under Section 4 and 6 of UP Act No. 1 of 1951. Tenure holders' right have been conferred under Section 10 to 21 of the aforesaid Act on the basis of cultivation. Admittedly, the land in dispute was used for brick kiln and was not in cultivation on the date of vesting as such no right of bhumidhar , sirdar or asami had accrued to the petitioners under the Act. Findings of Consolidation Officer that the petitioners have acquired bhumidhari right over the land in dispute, is incorrect. A Division Bench of this Court in Triloki Nath Vs. Ram Gopal and others 1974 , RD 5 (D.B.) has held that the land used for brick kiln is not a 'land' within the meaning of the UP C. H. Act and the consolidation courts have no jurisdiction over the brick kiln land.

So far as the arguments that the petitioners had raised house over the land in dispute on the date of vesting as such land of building along with its appurtenant land was settled with them under Section 9 of UP Act No. 1 of 1951, is concerned, consolidation authorities have no jurisdiction to adjudicate title over abadi land. For that issue it will be open for the petitioners to raise their grievances before the appropriate court. **(Saleem and others v. D.D.C. and others, 2015 (129) RD 249)**

Sec. 27(3)—Application u/s. 27(3) is maintainable before the consolidation

authorities—Not before the Collector

The father of the petitioners was recorded in basic year khatauni under clause 4-A. In proceedings under Section 9-A of the Act, the name of the father of the petitioners was ordered to be expunged. The consequential appeal was allowed by the Settlement Officer, Consolidation and the basic year entry was maintained. This order was passed by the Settlement Officer Consolidation on 30.12.2011.

It has been specifically averred in the writ petition that the consolidation operation in the unit came to a close by issuance of a notification under Section 52 of the U.P. Consolidation of Holdings Act in June, 2013.

It appears that on 07.03.2014 the petitioners filed an application under Section 27 (3) of the U.P. Consolidation of Holdings Act before the Collector Banda. This application came to be rejected vide order dated 21.10.2014 passed by Additional Collector (Finance and Revenue), Banda. The consequential revision filed by the petitioners was dismissed on 18.12.2014. Hence this writ petition.

It would be relevant to note that by their application dated 07.03.2014, the petitioners had prayed for a correction in the CH Form-45 by incorporating the name of the petitioners in accordance with the entry contained in CH Form-23. In my considered opinion, such an application was maintainable before the Consolidation authorities and not before the Collector whose jurisdiction was in fact invoked. Besides Section 27 (3) empowers the Collector to maintain the record of rights etc. and order for its correction in accordance with the provisions of the U.P. Land Revenue Act. Even otherwise, since the consolidation operations had come to a close, proceedings under Section 33/39 of the U.P. Land Revenue Act were the proper remedy available to the petitioners and for this reason alone, Court found no justification to interfere with the impugned order. **[Sipahi Lal vs. State of U.P., 2015 (129) RD 650 (All.)]**

Sec. 42-A—Mistake in amaldaramad can be corrected by the consolidation authority

The Counsel for the petitioner pointed out that in the amaldaramad made in khatauni in place of plot No. 562/3, plot No. 562/2 has been noted. So far as amaldaramad is concerned, it has been made on the basis of the order of Assistant Consolidation Officer dated 17.4.1999 passed on the compromise. If there was any mistake in the amaldaramad, it can be corrected by the consolidation authorities. The petitioner may file an application u/s. 42A of the Act, before Consolidation Officer in this respect, which may be decided within a period of two months of filing of the application by Consolidation Officer

after hearing the arguments of the parties. **[Gokul vs. Addl. Collector (F/R) D.D.C., Lalitpur, 2015 (129) RD 667 (All.)]**

Sec. 48- Revision allowed- Chaks altered – No opportunity of hearing in revision provided and chak altered –Effect of- Violation of Principles of natural justice and order is unsustainable

From the perusal of the record, which is Jot Chakbandi Patra-5 prepare as per Rule 25 (Kha) of the Consolidation Rule initially Sob Nath S/o Chandra Shekahr was the recorded bhoomidahr of the land having Chak No. 1684, thereafter from the perusal of the Khatauni, filed by the petitioner (Annexure No. 3A) at the time of starting of the consolidation proceeding, and at the stage of the Assistant Consolidation Officer the petitioner has been allotted the land of 2 Bigha in Chak No. 1684. And from the perusal of the appeal filed by Gaya Prasad aggrieved by the order dated 24.07.2006 passed by Settlement Officer Consolidation in appeal No. 266 under Section 21(2) of the Act, the petitioner was not impleaded as party.

Even before the Dy. Director of Consolidation, the petitioner was not impleaded as party in the revision and the order dated 24.07.2006 has been passed without providing opportunity of hearing to the petitioner, thus, the same is in violation of principles of natural justice because it is well settled that denial of natural justice in a modern society is not acceptable. India has a progressive society and a modern constitution. Natural justice is a parameter of all the modern constitution of the world.

In the case of Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors. JT 2012 (10) SC 476, Hon'ble the Supreme Court in paragraph no.3 held as under:-

"The principles of natural justice embody the right to every person to represent his interest to the court of justice. Pronouncing a judgment which adversely affects the interest of the party to the proceedings who was not given a chance to represent his/its case is unacceptable under the principles of natural justice."

Keeping in view the said facts as well as from the perusal of the impugned order/material on record, the position which emerged out that prior to passing of the impugned orders by Dy. Director of Consolidation no opportunity has been given to the petitioner, so the same is liable to be set aside. **(Sarveshwar v. Deputy Director, Consolidation, Unnao and others, 2015(129) RD 412)**

Sec. 48- Jurisdiction – Dy. Director of Consolidation has got no jurisdiction to act as consolidation officer or the settlement officer

In the case at hand there has been no adjudication by the SOC either of the appeal in entirety or of any matter/issue. Even after amendment in the year

2002 and addition of explanation 3 to Section 48 the revisional authority is not empowered to adopt the course of action as done by him in this case. Explanation 3 only empowers him to enter into the question of fact to examine any finding recorded by the subordinate authority whether on fact or law and in this context it includes the power to re-appreciate the evidence for the purpose of examination of correctness, legality or propriety of any such finding. It does not mean that the revisional authority can call for the records of the appellate authority and decide the appeal himself in exercise of his revisional powers without any finding having been recorded by the appellate authority or appeal itself having been decided. Reference may be made in this regard to the pronouncement made by this Court in the case of Karan Singh (Dead) Through L. Rs. Vs. Deputy Director of Consolidation, Aligarh and others, reported in [2003(94) RD 382 wherein after noticing the decision of the apex court in Gaya Deen (D) through L.Rs and others Vs. Hanuman Prasad (D) through L. Rs and others reported in [2001 (92) RD 79 (SC) as also the amendment of 2002 the Court held in para 6 as under:--

> "..... The amendment of Section 48 of the Act has widened the scope of the powers of the Deputy Director of Consolidation. It has given power to him to reappraise the evidence but it nowhere provided that the Deputy Director of Consolidation will have jurisdiction to reverse the findings recorded by the authorities below and can substitute his own findings. The Apex Court in Gaya Din (D) through L.Rs. and others Vs. Hanuman Prasad (D) through L.Rs. and others [(2001(92) RD 79 (SC)] specifically laid down that the Deputy Director of Consolidation has got no jurisdiction to act as the Consolidation Officer or the Settlement Officer Consolidation, otherwise there will remain no difference in the powers of the Consolidation Officer, the Settlement Officer Consolidation and the Deputy Director of Consolidation while dealing with the cases originally, in appeal and revision. In case the Deputy Director of Consolidation was of the opinion that the findings recorded were bad in law, he could set aside the same after reappraisal of the evidence and could remand the case for decision afresh." **(Prem Nath and others v. Deputy Director of Consolidation, Barabanki and others, 2015(129) RD 475)**

Assami Patta – Nature and Status of- Relying upon Rule 176-A and case laws- Held, no Asami lease shall be made for a period exceeding five years

First and foremost question to be decided in the present case that whether the petitioner has got any right to get the Assami Patta granted in his favour in respect of the land in dispute i.e. Gata Nos.187 and 188, converted into Sirdhari

Patta.
It is settled position of law that Rule 176-A of the Rules framed under the Act, (hereinafter referred to the as the 'Rules') as it stands today w.e.f. 1.11.1975, provides that no Assami lease shall be made for a period exceeding five years. Therefore, in case of period of lease not being specified, it shall be treated as one on year to year basis with the maximum period of five years. Thus, the lease granted to the petitioner by way of Assami Patta automatically after expiry of the period as mentioned therein or utmost after five years from the date of initial grant.
in the case of Chhotti Vs. State of U.P. and others 2010 (109) RD 240 it has been held that Assami lease holder has no right to continue in possession on the expiry of lease and his name is liable to be expunged from revenue records. No opportunity of hearing is necessary when nothing plausible has been stated about the defence which may also change the outcome.
Thus, in the instant case also the Assami lease of the petitioner stands determined by the Statute itself i.e. by virtue of Rule 176-A of the Rules on the expiry of five years from the date of initial grant. So, the same stands determined with efflux of time, as such, the petitioner has got no right to convert the same as Shridhar Land. Thus, very basis of the foundation, the order dated 17.04.2008 is void ab initio and without jurisdiction and from the said fact, the petitioner cannot derive any benefit in his favour. **(Babu Lal v. Additional Commissioner, Lucknow and others, 2015 (129) RD 231)**

Lease Grant/Renewal- Mere filing of an application for- Effect of-Not a vested right for grant or renewal of lease conferred
The basic position in law is that the mere filing of an application either for the grant of a lease or for the renewal of a lease does not confer a vested right for the grant or renewal of a lease and, an application has to be disposed of on the basis of the rules as they stand on the date of the disposal of the application.
From the law so declared by the Division Benches of this Court, it cannot be disputed that mere filing of an application for grant of lease/for renewal of a lease will not confer any vested right for grant of renewal of the lease right and that an application has to be disposed of on the basis of the rules as it stands on the date of the disposal of the application. **(Shiv Prasad v. State of U.P. and others, 2015 (129) RD 250)**

Revenue entry—In 1356 and 1359 F Khataunis—Evidentiary value of—Discussed
So far as entry in 1356F and 1359 Khatauni, relied upon by the petitioners are concerned, Supreme Court in State of A.P. vs. Hyderabad Potteries (P) Ltd., (2010) 5 SCC 382, and Union of India vs. Vasavi Cooperative Housing

Society, 2014 (122) RD 634 (SC), held that it is trite that entry in the revenue record alone may not be sufficient as conclusive proof of title nor can be relied upon for proof of establishing the title as such. Although there is presumption regarding correctness of the settlement year Khatauni but in view of the fact that from 1289F, the land in dispute was separately in possession of Shivnandan and partition of joint family property between Shivnandan and Ram Narain had taken place, Khataunies of 1356F and 1359F were not correctly prepared. As such it has been rightly disbelieved by Deputy Director of Consolidation. **[Ram Anuj vs. D.D.C., Jaunpur, 2015 (129) RD 658 (All.)]**

U.P. Land Revenues Act

Secs. 21(3) and 9-B (2)- Spot inspection –purpose of –Explained

Thus, view expressed in Ram Deo's case that if after arguments, Spot inspection was made then earlier arguments stands nullified is contrary to principles laid down by Supreme Court, in aforementioned cases. The only purpose of spot inspection is to test the correctness of the arguments and to appreciate the evidence on record more properly, violation of principles of natural justice cannot be inferred merely on the ground that Deputy Director of Consolidation has not heard arguments again after spot inspection. In view of the contrary judgments of Supreme Court, the judgment in Ramdeo's case is not a binding precedent **(Pramod Kumar v. Addl. Collector (F/R/) D.D.C., Muzaffarnagar and another, 2015 (129) RD 10)**

Secs. 33 r/w 39 –Scope of –Do not empower the collector to decide a dispute involving question of title over land

The provisions of section 33/ 39 of the U.P. land Revenue Act do not empower the collector to decide a dispute involving any question of title over the land. It is limited to make changes due to succession and transfers and for making corrections on account of errors. The U.P. Zila Adhikari acting as a delegate of the Collector has not ordered for the above change in favour of Gaon Sabha on account of any succession or transfer of land or for making any correction. The exemption to the name of the petitioner was directed as the Gaon Sabha land could not have been included in the chak of the petitioner in consolidation proceedings and that some fraud was played. It is not the ground covered by either section 33 or 39 of the U.P. Land Revenue Act and, as such, the impugned order has been passed without any authority of law. **(Durga Devi Rural and Educational Development Society, Kaushambi through its Secretary v. State of U.P. Through the Principal Secdretary, Panchayat Raj, U.P., Secretariat, Government of U.P., Lucknow and others, 2015 (129) RD 34)**

Sec.34- Scope of –Mutation of name of any person in case of transfer or succession- Tahsildar will have jurisdiction

Under the provisions of U.P. Land Revenue Act, 1901, Tahsildar has jurisdiction to mutate the name of any person in cases of transfer or succession. The petitioner could not prove that land in dispute was transferred by Mewa to Ram Surat nor that Ram Surat was the heir of Mewa as such, Deputy Director of Consolidation found that amaldaramad made in Khatauni 1363-F-1365-F by the order to Tahsildar is without jurisdiction

Sec. 49 –Scope of –Explained

It would be relevant to refer to Section 49 of the Act which provides for a bar to the jurisdiction of the civil or revenue courts. It reads as under:

"49. Bar to civil Courts jurisdiction. - Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of right of tenure-holder in respect of land lying in an area, for which a notification has been issued under sub-section (2) of Section 4 or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding would or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act:

Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act.

It provides that after a notification under Section 4 of the Act is issued or, in other words, the village is brought under Consolidation, all rights of the parties with regard to the holdings therein would be determined or adjudicated in accordance with the provisions of the Act and that no civil or revenue court shall entertain any suit or proceedings with respect to the rights in such land or with respect to any other matter with regard to which proceedings could or ought to have been taken under this Act.

The disputes with regard to rights of the parties or any other matter in respect of any land under consolidation is barred before a civil or revenue court to avoid multiplicity of proceedings and conflicting decisions and to bring all disputes in that regard before one single court. **(Durga Devi Rural and Educational Development Society, Kaushambi through its Secretary v. State of U.P.**

Through the Principal Secdretary, Panchayat Raj, U.P., Secretariat, Government of U.P., Lucknow and others, 2015 (129) RD 34)

Sec. 54- Scope of –Explained –Mistake in earlier order could not be corrected by invoking provisions of S. 54 of above Act

Bare perusal of Section 54 of the Act would reveal that the Record Officer shall cause to be carried out survey, map correction, field to field Partal and test and verification of current annual register in accordance with the procedure prescribed. Sub-section (2) of Section 54 would demonstrate that after the test and verification of the current annual register in accordance with sub-section (1), the Naib Tahsildar shall correct clerical mistakes and errors, if any, in such register, and shall cause to be issued to the concerned tenure-holder and other persons interested, notices containing relevant extracts from the current annual register and such other records as may be prescribed, showing their rights and liabilities in relation to land and mistakes and disputes discovered during the operations. Having received such notice under sub-section (2), tenure-holder or the noticee may file reply within twenty-one days disputing the proposed mistakes and corrections. Sub-section (5) of Section 54 provides that after hearing the noticee and other interested person and after making such other inquiry, as Naib Tahsildar deems fit, shall settle the dispute, by conciliation between the parties, and pass orders on the basis of such conciliation. As per sub-section (6) of Section 54, if the Naib Tahsildar is not able to decide the lis between the two parties by way of conciliation, he shall forward to the Assistant Record Officer his report and the Assistant Record Officer, as per the provisions of Sections 40, 41 or 43, shall decide the dispute after summary inquiry and if during the summary inquiry it is found that noticee is in unauthorized possession of any part of the property, he may pass order of dispossession of the noticee. As per sub-section (8) of Section 54, any order made by the Assistant Record Officer deciding the question of title summarily shall be final, subject to the provisions of Sections 201 and 219 of the U.P. Land Revenue Act, however, if order of dispossession is passed under sub-section (7) of Section 54 it shall be final, subject to the outcome of the suit, which the aggrieved party may file before the competent court for establishment of his title. In the present case, no notice was admittedly issued to the petitioner, as required by sub-section (2) of Section 54 annexing therewith extract of annual register and any such record showing the irregularities and mistakes therein. Perusal of the impugned orders would reveal that the Naib Tahsildar never tried to decide the dispute of the mistake by conciliation. Not only this, the Naib Tahsildar has not referred the dispute to the Assistant Record Officer, as required by sub-section (6) of Section 54 and straightway

the Assistant Record Officer has passed the order dated 18.4.2001 recalling the earlier order dated 27.11.2000. **(Alam v. State of Uttaranchal and others, 2015 (129) RD 56)**

Sec. 219 (2)- Second revision – Maintainability of –First revision preferred by petitioner was dismissed as withdrawn without seeking any liberty to file revision again –Hence second revision held to by not maintainable

The Tehsildar, Akbarpur, District Ambedkar Nagar vide order dated 12.05.2014 had decided the mutation proceedings under Section 34 of U.P. Land Revenue Act by holding that the petitioner is not the second wife of late Abrar Husain. The orders were passed in favour of opposite parties no.4 and 5. The appeal preferred by the petitioner under Section 210 of Land Revenue Act was dismissed by Sub Divisional Officer vide judgment and order dated 29.12.2014. It was thereafter that the petitioner had preferred revision under Section 219 Land Revenue Act initially before the Commissioner, Faizabad Division, Faizabad on 6.1.2015 (for convenience it is mentioned as 'first revision'). An application for withdrawal was moved on 29.1.2015. The said application was allowed and the revision was dismissed as not pressed vide order dated 29.1.2015.

The petitioner had preferred another revision under Section 219 of Land Revenue Act before the Board of Revenue, Lucknow on 12.1.2015 (for convenience it is mentioned as 'second revision'). The second revision, on being filed, was directed to be listed for admission on 21.2.2015. The opposite parties no.4 and 5 had raised objections before the Board of Revenue regarding maintainability of second revision on the ground that it is barred under Section 219 (2) of Land Revenue Act. The learned Member of Board of Revenue vide order dated 21.2.2015 had referred the matter to the larger Bench for authoritative decision as he had observed that there were conflicting judgments on the issue. It was thereafter that the larger Bench of the Board of Revenue had considered the issue in question and by the impugned order has come to conclusion that in the given facts and circumstances the second revision preferred by the petitioner was not maintainable and has accordingly dismissed the second revision.

So far as the contention of learned counsel for the petitioner that the second revision preferred by the petitioner had come up for admission before the Board of Revenue on 21.2.2015 and at that time no revision was pending, as such, it cannot be treated to be a second revision and Board of Revenue has wrongly come to conclusion that it was not maintainable is concerned, suffice is to observe that the provision under Section 219 (2) of Land Revenue Act are very much clear. It is specifically provided that if an application for revision has

been preferred before any of the authorities given, no further application by the same person shall be entertained, meaning thereby that once first revision was preferred by the petitioner which was dismissed as withdrawn without seeking any liberty to file revision again, the second revision was not maintainable. Even in the application for withdrawal the petitioner had not disclosed that he has preferred another revision before the Board of Revenue and do not want to pursue this revision. The application for withdrawal was filed simply on the ground that petitioner does not want to pursue the revision and it may be dismissed as withdrawn. The petitioner had not sought any liberty to file fresh revision, the first revision was, as such, dismissed as withdrawn without providing any liberty to file another revision. It is immaterial whether the second revision preferred by the petitioner had come up for admission on 21.2.2015 i.e., at the time when the first revision was already dismissed as withdrawn. Since no liberty was sought or given while withdrawing the first revision, as such, I am of the considered opinion that the second revision preferred by the petitioner was not maintainable. The larger Bench of the Board of Revenue by the impugned judgment and order has rightly come to conclusion that the second revision by the petitioner before Board of Revenue was not maintainable. The larger Bench was also right in dismissing the revision preferred by the petitioner as there was no question of remanding or sending the matter back to the authority who had made the reference to the larger Bench, once the larger Bench of the Board of Revenue had come to conclusion that the second revision was not maintainable. **(Smt. Umman Bibi v. Board of Revenue, U.P., Lucknow and others, 2015 (5)AWC 5422)**

U.P. Panchayat Raj Act

Sec. 12-C – Corrupt practice of bribery/undue influence in election –Effect of explained

What would amount to corrupt practice of bribery or undue influence has also been provided in sub-section (2) (B) of section 12-C of the Act. Undue influence has been construed as any direct or indirect interference or attempt to interfere on the part of a candidate or of any other person with the connivance of the candidate with the free exercise of any electoral right.

So far as the grounds of undue influence is concerned, the election petition does contain the averments that the officials and the Presiding Officer entrusted with the counting of ballots in connivance with the returned candidate had conducted the counting in irregular and illegal manner, thereby violated the provisions contained in Rule 49 of the rules, 1994 **(Pawan Singh v. Presiding Officer/S.D.M., Kunda and others, 2015 (129) RD 414)**

U.P. Urban Building Regulations of Letting Rent and Eviction Act

Secs. 7 and 20(4)—Benefit of deposit—On first date of hearing—Claim of—Unless entire amount of rent is deposited including arrears of municipal the benefit of Sec. 20(4) of Act can't be extended to tenant

Section 7 of the Act specifically provides that water tax is payable by the tenant in addition to and as part of rent. The same view has been taken in a string of decisions of this Court. **(See : 1985 (1) ARC 201 Jwala Prasad Jain vs. IVth Addl. District Judge, Etah; 1999(2) ARC 292 Jagtar Singh Chopra vs. Trilok Chandra; 1981 ARC 175 Mirza Humayun Beg and another vs. II Addl. District Judge, Lucknow and others; 1995 (2) ARC 52 Abdul Alim vs. District Judge, Jhansi and others.)** Thus, for taking benefit of provisions of Section 20(4) of the Act, unless entire amount of rent due is deposited which as discussed above, would include the arrears of municipal taxes, the benefit of the said provision cannot be extended to a tenant. In Raj Rani Kapoor vs. Bhupinder Singh1 this Court held as under :-

> "The statutory liability guaranteed under section 7 of the U. P. Act 13 of 1972 is in additional to the contractual liability and this also under the law is payable as rent. The tenant was, therefore, obliged to deposit the entire amount of rent payable by him if he wanted to take the benefit of Section 20 (4) to avoid his eviction." **[Sanjay vs. Smt. Vimla Rani and 6 others, 2015 (3) ARC 741]**

Sec. 20 (2) (a) –Ejectment on ground of default in payment of rent – Validity

SCC Suit No. 128 of 1997 was instituted by the plaintiff respondent against the petitioner for recovery of arrears of rent and for ejectment from a shop situated on the ground floor of building no. D 65/48 Lahartara, Varanasi, (hereinafter referred to as "the shop"). According to plaint case, building no. D 65/48 Lahartara, Varanasi belonged to one Kallan. He executed a registered will in favour of his wife Smt. Shivmurti Devi. The petitioner was a tenant in the shop on behalf of the Kallan. After death of Kallan, according to plaint case, the petitioner started paying rent to Shivmurti Devi. Shivmurti Devi is alleged to have executed an agreement in respect of northern portion of the building, which includes the demised premises, in favour of the plaintiff along with delivery of possession. Subsequently, in September, 1990 a sale deed was also executed by Shivmurti Devi in favour of the plaintiff-respondent. It is alleged that since September, 1990 the petitioner had not paid rent to the

plaintiff. Consequently, by means of a notice dated 21.7.1997, arrears of rent was demanded and the tenancy was terminated on expiry of period of 30 days. It was alleged that, in spite of service of notice, the petitioner failed to tender rent to the plaintiff-respondent and hence, there is default in payment of rent, for which the petitioner is liable to ejectment.

In *Sk.Sattar Sk.Mohd.Choudhari v. Gundappa Amabadas Bukate,(1996) 6 SCC 373* the Supreme Court has held that liability to pay rent to the assignee landlord is postponed till the knowledge of transfer is gained by the tenant, but it does not have the effect of postponing the assignment or transfer of property. A specific finding has been recorded by the trial court that the petitioner came to know about assignment on service of notice upon him in January 1997 and again in July 1997. It was not necessary for establishing relationship of landlord and tenant that there should have been payment of rent by the petitioner to the plaintiff, as the attornment had taken place by operation of law. On gaining knowledge of the transfer, the liability to pay rent comes into existence and the petitioner should have tendered rent to the plaintiff. However, having failed to do so, inspite of notice of demand admittedly served upon him in January, 1997 and again in July 1997, which notice has also been held to be served on the petitioner, there was a clear default in payment of rent. Concernedly, no rent was deposited by the petitioner under Section 30 or in the suit, on the date of first hearing. Thus, there was a clear default in payment of rent, within the meaning of Section 20 (2)(a) of U.P. Act XIII of 1972. The trial court was fully justified in decreeing the suit for arrears of rent and for ejectment. **(Kanhaiya Lal Sharma v. Dr. Sushil Kumar, 2015 (6) ALJ 284)**

Sec. 21 (1) (a) - Release application filed by respondent/Landlord for a shop on ground of bonafide need for his wife and three sons- No dispute that landlord has no shop at his disposal- Landlord cannot be compelled to carry out commercial activities from his residence

A release application was filed by the first respondent-landlord under Section 21(1)(a) of the Act XIII of 1972 for release of the shop in dispute situated in Orai at district Jalaun. The landlord pleaded bonafide need for his wife and three sons who were educated but unemployed. The release application was allowed by the Prescribed Authority. Aggrieved, petitioner preferred an appeal being Appeal No.07/2007 which was allowed on 28 November 2008 rejecting the release application. Aggrieved, first respondent-landlord assailed the order in a petition being Writ - A No. - 3171 of 2009 (Puttan Babu v. Special Judge (SC/ST Act) Jalaun at Orai & others), this Court allowed the petition, remanded the matter by order dated 6 August 2014 directing the Appellate Court to decide the bonafide need set up by the landlord for two sons, namely, Pramod Kumar

and Sujeet Kumar.
The Appellate Court upon considering the rival contention, material and evidence available on record returned a finding recording the bonafide need of the premises in favour of the sons. The appellate order dated 11 August 2015 is being assailed in writ jurisdiction.
It is also a trite law that a landlord cannot be compelled to carry out commercial activity from his residential premises. This apart, it has also been settled in a catena of judgments that every member of the landlords family is entitled to start his independent business and cannot be compelled to participate in the family business as being otherwise asserted by the tenant/petitioner. (Refer: Avinash Chandra and others Versus VIIth A.D.J. Ghaziabad1).
In Mohd. Ayub v. Mukesh Chand2, while interpreting the provisions of law, Supreme Court has observed in para 15 as under:-
"15. It is well settled the landlord's requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. It was wrong on the part of the District Court to hold that the appellants' case that their sons want to start the general merchant business is a pretence because they are dealing in eggs.....Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the courts below."
In Rishi Kumar Govil v. Maqsoodan3, on the plea and evidence relating to bonafide need of landlord, Apex Court in para 19 observed as under:-
"19. In Ragavendra Kumar v. Prem Machinery and Co.4, it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In Gaya Prasad v. Pradeep Srivastava5, it was held that the need of the landlord is to be seen on the date of application for release. In Prativa Devi (Smt.) v. T.V. Krishnan6, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live."
The matter at hand has been settled by both the courts below and does not warrant any interference by this Court in exercise of its powers conferred under Article 226 of the Constitution of India. **(Amit Kumar and Puttan Babu and another, 2015 (113) ALR 320)**

Sec. 21 (1) (a)- Release application –Dismissed by both the courts below- Legality of –Scope of Judicial review is very limited and narrow if concurrent finding of facts have been recorded does not show perverse or contrary to material on record

The petitioner-landlord, whose release application under Section 21(1)(a) of Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") was dismissed by Prescribed Authority vide order dated 13.1.1997 and the said judgment has been confirmed in appeal vide judgment dated 08.03.2007 has come to this Court challenging the aforesaid two orders.

Having gone through the impugned orders as also pleadings and grounds taken in writ petition, I do not find any patent illegality or irregularity in the orders impugned in this writ petition warranting interference. Concurrent findings of fact have been recorded which have not been shown perverse or contrary to material on record. The scope of judicial review under Article 226/227 is very limited and narrow as discussed in detail by this Court in Writ-A No, 11365 of 1998 (Jalil Ahmad v. 16th Addl. District Judge, Kanpur Nagar and others) decided on 30.7.2012. There is nothing which may justify judicial review of order impugned in this writ petition in the light of exposition of law) **(Hari Shanker Sharma v. Ram Prakash Govil (Since Deceased) and another, 2015 (3) ARC 498)**

Sec. 21 (1)(a)- Comparative hardship- Facts to be taken in consideration

In this case, the tenant has failed to bring on record that he has made any genuine effort to search for an alternative accommodation during pendency of the release application. This is one of the relevant factor to be taken into consideration while comparing the hardship of the landlord and tenant. Once the need of the landlord is found bonafie and genuine, the above fact would tilt the hardship in favour of the landlord. **(Sapan Das v. Dist. Judge And 2 Ors., 2015 (3) ARC 611)**

U.P.Z.A. and L.R. Act

Sec. 6—Scope of—Vesting of estate in state of U.P.—Discussed and explained

In this case, it is found that the land in dispute was parati/banjar land on the date of vesting and was an estate of an intermediary, as such, it was vested in the State of U.P., free from all encumbrances u/ss. 4 and 6 of U.P. Act No. 1 of 1951 on the date of vesting. U/s. 6(a) of U.P. Act No. 1 of 1951, all rights, including easementary right to use the land in dispute as khalihan of the petitioner or other villagers, were terminated and vested in State of U.P., **[Kripa Shankar Pandey vs. Deputy Director of Consolidation, Ballia, 2015 (129) RD 690 (All.)]**

S. 12- Mutation –No period of Limitation has been provided for but delay in disclosing will creates doubt

Although no limitation has been provided for mutation but in the case of inheritance on the basis of unregistered Will, delay in disclosing the Will itself crate a doubt in respect of its genuineness. In these circumstances the Will was surrounded with suspicious circumstances and the propounders have failed to explain suspicious circumstances Supreme Court in H. Venkatachala v. B.N. Thimbajamma AIR 1959 SC 443, S.R. Srinivasa v. S. Padmavathamma 2010 (111) RD 675 (SC) and M.B. Ramesh v. K.M. Veraje , 2013 (a120) RD 438 (SC) held that in case, the propounder has taken active part in execution of the Will, then it create a suspicious circumstance **(Shardul Ranjan and othrs v. D6y Director of Consolidation, 2015 (129) RD 495)**

Sec. 122-B— Possession over land—Whether petitioner can claimed right over land on basis of sale deed declared to be void and barred by Sec. 157AA of Act—Held, "No"

So far as the contention of learned counsel for petitioner that the petitioner is in possession over the land in question, as such, he is entitle to get the benefit of Section 122-B (4F) U.P.Z.A.&L.R. Act is concerned, suffice is to observe that the petitioner has claimed the right over the land in question on the basis of alleged sale-deed dated 10.11.1998 and he is in possession over the land in question subsequent to the said transaction. Since it has been held that the said execution of sale-deed was void and was barred by Section 157-AA U.P.Z.A.&L.R. Act, the petitioner could not have got the possession over the land in question, as such he is not entitle to claim the benefit of Section 122-B (4F) U.P.Z.A. & L.R. Act. **[Prem Chandra vs. Additional Commissioner (Administration), Lucknow Mandal and others, 2015 (6) AWC 5738 (All.)]**

Sec. 143- Land use- Change of- Locus standi to apply u/s 143 of the U.P.Z.A. & L.R. Act –Person not having right over the land in dispute and not a tenure holder has no locus standi to apply u/s 143 of the Act

Section 143 of U.P.Z.A.&L.R. Act clearly provides that where a Bhumidhar with transferable rights uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the Assistant Collector-in-charge of sub-division may, suo motu or on an application, after making such enquiry may pass an order for change of land uses. It clearly means that in case the holding or part of the holding (land) is being used for the purpose not connected with agriculture land use of said land can be changed in exercise of powers under Section 143 of U.P.Z.A.&L.R.Act. Petitioner does not own holding or part of

holding as in the present case, admittedly, the petitioner has no right over the land in question as she is not a tenure holder of the land in question. Her husband has merely constructed the house on a part of the said land, as such court is of the view that provisions of Section 143, U.P.Z.A.&L.R. Act would not be applicable in the case of petitioner. The petitioner has no right to move any application for change of land uses under Section 143, U.P.Z.A.&L.R. Act. **(Smt. Praveen Singh v. Board of Revenue, U.P. at Alahabad and others, 2015(129) RD 534)**

Sec. 157 AA- Scope of –Land belongs to a schedule caste which was allotted to him u/s 131-B of the Act- Petition on the basis of sale-deed acquired the disputed land- before the execution of the sale-deed no permission from competent authority was abstained –Restriction imposed u/s 157-AA of above act applicable

It is the admitted case of the petitioner, as has been submitted by learned counsel for the petitioner before the Court, that the land in question belongs to a Schedule Caste which was allotted to him in exercise of powers under Section 131-B U.P.Z.A.&L.R. Act. The petitioner on the basis of the alleged registered sale-deed dated 10.11.1998 had acquired the land in question from Bhusey son of Bhagwant.

It is also admitted position that before execution of the said sale-deed no permission from the competent authority i.e., Assistant Collector, Mohanlalganj, Lucknow was obtained.

Section 157-AA U.P.Z.A.&L.R. Act specifically provides that no person belonging to Schedule Caste having become bhumidhar with transferable rights under Section 131-B U.P.Z.A.&L.R. Act shall have the right to transfer the land by way of sale, gift, mortgage or lease to person other than a person belonging to Scheduled Caste and such transfer, if any, shall be in the following order of preference:

(a) land less agricultural labourer;
(b) marginal farmer;
(c) small farmer; and
(d) a person other than a person referred to in Clauses (a),
(b) and (c).

In the present case, the restriction imposed under Section 157-AA U.P.Z.A.&L.R. Act would be fully applicable, as such, courts of the considered view that the alleged sale-deed dated 10.11.1998 was void and the petitioner on the basis of said sale-deed could not have acquired any right over the land in question. **(Prem Chandra v. Addl. Commissioner (Admini) Lucknow Mandal and others,2015 (129) RD 417)**

Sec. 161- Exchange of Land by Bhumidhar with non-transferable rights- Not permissible

The petitioner has filed this writ petition challenging an order dated 25.03.2015 of the Commissioner, Aligarh, whereby he has set aside an order passed in favour of the petitioner in proceedings under Section 161 of the U.P. Zamindari Abolition & Land Reforms Act for exchange of certain plots of the petitioner with those of the Gaon Sabha recorded in the revenue records as banjar. This order for exchange was passed by the Sub Divisional Officer.

It has been submitted by counsel for the petitioner that on his application proceedings under Section 161 of the U.P.Z.A.&L.R. Act were initiated and the order for exchange was passed, validly and in accordance with law. The order was also in consonance that the resolution of the Gaon Sabha in this regard and it was passed after the Pradhan had given her consent in her oral testimony, recorded by the Sub Divisional Officer. The order therefore was a consent order. Prior to the order being passed, the opinion of the D.G.C. Revenue had also been obtained. The order for exchange have been passed in public interest.

The revision filed against this order, was preferred by the D.G.C. (Revenue), without there being any resolution of the Gaon Sabha in this regard. The revision was therefore, incompetent. It was also highly time barred and was not accompanied by any application under Section 5 of the Limitation Act for condonation of delay. The revision therefore has wrongly been entertained and allowed. The impugned order therefore is patently illegal and is liable to be set aside.

In the writ petition, the fact that the petitioner was at best a bhumidhar with non transferable rights, is not in dispute. It is well settled that a bhumidhar with non transferable rights cannot exchange such holding. **(Vishambhar Dham Higher Secondary School v. State of U.P. and others, 2015 (129) RD 486)**

Sec. 169 (Amendment w.e.f. 23.08.2014) –Scope of- Registration of will was made compulsory under –Testator was alive on 23.8.2004, hence unregistered will not admissible in evidence

Section 169 of U.P. Act No. 1 of 1951, as amended by U.P.Zct Non 27 of 2004, w.e.f. 28.8.2004 provided that a 'bhumidhar with transferable right' may by Will bequeath his holding or any part thereof in writing, attested by two persons and registered. Thus from 23.8.2004, registration of the Will was U.P. Act No. 1 of 1951. As Smt. Chiraita Devi was alive on 23.8.2004, as such the amended provisions of section 169 Will apply upon her and it was compulsory for her to got her Will registered. An unregistered Will produced by the petitioners was not admissible in evidence and could not be relied upon. **(Shardul Ranjan and othrs v. D6y Director of Consolidation, 2015 (129) RD 495)**

Sec. 209 –Suit under –When maintainable- Discussed

A suit under 209 of the Act would be maintainable if the case of taking or thereafter continuing in possession is otherwise than in accordance with law. This provision would not be attracted if the initial act of taking possession was in accordance with law, but latter on account of the fact that contract of sale could not materialize, and licence stood revoked, that the plaintiff has become entitled to get back possession of his land. The status of defendant appellant does not turn into that of a trespasser and the revenue suit would not be maintainable. The judgment in the case of Bajara Singh would thus apply to the facts of this case. **(Sharif Ahamad and another v. Faiz Mohammad and others, 2014 (129) RD 531)**

Secs. 331 and 333- Nature of Explained

Section 333 of the Act is the provision relating to power conferred on various authorities such as, Board of Revenue or the Commissioner or the Additional Commissioner which can call for record of any suit or proceeding other than the proceedings under sub-Section (4-A) of Section 198 of the Act decided by any Court subordinate to them in which no appeal lies or where an appeal lies but has not been preferred. The reading of Section 331 and 333 of the Act clearly indicates that the separate statutory provisions have been made for availing the remedy of appeal and remedy of revision under the Act. **(Sushila and another v. State of U.P. through Collector Faizabad and others, 2015 (129) RD 253)**

Words and Phrases

(i) "Legality"- Meaning of

The ordinary meaning of the word 'legality' is lawfulness. It refers to strict adherence to law, prescription, or doctrine, the quality of being legal

(ii) "Bona fide need" – Meaning of

In Ram Dass's case this aspect of the concept of Bona fide need has further been clarified. It has been observed therein that the "Bona fide need of the landlord should be genuine and honest, conceived in good faith; and the Court must also consider it reasonable to gratify the need. **(Arun Kumar v. Smt. Ramwati Devi and others, 2015 (113) ALR 790)**

"Mandamus"- Means a 'command' or an 'order' which directs a person or authority to whom it is addressed to perform the public duty imposed on him or on it

"Mandamus" is a Latin word. Literally, it means a "command" or an "order" which directs a person or authority to whom it is addressed to perform the

public duty imposed on him or on it.
Mandamus is English origin. The direction in the Magna Carta that the Crown was bound neither to deny justice to anybody nor to delay anybody in obtaining justice has been recognized by this writ. The first reported case of mandamus was the Middleton's Case (1574) 3 Dyer 332b in 1573 wherein a citizen's franchise was restored. James Bagg (1615) 11 Co Rep 93b was the leading decision by which a membership of local body was restored to the applicant.
The first reported case was in 1775 R. v. Warren Hastings, (1775) 1 ID (05) 1005, where mandamus was sought against the supreme Council of the Governor General. Statutory recognition to grant mandamus was granted by section 50 of the Specific Relief Act, 1877. In Tan Bug Taim V. Collector AIR 1946 Bom 216, an order requisitioning property was held ultra vires. The words "any law" were interpreted as wide enough to include all kind of law, statutory or otherwise.
After the commencement of the Constitution, the supreme Court is empowered under Article 32 to issue mandamus for the enforcement of fundamental rights, while every High Court has power to issue mandamus under Article 226 for the enforcement of fundamental rights and also for "any other purpose" throughout the territories in relation to which it exercises jurisdiction.
Mandamus differs from prohibition and certiorari in that, while the former can be issued against administrative authority,the latter are available against judicial and quasi-judicial authorities. Mandamus acts where the courts and tribunal usurp jurisdiction vested in them or exceed their jurisdiction. Whereas mandamus demands activity, prohibition commands inactivity. While mandamus compels, certiorari corrects. **(Shambhu Nath Pandey v. State of U.P. and others, 2015 (33) LCD 2971)**

"Mistake apparent on face of record" means that mistake is still evident and needs no search

The mistake apparent on the face on record means that mistake is still evident and needs no search. Review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits **(Shri Chandra Gupta v. Additional District Judge, Court No. 1, Hardoi and others, 2015 (33) LCD 2966)**

"Person aggrieved" –Meaning of

The meaning of the expression 'person aggrieved' will have to be ascertained with reference to the purpose and the provisions of the statute. One of the meanings is that person will be held to be aggrieved by a decision if that decision is materially adverse to him. The restricted, meaning of the expression requires denial or deprivation of legal rights. A more legal approach is required

in the background of statutes which do not deal with the property rights but deal with professional misconduct and morality.

Broadly, speaking a party or a person is aggrieved by a decision when, it only operates directly and injuriously upon his personal, pecuniary and proprietary rights (Corpus Juris Seundem. Edn. 1, Vol. 365 as referred in Kalva Sudhakar Reddy v. Mandal Sudhakar Reddy AIR 2005 AP 45 49 para 10

The expression 'person aggrieved' means a person who has suffered a legal grievance i.e. a person against whom a decision has been pronounced which has lawfully deprived him of something or wrongfully deprived him of something or wrongfully refused him something. **(Samar Singh v. State of U.P. and others, 2015 (129) RD 15)**

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