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CONSTITUTIONAL, CIVIL, CRIMINAL & REVENUE LAWS
(Covering important judgments of Supreme Court and Allahabad High Court)

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FROM THE CHAIRMAN'S DESK

On 13.07.2016, the Supreme Court reinstated the Congress Government in Arunachal Pradesh which had earlier been dismissed and new Government headed by Kalikho Pul had been installed. The Governor played active role at different stages of the proceedings. This order is first of its kind in India. Earlier imposition of President Rule had been set aside in several cases. The most recent instance was of Uttrakhand where President Rule was quashed and the Congress Government headed by Mr. Rawat was reinstated which proved its majority on the floor. Previous Chief Minister of Arunachal Pradesh Nabam Tuki was reinstated as Chief Minister. The Governor directed him to prove majority on 16.7.2016 on which date the Congress party elected a new Chief Minister Pema Khandu and proved its majority. The action of the Governor particularly the one recommending central rule was severely criticized by the Supreme Court. Constitution Bench of the Supreme Court by unanimous judgment held that the Governor humiliated the elected Government and ignored the resolution of the council of Ministers which resulted in thrashing to the Constitution and a spanking to governance. It further held that the actions of the Governor were not in the language of the law or the spirit of parliamentary democracy hence his unilateral act of summoning the assembly was unconstitutional. Ultimately it was held that the steps and decision taken by the assembly pursuant to the Governor's decisions were unsustainable and the same were set aside. The Supreme Court has curtailed the discretionary powers of the Governors and asked them to remain totally aloof

from the political developments in the State as long as the Chief Minister has a majority, which incase of doubt has to be proved only and only on the floor of the house. On 26.1.2016 Tuki Government was dismissed and the State was placed under Central rule. Kalikho Pul was sworn in as Chief Minister on 20.2.2016 and he proved his majority on 25.2.2016 however on that date 17 Congress M.L.As including previous Chief Minister Nabam Tuki were absent. The Supreme Court restored status quo ante which meant that the disqualification of the 14 MLAs as ordered by the Speaker on 15.12.2015would remain valid. The action of the Governor advancing the Assembly Session from 14.1.2016 to 16.12.2015 without taking mandatory approval of Council of Ministers was severely criticized by the Supreme Court.

After the then speaker Naban Rabia disqualified 14 out of 21 dissident Congress MLAs, on 15.12.2015 all the 21 Congress MLAs, 11 BJD MLAs and 2 independent MLAs held the special session at a hotel as Assembly building was locked by the Speaker's order. In the said meeting the speaker was impeached.

Real Estate (Development and Regulation) Act 2016 came into force on 1.5.2016. In the end of June 2016 proposed Rules under the Act have been framed and objections with regard thereto have been invited. One of the features of the proposed Rules is imposition of 11.2% interest on the builders to be paid to the buyers on delay in handing over apartments.

Since the end of June an unfortunate development is taking place in the recently created State of Telangana which was earlier part of Andhra Pradesh. The Judges of the District Courts are violently agitating in respect of bifurcation of judiciary. Judges of

Telangana Courts are alleging that more than 100 judges of Andhra Pradesh region have been allocated to Telangana Judiciary Cadre. The High Court has taken serious view of the matter and suspended several judicial officers who are actively participating and leading the agitation.

No consensus has yet been arrived at between Central Government and Supreme court over Memorandum of Procedure for appointment of High Court (and Supreme Court) Judges. The Government is insisting that it must have veto power to reject any recommendation of the collegium on the ground of being against the national interest. Now the position is that total strength of judges in all the High Courts has come down to almost 50%. The earlier this dispute is resolved the better it would be for the judiciary and the country. It is reported in Times of India Lucknow Edition dated 18.7.2016 that the new Law Minister Sri Ravi Shanker Prasad has issued early resolution of the tangle.

In respect of National Eligibility – cum – Entrance Test (NEET) the Supreme Court on 14.7.2016 directed that in addition to the admissions made to MBBs and BDS courses through NEETs (the last one to be held on 24.7.2016) entrance examination conducted by the State Governments will also be valid for this year alone. The ordinance dated 24.5.2016 which has been promulgated by the Central Government permitting the States to opt out of NEET has not be appreciated by the Supreme Court, however it has not stayed the same even though in its tentative opinion, as reported in News papers the ordinance is contrary to the judgment and order of the Supreme Court with respect to NEET dated 2.5.2016.

In the Times of India Lucknow Edition dated 15.7.2016 it has been reported that in the District Judiciary in the entire country 22% of sanctioned posts are lying vacant. The deficiency was 20% in 2002. In a write-up in Times of India Lucknow Edition dated 30.5.2016 Shailesh Gandhi former Central Information Commissioner had mentioned that the Indian Judiciary was disposing of the cases at a brisk rate and if all the sanctioned posts were filled, within very few years judiciary can drastically bring down back breaking load of pendency of cases. It has been mentioned that there is a backlog of about 3 crore cases, however every year about 2 crore cases are instituted and almost equal number of cases are decided.

Justice S.U. Khan
Chairman, JTRI

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63. **Santosha Craft (Pvt.) Ltd. V. Board of Revenue, U.P. at Lucknow and others, 2016 (3) AWC 2735**
64. **Shakeel Ahmad v. Zameer Ahmad Siddiqui and another, 2016 (116) ALR 574**
65. **Shiv Sampat v. Sushil Kumar and others, 2016 (131) RD 145)**
66. **Shri Sumati Nath Jain v. State Of U.P. And Another, 2016 (131) RD 34**
67. **Shyam Babu vs. State of U.P. and another 2016 (94) ACC 821(Allahabad High Court]**
68. **Siyaram Saxena v. Bishambhar Dayal Saxena And Others, 2016 (131) RD 67**
69. **Smt. Chhaya Devi v. State of U.P. & another, 2016 (2) ALJ 545**
70. **Smt. Dropa Devi and another vs. State of U.P., 2016 (94) 740 (Allahabad High Court)**
71. **Smt. Prem Kali v. Deputy Director Of Consolidation Sitapur And Others, 2016 (131) RD 154**
72. **Smt. Rita Bagga and another v. Milan Developers and another, 2016 (3) AWC 2362**

73. **Smt. Samana v. Dy. Director of Consolidation and others. 2016 (131) RD 359**
74. **Smt. Sulekha v. Ashok Kumar, 2016 (3) ALJ 263; 2016 (114) ALR 62**
75. **Smt. Vijay Jain v. State of U.P. and others, 2016 (3) ALJ 278**
76. **Somwati @ Girija And Another v. State of U.P. and another, 2016 (115) ALR 827**
77. **Sr. General Manager, Ordnance Factory, Kalpi Road, Kanpur v. Central Administrative Tribunal & Anr, 2016 (34) LCD 1084**
78. **Subhash Chandra Vishwakarma v. Chief Information Commissioner U.P. State Information & Ors. 2016 (2) ALJ 463**
79. **Sunder Lal v. Deputy Director of Consolidation, Unnao and others, 2016 (131) RD 344**
80. **Suresh Pal vs. State of U.P., 2016 (94) ACC 947 (Allahabad High Court)**
81. **Suresh Prasad v. A.D.J. And 2 Ors., 2016 (2) ARC 38**
82. **Surjeet Singh Bhamra v. Bank of India and others, 2016 (2) AWC 2113 (SC)**
83. **Sushila and Another v. State of U.P. and others, 2016 (34) LCD 1124**
84. **Sushila and others v. District Judge and others, 2016 (115) ALR 748**
85. **Syed Wasif Husain Rizvi v. Hasan Raza Khan & 6 Ors. 2016 (1) ARC 872**
86. **Thakur Ram Janki Ji Virajman Mandir and another v. Board of Revenue, U.P. at Allahabad, 2016 (131) RD 30**
87. **Tulsi Ram and others v. Addl. Commissioner (Judicial), Lucknow and others, 2016 (131) RD 361**
88. **U.P. Awas Evam Vikas Parishad and another v. Prem Prakash Sharma, 2016 (2) AWC 1869**
89. **Union of India and others v. Brijesh Kumar No. 871180872 Ex Constable, 2016 (116) ALR 264**
90. **Vasant Balu Patil and others v. Mohan Hirachand shah and others 2016 (131) RD 147; 2016 (114) ALR 7**
91. **Veer Pal and another v. State of U.P. and another, 2016 (3) ALJ 446**
92. **Vinod Kumar Agarwal v. U.P. Financial Corporation and others, 2016 (131) RD 238**

PART – 1 (SUPREME COURT)

Arbitration and Conciliation Act

Section 11—Arbitration petition—Jurisdiction of Court u/s. 11 of the Act—Once it is held that disputes had arisen between the parties in relation to agreement which contained an arbitration clause, the Court should have made reference to the arbitrator leaving the parties to approach the arbitrator with their claim and counter claim.

It is a settled principle of law that jurisdiction of Court under Section 11 of the Act is limited and confine to examine as to whether there is an arbitration agreement between the contracting parties and, if so, whether any dispute has arisen between them out of such agreement which may call for appointment of arbitrator to decide such disputes.

Once it is held that disputes had arisen between the parties in relation to agreement which contained an arbitration clause for resolving such disputes, the Court should have made reference to the arbitrator leaving the parties to approach the arbitrator with their claim and counter- claim to enable the arbitrator to decide all such disputes on the basis of case set up by the parties before him. In this case, Court finds that the learned Single Judge did exceed his jurisdiction on this issue and hence interference to this extent is called for.

The Court, accordingly, observe that the arbitrator while deciding the disputes between the parties in arbitration proceedings would not, in any manner, be influenced by any finding, observations made by the learned Single Judge in the impugned order and nor would make any reference of the findings while deciding the case.

Now so far as the appointment of sole arbitrator made by the learned Single Judge is concerned, in view of the reservation expressed by the appellant regarding the choice of an advocate arbitrator by the High Court, Court feel that it is just and proper that a retired Judge should be appointed in his place as an arbitrator to resolve the disputes.

Court, accordingly, appoint Shri Justice M.L. Mehta (Rtd.) as the sole arbitrator to decide the disputes, which have arisen between the parties in relation to the agreement in question. **[Rajesh Verma vs. Ashwani Kumar Khanna, 2016 (4) SCALE 184]**

Sections 15, 11.5 and 7 r/w S. 89 C.P.C. - Distinction between settlement of disputes by Arbitration and Mediation-Explained.

It hardly needs to be emphasized that the parties choose arbitration as a

dispute resolution mechanism keeping in view that it offers a timely, private, less formal and cost effective approach for the binding determination of disputes. It provides the parties with greater control of the process than a court hearing. The non-judicial nature of arbitration makes it both attractive and effective for several reasons. Apart from it being cost effective and speedier method of settling the disputes when compared with court adjudicatory method, the confidentiality of the arbitration process may appeal to those who do not wish the terms of settlement to be known. Therefore, first thing that has to be kept in mind, when in a pending suit the parties agree for reference to arbitration, though there was no arbitration agreement when the suit was filed, is that they have consciously preferred arbitration rather that the court process. It, thus, follows that the intention is to settle the disputes through arbitration and not the court.

Secondly, in such a situation, Section 89 of the CPC also springs into action, which provides for 'settlement of disputes outside the Court'. As per this provision, where it appears to the Court that there exists elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may re-formulate the terms of a possible settlement and refer the same for –

a) arbitration;

b) conciliation;

c) judicial settlement, including settlement through Lok Adalat; or

d) mediation.

Section 89 CPC, 1908 provides for alternate methods of dispute resolution, i.e. those methods which are alternate to the Court and are outside the adjudicatory function of the Court. One of them with which we are concerned is the settlement of dispute through arbitration. Insofar as reference of dispute to arbitration is concerned, it has been interpreted by this Court that resort to arbitration in a pending suit by the orders of the Court would be only when parties agree for settlement of their dispute through arbitration, in contra-distinction to the Alternate Dispute Mechanism (for short, 'ADR') through the process of mediation where the Judge has the discretion to send the parties for mediation, without even obtaining the consent of the parties. Thus, reference to arbitration is by means of agreement between the parties. It is not in dispute that there was an agreement between the parties for reference of dispute to the arbitration and it was so referred. [**Shailesh Dhairyawan vs. Mohan Balkrishna Lulla, (2016) 3 SCC 619]**

Section 34—Arbitration Award—Scope of judicial review—Construction of terms of a contract is primarily for an Arbitrator of Arbitral Tribunal to decide and unless the Arbitrator or Arbitral Tribunal construes the

contract in such a way that no fair minded or reasonable person could do, no interference by Court is called for.

Having considered rival submissions, Court is of the view that the assessment made by the Arbitral Tribunal in the instant case as affirmed by the High Court was definitely within its jurisdiction. It has consistently been laid down by this Court that construction of the terms of a Contract is primarily for an Arbitrator or Arbitral Tribunal to decide and unless the Arbitrator or Arbitral Tribunal construes the contract in such a way that no fair minded or reasonable person could do, no interference by Court is called for. Viewed thus, Court does not see any reason or justification to interfere in the matter. The view that the increase in rates of service tax in respect of bank guarantee and insurance premium is directly relatable to terms of the contract and performance under the Contract is certainly a possible view. **[National Highways Authority of India vs. M/s. JSC Centrodorstroy, 2016 (4) SCALE 170]**

Civil Procedure Code

Sections 4 & 4(1) C.P.C. provides as under:

"*In the absence of any specific provision to the contrary, nothing in this code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred or any special form of procedure prescribe, by or under any other law for the time being in force."*

Travancore – Kochin High Court Act 1125 is not corresponding law *vis – a –vis* C.P.C. hence it does not stand repealed by C.P.C.

Sections 117, 120, 122, 125 and 129 of C.P.C. are not specific as regards course to be adopted in case judges hearing an appeal differ in their opinion. In such situation Travancore – Kochin High Court Act will prevail and matter has to be referred to third judge whether the difference of opinion in on question of fact or on question of law, even though under Section 98 only on difference of opinion on a point of law the matter is to be referred to the third judge otherwise on a difference of opinion on question fact appeal is to be dismissed. **[Pankajakshi v. Chandrika AIR 2016 SC 1213 (DB)]**

Sec. 9—Ouster of non-possessing co-owner by the co-owner in possession-consequence thereof

Who claims his possession to be adverse, is a weak defence in a suit for partition of family property and it is strong if the defendant is able to establish consistent and open assertion of denial of title, long and uninterrupted possession and exercise of right of exclusive ownership openly and to the knowledge of the other co-owner. In **Vidya Devi, (1995) 4 SCC 496** the Court stated three necessary elements for establishing the plea of ouster in the case of co-owner viz. (i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster, and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner. In **Vidya Devi, (1995) 4 SCC 496** the Court stated three necessary elements for establishing the plea of ouster in the case of co-owner viz. (i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster, and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner.

Having regard to the true factual and correct legal position emerging from the stand of the plaintiff in the suit of 1962 that she had been dispossessed from the property in the year 1957 and the specific averments made by the defendant in his written statement regarding hostile animus and exclusive possession, with a view to putting an end to five decade old disputes between a sister and brother, to avoid and further litigation and to get the families to reconcile and restore peace, a suggestion had been put for reasonable settlement. On the basis of the cooperation extended by the counsel and the parties, a solution has been evolved. Accordingly, it is ordered that the appellants shall be entitled to 35% and the respondent 65% of the property. Let the suit property be accordingly partitioned. It is found that it is not possible to do so by metes and bounds, let the property be sold and proceeds shared accordingly. [**Nagabhushanammal v. C. Chandikeswaralingam, (2016) 4 SCC 434]**

Section 11—U.P. Consolidation of Holdings Act, 1953—Res judicata—Principle of—Previous proceedings would operate as res judicata only in respect of issues of facts and not on issues of pure questions of law when the subsequent suit or proceeding is based upon a different cause of action and in respect of different property though between the same parties—An erroneous determination of a pure question of law in a previous judgment will not operate as res judicata in the subsequent proceeding for different property, though between the same parties.

The decisions relied upon by the appellants, in Court's view do not

distract from the reasoning and correctness of the findings given by the High Court that previous proceedings would operate as res judicata only in respect of issues of facts and not on issues of pure questions of law when the subsequent suit or proceeding is based upon a different cause of action and in respect of different property though between the same parties. Court is in agreement with the views of the High Court and hence do not deem it necessary to go into further details of the legal concept of res judicata and estoppel. It is sufficient to indicate that once a judgment in a former suit or proceeding acquires finality, it binds the parties totally and completely on all issues relating to the subject matter of the suit or proceeding. This flows from Section 11 of the CPC which in turn is based upon ancient doctrines embodied in every civilized system of jurisprudence with almost universal application that an earlier adjudication between the same parties is conclusive in respect of the same subject matter. The Latin maxims relevant for explaining the 11 Page 12 C.A.Nos.4083-84 of 2016 @ S.L.P(C)Nos. 12915-16 of 2014 concept of res judicata clearly specify that: (1) no man should be vexed twice for the same cause, (2) it is in the interest of State that there should be an end to a litigation and (3) a judicial decision once it has attained finality must be accepted as correct between the parties.

The distinction drawn by the High Court in the impugned judgment that an erroneous determination of a pure question of law in a previous judgment will not operate as res judicata in the subsequent proceeding for different property, though between the same parties, is clearly in accord with Section 11 of the CPC. Strictly speaking, when the cause of action as well as the subject matter i.e, the property in issue in the subsequent suit are entirely different, res judicata is not attracted and the competent Court is therefore not debarred from trying the subsequent suit which may arise between the same parties in respect of other properties and upon a different cause of action. In such a situation, since the Court is not debarred, all issues including those of facts remain open for adjudication by the competent Court and the principle which is attracted against the party which has lost on an important issue of fact in the earlier suit is the principle of estoppel, more particularly “issue estoppel” which flows from principles of evidence such as from Sections 115, 116 and 117 of the Indian Evidence Act, 1872 and from principles of equity.

Where the decision is on a pure question of law then a Court cannot be precluded from deciding such question of law differently. Such bar cannot be invoked either on principle of equity or estoppel. No equitable principle or estoppel can impede powers of the Court to determine an issue of law correctly in a subsequent suit which relates to another property founded upon a different cause of action though parties may be same. As explained earlier, in such a situation the principle of res judicata is, strictly speaking, not applicable at all.

So far as principle of estoppel is concerned, it operates against the party and not the Court and hence nothing comes in the way of a competent court in such a situation to decide a pure question of law differently if it is so warranted. The issues of facts once finally determined will however, stare at the parties and bind them on account of earlier judgments or for any other good reason where equitable principles of estoppel are attracted. **[Satyendra Kumar vs. Raj Nath Dubey, 2016 (5) SCALE 34]**

Section 11, Evidence Act Section 115

If in a litigation in between the same parties for different property a pure question of law had been decided, the decision will not operate as resjudicata in subsequent proceedings for different property. No principle of estoppel or equitable estoppel is also attracted. View of Allahabad High Court approved. **[*Surendra v. Raj Nath Dubey AIR 2016 SC 2231]***

Section 96—Appeal—Remand could be ordered only if the judgment of the trial Court was erroneous and the appellate court could not decide the matter and not merely on an amendment being allowed—High Court had as a consequence of its decision to permit amendment, set aside the judgment of the trial Court and remanded the matter.

In this case, the High Court has as a consequence of its decision to permit amendment, set aside the judgment of the trial court and remanded the matter. Court is of the view that even after the amendment was permitted, further question whether any fresh issue was required to be framed or fresh evidence was to be led required to be gone into before setting aside the judgment. In case it becomes necessary to frame additional issue and permit the parties to lead further evidence, a report could be called for from the trial court on such additional issue. Remand could be ordered only if the judgment of the trial court was erroneous and the appellate court could not decide the matter and not merely on an amendment being allowed.

In view of the above, without expressing any opinion on merits, Court set aside the impugned judgment passed by the High Court. The High Court may consider the matter afresh in accordance with law. **[A.A. Prakasan vs. Anupama, 2016 (5) SCALE 116]**

Section 96--

If suit is dismissed on the ground of resjudicata without framing issue still it is decree and appealable. No revision is maintainable under section 115 C.P.C. In this case interim application by the defendant was filed for dismissal of suit on the ground of resjudicata before the trial had commenced. The application was allowed and suit was dismissed as barred by resjudicata. The Supreme Court held that it was decree henceappealable**. [Rishabh Chandra Jan v. Ginesh Chandra Jan AIR 2016 SC 2143]**

Section 100 and Order 41, Rule 5--

In second appeal no stay order can be granted without admitting the second appeal and formulating substantial question of law.

Raghvendra Swami Mutt v. Uttarati Mutt, AIR 2016 SC 1589

A company was tenant of premises. In liquidation proceedings against it, official liquidator issued an advertisement / notice for disposal of the tenanted land. Under Bombay R.C. Act 1947 this does not amount to subletting as mere issuance of advertisement / notice does not amount to completed action. **[Jabal C. Lashkari v. Official Liquidator AIR 2016 SC 1601]**

Section 115—Revision petition—Intervention application—Whether in the interest of justice, the intervention application of the appellant should be allowed and he should also be permitted to participate in the proceedings—Held, yes.

The limited grievance of the appellant is that though the High Court initially had taken a view, while issuing notice, that the appellant will be heard at the time of disposal of Civil Revision Petition, but finally, by the impugned order, its application for intervention was rejected.

Having heard the learned counsel on both the sides, Court is of the view that in the interest of justice, the intervention application of the appellant should be allowed and the appellant should also be permitted to participate in the proceedings. Ordered accordingly,

The appellant shall also be permitted to participate in the Civil Revision Petition No. 413 of 2004 pending before the High Court. We request the High Court to expedite the disposal of the petition. **[M.K. Utthan Sudhar Samiti Maryadit v. Babulal Shukla, 2016 (4) SCALE 330]**

Sections 148 and 151--

Section 148 C.P.C as amended in 1999 provides as follows:-

"Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period [not exceeding 30 days in total], even though the period originally fixed or granted may have expired".

(Words in brackets added in 1999)

Supreme Court has held that even after expiry of period of 30 days time may be extended if appropriate ground for the same is shown under Section 151 C.P.C. In this case costs were imposed for restoration of execution application, costs were deposited late. The Supreme Court found that explanation for delay was quite genuine, hence, it extended time even though maximum period of 30 days had expired. It was further held that even if an appeal against order of restoration of execution application filed by the respondent was dismissed as withdrawn it was immaterial**. [Nashik Municipal Corporation v. M/s R.M. Bhandari AIR 2016 SC 1090]**

Order 8 Rule 5--

If it is stated in the written statement that the allegation of execution of sale deed is denied for want of knowledge does not a specific denial, hence, it is no denial in the eye of law.

Order 8 Rule 6A--

Counterclaim

If cause of action to file counter claim has accrued before filing of written statement then it is permissible for the defendant to file counter claim after about two and a half years of framing of issues but before recording of evidence. In such situation no prejudice is likely to be caused to the plaintiff. **[Vijai Prakash Jarath v. Tej Prakash Jarath, AIR 2016 SC 1304]**

Order 21 Rule 41 & 42—Bombay Rent Act, 1947—Section 13A(2)—Execution proceedings—Order setting aside attachment of a Flat—Legality of

In this case, appellant had filed a suit for eviction with respect to Flat No. F-201 of a Cooperative Society against respondent 1 as license had expired on 1.11.1994. Premises were not vacated nor the compensation paid after the expiry of the licence. Competent authority passed an order directing respondent 1 to handover vacant possession to appellant along with compensation of Rs. 8,000/- per month w.e.f. 1.11.1994 till the date of handing over the possession. An appeal filed by respondent 1 was dismissed by the High Court. Possession

was handed over on 17.7.2001 to appellant but the amount of compensation was not paid. An application under Order 21 Rule 41 and 42 of the Code was filed by the appellant restraining respondent 1 from transferring the flat No. 408 to respondent 2. However, in order to defeat and frustrate the decree with respect to the compensation., respondent 1 transferred the flat in question to respondent 2 by an unregistered agreement deed dated 26.6.2001 which was neither properly stamped nor duly registered. Application filed by appellant for recovery of compensation and for attachment of the flat in question was allowed. Respondent 1 was restrained from transferring the suit property. So warrant of attachment of movable property was issued in the execution and objection filed by respondent 2 was allowed. Hence, the High Court had erred in law in setting aside the attachment. **[Kusum Harilal Soni v. Chndrika Nandlal Mehta, 2016 (4) SCALE 75]**

Order 22 Rule 2, Section 98(3), Specific Relief Act Section 34--
Suit/ Decree for declaration.

In case of death of one of the joint owners/ plaintiffs and non-substitution of his heirs appeal does not abate as right to sue survives to the remaining joint owners.

Even though under Section 98 C.P.C. if two judges hearing an appeal differ on question of fact appeal is to be dismissed, however, in view of the letters patent of Andhra Pradesh High Court in such situation matter is referred to third judge/ judges.

Suit land given to predecessors of plaintiff by royal *farman.* The land was abruptly recorded as Government land after cancelling the names of plaintffs. Possession of plaintiffs is not denied by the Government. Accordingly plaintiffs are entitled to decree for declaration of title**. [Government of Andhra Pradesh v. Pratap Karan, AIR 2016 SC 1717]**

Order 39 Rule 1--

Dispute regarding allotment of retail dealership of petrol pump. Appellant who was a widow was running the petrol pomp for more than a year. Interim order by the High Court restraining the appellant from operating the retail outlet was found wrong hence set aside by the Supreme Court. It held that prima facie case, balance of convenience and irreparable loss were more in favour of the appellant widow than in favour of the respondent who was also applicant of the allotment of the same petrol pump. **[*Krishna Devi v. Indian Oil Corporation, AIR 2016 SC 2392*]**

Order 39 rules 1 and 2 and Arbitration Act 1996 Section 9--

If the bank guarantee does not relate to the contract in question then it

cannot be encashed. Order refusing to grant injunction by Allahabad High Court set aside and respondent restrained from encashing the bank guarantee furnished by the appellant. **[M/s Gangotri Enterprises v. Union of India AIR 2016 SC 2199]**

Order 41, Rule 33—Indian Easements Act, 1882—Section 15—Appeal—Scope of—In absence of an independent appeal or cross-objection being filed by the aggrieved party, the relief which was denied by the courts below cannot be granted in appeal filed by appellant

The fact remains that as per the findings of the trial Court, the suit came to be filed only in the year 2002 and the windows had been in existence for nearly four years only anterior to the filing of the said suit and not for 20 years, so as to attract the acquisition by prescription as contemplated under Section 15 of the Indian Easements Act, 1882, wherefore, the plaintiff was entitled to the relief of removal of those three windows in the Western wall of the defendants' and for closure of that area occupied by those windows and the defendants shall comply with the same by closing down the windows, the said decree is granted even though there is neither an appeal nor cross-objection filed by the respondent/plaintiff before the High Court contending the substantial question of law would arise in his appeal/cross objection in view of the fact that the said relief(s) was rejected by both the courts below.

This Court after interpretation of Order 41 Rule 33 CPC has clearly held that in the absence of an independent appeal or cross-objection being filed by the aggrieved party, the relief which was denied by the courts below cannot be granted in the second appeal filed by the appellant.

In view of the law laid down by this Court on the same question of law as has been raised in this case, Court is of the considered view that the principles laid down in the different cases are squarely applicable to the fact situation, therefore, Court has to set aside the judgment and decree passed by the first appellate court, particularly the direction to the appellants/defendants to remove the windows in the Western wall of the defendants and for closure of that area occupied by those windows. It is also needless to make an observation that the respondent/plaintiff had not even questioned the setting aside of the judgment and decree of permanent injunction granted by the first appellate court against the appellants/defendants regarding ingress and egress to the suit property etc.

For the reasons stated supra, the appeals are allowed by setting aside that portion of the judgment which granted relief in favour of the respondent/plaintiff. **[Lakshmanan v. G. Ayyasamy, 2016 (3) SCALE 588]**

Constitution of India

Articles-32, 124, 124A, 124B, 124C, 217, 222 & 191—Review petition—No error apparent on face of record of the case—Delay of 74 days in filing review petition condoned

In the instant petitions, the petitioners have sought review of the judgment dated 16.10.2015 and the order dated 16.12.2015 rendered by this Court in Writ Petition (C) No. 13 of 2015 & batch. Review petition No. 1576 of 2016 is barred by 74 days and 13 days, respectively. We condone the said delay.

Court is not inclined to accede to the prayers made by the review-petitioners for hearing in open Court and to appear and argue in person. The same are rejected.

Having carefully perused the petitions for review, the judgment, as well as, the order impugned and the papers annexed in support thereof, Court is satisfied that there is no error apparent on the face of the record of the case, warranting review of the judgment and the order. **[Satya Veer Sharma v. Supreme Court of India, 2016(4) SCALE 616]**

Article 136 – Appeal before the Supreme court against acquittal / Cr.P.C. Section 482

Under the facts and circumstances of the case appellants have *locus standi* to file appeal. Appeal by third party having bonafide connection with the matter should be liberally allowed to be filed.

Quashing of cognizance by High Court under Section 482 Cr.P.C. found erroneous. **[Amanullah v. State of Bihar AIR 2016 SC 1871]**

Article 226—Tender—Bid Process—Condition regarding submission of annual turnover and net worth for last three years—Not essential condition—It was merely ancillary to achieve the main object that was to ensure that the bid amount was paid promptly—Bid of appellant having been found to be the highest, it was accepted and Letter of intent was issued—Sale Deed in respect of the Café was executed in favour of appellant—After execution of the Sale Deed, respondent 1 who had been running a Dhaba next to the site, filed writ petition in the High Court submitting that the appellant had not submitted his annual turnover and net worth for last three years as stipulated in the advertisement—No allegation was made of any arbitrariness, bias, favouritism or malice in the auction process—Effect of

In the present case, the site in question was to be sold on outright sale

basis. The advertisement or the stipulations therein did not contemplate creation and or continuation of any relationship between the parties calling for continued existence of any particular level of financial parameters on part of the bidder, except the ability to pay the price as per his bid. The condition was not an essential condition at all but was merely ancillary to achieve the main object that was to ensure that the bid amount was paid promptly. The advertisement contemplated payment of bid amount whereafter the Sale Deed would be executed and not a relationship which would have continued for considerable period warranting an assurance of continued ability on part of the bidder to fulfill his obligations under the arrangement. Nor was this condition aimed at ensuring a particular level of financial ability on part of the bidder, for example in cases where the benefit is designed to be given to a person coming from a particular financial segment, in which case the condition could well be termed essential. The idea was pure and clear sale simplicitor. As a matter of fact, the appellant did pay the entire bid amount within the prescribed period and the Sale Deed was also executed in his favor. In the circumstances the relevant condition in the advertisement would not fall in the first category of cases as dealt with by this Court in Poddar Steel Corporation v. Ganesh Engineering Works, 1991(1) SCALE 928. The authorities could therefore validly deviate from and not insist upon strict literal compliance.

The discretion so exercised by the authorities could not have therefore been faulted. Thus, the assessment made by the High Court that the condition in question was an essential condition for non-compliance of which, the bid furnished by the appellant was required to be rejected, in Court view was not correct.

Court, therefore, allow this Appeal and set aside the decisions rendered by the Single Judge and the Division Bench of the High Court in the present matter. The Letter of Intent dated 02.03.2010 and consequent Sale Deed dated 31.03.2010 in favor of the appellant are held valid and correct. **[Om Prakash Sharma vs. Ramesh Chand Prashar, 2016 (5) SCALE 566]**

99th Constitutional Amendment Act and NJAC Act declared unconstitutional being violative of basic structure of Constitution and struck down as void.

Held-

The independence of the judiciary took up so such discussion time of several committees, the Constituent Assembly and various other bodies and institutions. Several legal luminaries have also devoted considerable effort and given a thoughtful study to the independence of the judiciary. There was a purpose to it, namely, that the independence should not be subverted via

external or internal, that the independence should not be subverted via external or internal pressures. Through the medium of the 99th Constitution Amendment Act and the NJAC Act, this independence is subtly put to jeopardy. Justice O'Connor of the United States Supreme Court said: Judicial independence doesn't happen all by itself….. It's tremendously hard to create, and easier than most people imagine to destroy." The 99th Constitution Amendment Act and the NJAC Act put us face to face with this truism in respect of the fragile bastion. The 99th constitution Amendment Act and the NJAC Act lead to the clear possibility committed judiciary being put in place, which violates the basic structure of the Constitution.

Thus working within the parameters suggested by the respondents namely, the presumption of constitutionality of the 99th Constitution Amendment Act, that the basis of the judgment in the Second Judges case has been removed, the wisdom of Parliament and the needs of the people cannot be questioned and that the Supreme Court must recognize that society and its requirements have changed with the passage of time, it is not possible to uphold the constitutional validity of the 99th Constitution Amendment Act. The recipe drastically alters the process of appointment of Judges of the Supreme Court and the High Courts by taking away its essential ingredients leading to a constitutional challenge that must be accepted.

Through the 99th Constitution Amendment Act the NJAC takes away the responsibility not only of the executive but also the shared responsibility of the judiciary and the executive, completely decapitating the appointment system given to us by the Constituent Assembly – a system that ensures the independence of the judiciary. While there might be a need for a more efficient or better system of appointment of Judges, the NJAC scheme incorporates a host of features that severely impact on the appointment of Judges and thereby a the independence of the judiciary and thereby on the basic structure of the Constitution.

Thus, it is held that Article 124-A as introduced in the Constitution by the Constitution (Ninety-ninth Amendment) Act, 2014 impinges on the independence of the judiciary and in the matter of appointment of Judges (which is a foundational and integral part of the independence of the judiciary) and alters the basic structure of the Constitution. It is accordingly declared unconstitutional. The other provisions of the Constitution (Ninety-ninth Amendment) Act, 2014 are not severable and hence cannot stand by themselves and are therefore also declared unconstitutional.

Similarly, the National Judicial Appointments Commission Act, 2014 confers arbitrary and unchartered powers on various authorities under the Statute enabling substantive arbitrariness in the appointment of Judges to the to the Supreme Court and the High Court, thus it violates Article 14 of the Constitution and is declared unconstitutional. Even otherwise, since the 99th Constitutional Amendment Act is unconstitutional, the National Judicial Appointments Commission Act, 2014 (the NJAC Act) which is the Child of the 99th Constitution Amendment Act cannot independently survive on the Statue book. [**Supreme Court Advocates-on-record Association v. Union of India, (2016) 5 SCC 1]**

99th Constitutional Amendment and NJAC Act and Right to Know and Right to Privacy

Held-

The people have a right to know. The right to know has been recognized as a fundamental principle of the freedom of expression and the freedom o discussion. The right to know is a basic right which citizens of a free country aspire to in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution.

However, the balance between transparency and confidentiality is very delicate and if some sensitive information about a particular person is made public, it can have a far-reaching impact on his/her reputation and dignity. The 99th Constitution Amendment Act and the NJAC Act have not taken note of the privacy concerns of an individual. This is important because it was submitted by the respondents that the proceedings of NJAC will be completely transparent and any one can have access to information that is available with NJAC. This is a rather sweeping generalization which obviously does not take into account the privacy of a person who has been recommended for appointment, particularly as a Judge of the High Court or in the first instance as a Judge of the Supreme Court. The right to know is not a fundamental right but at best it is an implicit fundamental right and it is hedged in with the implicit fundamental right to privacy that all people enjoy. The balance between the two implied fundamental rights is difficult to maintain, but the 99th Constitution Amendment Act and the NJAC Act do not even attempt to consider let alone achieve that balance. [**Supreme Court Advocates-on-record Association v. Union of India, (2016) 5 SCC 1]**

Consumer Protection Act

C.P.C., Order 9 Rule 9

Provision of Order 9 Rule 9 C.P.C. do not apply to proceedings before the consumer forum, hence, if one complaint is dismissed for default of non-prosecution, second complaint on the same fact and cause of action can be filed.

Indian Machinery Company v. M/s Ansal Housing and Construction Ltd. AIR (2016 SC 2209)

Contract Act

Section 176 and E.P.F. Act 195--

A sugar mill took loan from a bank and pledged its sugar stock. Thereafter the stock was sold in auction as recovery certificate had been issued against the mill on the ground that it had not paid the dues of sugar cane growers who had supplied sugar cane to it. The mill had also not paid Provident Fund dues of its employees. The auction amount was first adjusted towards Provident Fund dues and thereafter the remaining amount was directed to be paid to the cane growers. Supreme Court held that the adjustment was improper as the bank had first charge over the sugar stock and it had to be given precedence over other dues. **[Sahyadri Co-operative Credit Society v. State of Maharashtra, AIR 2016 SC 1580]**

Co-operative Societies (Gujarat Co-operative Societies) Act 1962

Registrar while deciding as to whether leave should be granted to continue suit against a society in liquidation cannot say anything regarding maintainability of the suit. If the objection raised is that suit is bad for want of notice under Section 167 then the said point has to be decided by Civil Court alone where the suit is pending. **[M.K. Indrajit Sinhji Cotton P. Ltd. v. Narmada Cotton Co-operative Mills, AIR 2016 SC 2123]**

Copyright Act

Copyright subsists in inter-alia an original literary work-title does not qualify for being described as "work"- Incomplete in itself and refers to the work that follows-Origin of common word cannot be attributed to

It must be noted that in India copyright is a statutory right recognized and protected by The Copyright Act, 1957. It must therefore be first seen if the

title “Desi Boys” can be the subject of copyright. On a plain reading of Section 13, copyright subsists in inter-alia an original literary work. In the first place a title does not qualify for being described as “work”. It is incomplete in itself and refers to the work that follows. Secondly, the combination of the two words “Desi” and “Boys” cannot be said to have anything original in it. They are extremely common place words in India. It is obvious, therefore, that the title “Desi Boys”, assuming it to be a work, has nothing original in it in the sense that its origin cannot be attributed to the respondent No.1. In fact these words do not even qualify for being described as ‘literary work’. The Oxford English Dictionary gives the meaning of the word ‘literary’ as “concerning the writing, study, or content of literature, especially of the kind valued for quality of form”. The mere use of common words, such as those used here, cannot qualify for being described as ‘literary’. In the present case, the title of a mere synopsis of a story is said to have been used for the title of a film. The title in question cannot therefore be considered to be a ‘literary work’ and, hence, no copyright can be said to subsist in it, vide Section 13; nor can a criminal complaint for infringement be said to be tenable on such basis. No copyright subsists in the title of a literary work and a plaintiff or a complainant is not entitled to relief on such basis except in an action for passing off or in respect of a registered trademark comprising such titles. This does not mean that in no case can a title be a proper subject of protection against being copied. [**Krishika Lulla & Ors v. Shyam Vithalrao Devkatta & Anr., (2016) 1 SCC (Cri) 784 ; (2016) 2 SCC 521]**

Criminal Procedure Code

Jurisdiction of the Special Court has jurisdiction to try offences under both the special Acts and IPC - Then the trial can certainly continue.

As can be seen from the complaint the allegations are that the accused conspired with each other to cheat the complainant and a series of transactions gave rise to offence under Section 120B read with Section 420 of the Indian Penal Code as also Section 628 of the Companies Act. It is, therefore, clear that if the Special Court has jurisdiction to try offences under both the aforesaid Acts then the trial can certainly continue in respect of the offences which do not require the complainant to belong to the categories specified under Section 621 of the Companies Act. Thus the trial could certainly continue against those accused under the IPC. [**S. Satyanarayana v. Energo Masch Power Engineering & Consulting Pvt. Ltd. & Ors., (2016) 1 SCC (Cri) 399; (2015) 13 SCC 1]**

Section 125- Conviction of husband for bigamy - Justifiable reason - Staying separately.

The wife has not been maintained by her husband. It appears from the record that respondent the husband had been convicted for committing the offence of bigamy but the appeal filed against the said order was pending at the relevant point of time. The wife is not paid any amount of maintenance though she is staying separately. In the aforesaid circumstances, it cannot be said that the wife is staying separately without any justifiable reason and she should be maintained by respondent - husband. **[Smt. Munni Bai v. Bhanwarilal And Anr., AIR 2016 SC 2224]**

Section 154-- Delay in lodging the FIR - The prosecution version is truthful – Witnesses are trustworthy - The absence of an explanation may not be regarded as detrimental

It is no doubt true that one of the external checks against ante-dating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR "forthwith" ensures that there is no manipulation or interpolation in the FIR. If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. However, if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. [State Of Rajasthan v. Daud Kha (2016) 1 SCC (Cri) 793; (2016) 2 SCC 607]

Section 154-- Appreciation of FIR- Delay and correction – Reasonable explanation – Effect

It is true that even before the registration of FIR the inquest was undertaken and the post-mortem was conducted. In this case, the assault was made right in the Courtroom which called for immediate action on part of the investigators to clear the Courtroom as early as possible. The Investigating Officer had initially requested the Presiding Officer to lodge a complaint. Upon his refusal, the Investigating Officer then had to make enquiries and record the complaint of PW 30 Bhanji. In the meantime, if inquest was undertaken and the body was sent for post-mortem, we do not see any infraction which should entail discarding of the entire case of prosecution. We also do not find anything wrong if the first informant soon after the recording of the assailant corrected himself, as a result of which name of the third assailant came to be dropped. So long as the version coming from the eye witnesses inspires confidence and is well corroborated by the material on record, any such

infraction, in our view would not demolish the case of the prosecution in entirety. [**Harijan Jivrajbhai Badhabhai v. State of Gujarat AIR 2016 SC2376]**

Sections 173/228— For framing of charge-sheet along with the accompanying material is to be considered–for subjective satisfaction of the Court

The law on framing of charge is crystal clear that only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out. It has to be the subjective satisfaction of the Court framing charges. In our opinion, the High Court has only examined the material before it against the prevailing law to reach its conclusions. Thus, the impugned judgment may not be assailable on this ground. [**State of Madhya Pradesh v. Rakesh Mishra, (2016) 1 SCC(Cri) 405; (2015) 13 SCC 8]**

Sec. 185/186-- Direction for - Investigation by Other Agency- During trial

During trial, leaves one with a choice either to let the ongoing trial casually drift towards its conclusion with the possibility of offence going unpunished or to embark upon investigation belated though, spurred by the intervening developments, to unravel the truth, irrespective of the persons involved. As it is, every offence is a crime against the society and is unpardonable, yet there are some species of ghastly, revolting and villainous violations of the invaluable right to life which leave all sensible and right minded persons of the society shell shocked and traumatized in body and soul. Such incidents mercifully rare though are indeed exceptionally agonizing, eliciting resentful condemnation of all and thus warrant an extra-ordinary attention for adequate remedial initiatives to prevent their recurrence. Even if such incidents otherwise diabolical and horrendous do not precipitate, national or international ramifications, these undoubtedly transcend beyond the confines of individual tragedies and militatively impact upon the society's civilized existence. If the cause of complete justice and protection of human rights are the situational demands in such contingencies, order for further investigation or reinvestigation, even by an impartial agency as the CBI ought to be a peremptory measure in the overwhelming cause of justice.

Notwithstanding the pendency of the trial, and the availability of the power of the courts below under Sections 311 and 391 of the Code read with Section 165 of the Evidence Act, it is of overwhelming and imperative necessity that to rule out any possibility of denial of justice to the parties and more importantly to instil and sustain the confidence of the community at large, the CBI ought to be directed to undertake a de novo investigation in the

incident. We take this view, conscious about the parameters precedentially formulated, as in our comprehension in the unique facts and circumstances of the case any contrary view would leave the completed process of crime detection in the case wholly inconsequential and the judicial process impotent. A court of law, to reiterate has to be an involved participant in the quest for truth and justice and is not expected only to officiate a formal ritual in a proceeding farseeing an inevitable end signalling travesty of justice. Mission justice so expectantly and reverently entrusted to the judiciary would then be reduced to a teasing illusion and a sovereign and premier constitutional institution would be rendered a suspect for its existence in public estimation. Considering the live purpose for which judiciary exists, this would indeed be a price which it cannot afford to bear under any circumstance. **[Pooja Pal v. Union Of India And Ors., (2016) 1 SCC (Cri) 743; (2016) 3 SCC 135]**

Sec. 193-- Cognizance by Session Court – Against accused not figured in charge sheet - After committal -

Where the Police report which was submitted to the Magistrate, the IO had not included some named as accused persons, here in after referred as dropped accused. The application of the complainant to take cognizance against the dropped accused rejected by the Magistrate. The dropped accused had replied to the said application and after hearing the arguments, the application was rejected by the Magistrate. This order was not challenged. Normally, in such a case, it cannot be said that the Magistrate had played 'passive role' while committing the case to the Court of Sessions. He had, thus, taken cognizance after due application of mind vand playing an “active role” in the process. The position would have been different if the Magistrate had simply forwarded the application of the complainant to the Court of Sessions while committing the case. Notwithstanding the same, the Sessions Court on the similar application made by the complainant before it, took cognizance thereupon. Normally, such a course of action would not be permissible. Aggrieved by the said order, the dropped accused approached the High Court. High Court remanded the matter back to the Sessions Court with a direction to hear the parties and pass further orders. The Sessions Court accorded fresh hearing and thereafter allowed the application once again.

The order of the Magistrate refusing to take cognizance against the appellants is revisable. This power of revision can be exercised by the superior Court, which in this case, will be the Court of Sessions itself, either on the revision petition that can be filed by the aggrieved party or even suo moto by the revisional Court itself. The Court of Sessions was, thus, not powerless to pass an order in his revisionary jurisdiction. Things would have been different had he passed the impugned order taking cognizance of the offence against the

appellants, without affording any opportunity to them, since with the order that was passed by the learned Magistrate a valuable right had accrued in favour of these appellants. However, in the instant case, we find that a proper opportunity was given to the appellants herein who had filed reply to the application of the complainant and the Sessions Court had also heard their arguments. [**Balveer Singh & Anr. v. State of Rajasthan & Anr AIR 2016 SC 2266]**

Section 197- Principles - Applied

The principles emerging from the decisions are summarized hereunder:

I. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

II. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

III. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under section 197 Cr.P.C. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor it is possible to lay down such rule.

IV. In case the assault made is intrinsically connected with or related to performance of official duties sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

V. In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

VI. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.

VII. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to

decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

VIII. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to accused to place material during the course of trial for showing what his duty was. Accused has the right to lead evidence in support of his case on merits.

IX. In some case it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial. [**Devinder Singh & Ors. V. State of Punjab through CBI 2016(3) Supreme 200]**

Section 216—Court can change or alter the charge - If there is defect or something is left out - The test is - Must be founded on the material - Available on record.

The court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. The test of prejudice is that unless the convict is able to establish the defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory.

[**Anant Prakash Sinha @ Anant Sinha v. State of Haryana & Anr., 2016(2) Supreme 385]**

Section 228—Initially charged for an offence under Section 306 - At the far end of the trial, the charge framed under Section 302 IPC – No re-call the witnesses – No cross-examine of those witnesses - Not even adjourned - principles of natural justice violated - Trial vitiated.

Where the accused persons were initially charged for an offence under Section 306 of the IPC, and 26 witnesses were examined and cross-examined by the appellants. Obviously, when the appellants are charged with an offence under Section 306, the focus as well as stress in the cross-examination shall be on that charge alone. At the fag end of the trial, the charge is altered with "Alternative Charge" with the framing of the charge under Section 302 IPC. This gives altogether a different complexion and dimension to the prosecution case. In a case like this, addition and/or substitution of such a charge was bound to create prejudice to the appellants. Such a charge has to be treated as original charge. In order to take care of the said prejudice, it was incumbent upon the prosecution to re-call the witnesses, examine them in the context of the charge under Section 302 of IPC and allow the accused persons to cross-examine those witnesses. Nothing of that sort has happened. The case was not even adjourned as mandatorily required under sub-Section (4) of Section 216 of the Code. It hardly needs to be demonstrated that the provisions of Sections 216 and 217 are mandatory in nature as they not only sub-serve the requirement of principles of natural justice but guarantee an important right which is given to the accused persons to defend themselves appropriately by giving them full opportunity. In the instant case, there is no cross-examination of these witnesses insofar as charge under Section 302 IPC is concerned. The trial, therefore, stands vitiated and there could not have been any conviction under Section 302 of the IPC. **[R. Rachaiah v. Home Secretary, Bangalore, AIR 2016 SC 2447]**

Section 250 - Award compensation to the accused - Material must to show - The prosecution has deliberately roped in the accused persons

The learned trial Judge has been guided basically by three factors, namely, that the State Government has not established Forensic Science Laboratories despite the orders passed by this Court; that there has been delay in getting the seized articles tested; and that the seizing officer had not himself verified by using his experience and expertise that the contraband article was opium. As far as the first aspect is concerned, it is a different matter altogether. As far as the delay is concerned that is the fulcrum of the reasoning for acquittal. It is apt to note that the police while patrolling had noticed the

accused persons and their behaviour at that time was suspicious. There is nothing on record to suggest that there was any lapse on the part of the seizing officer. Nothing has been brought by way of evidence to show that the prosecution had falsely implicated them. There is nothing to remotely suggest that there was any malice. The High Court, as is noticed, has not applied its mind to the concept of grant of compensation to the accused persons in a case of present nature. There is no material whatsoever to show that the prosecution has deliberately roped in the accused persons. There is no malafide or malice like the fact situation which are projected in the case of Hardeep Singh (supra). Thus, the view expressed by the learned trial Judge that a Court of Session can award compensation to the accused in a case of malicious prosecution and accordingly directed payment of Rs.1,50,000/- each to both the accused persons, is absolutely indefensible and the affirmance thereof by the High Court is wholly unsustainable. [**State of Rajasthan v. Jainudeen Shekh and Anr., (2016) 1 SCC (Cri) 380; (2016) 1 SCC 514]**

Sections 353/361— Judgment-- No where suggested-The judgment should be too lengthy or prolix and disproportionate to the issue involved - The principal objective - Make an effective, practical and workable decision - Reasoning and conclusion must be practical and sufficient

It is no where suggested that the judgment should be too lengthy or prolix and disproportionate to the issue involved. However, it is to be borne in mind that the principal objective in giving judgment is to make an effective, practical and workable decision. The court resolves conflict by determining the merits of conflicting cases, and by choosing between notions of justice, convenience, public policy, morality, analogy, and takes into account the opinions of other courts or writers (Precedents). Since the Court is to come to a workable decision, its reasoning and conclusion must be practical, suit the facts as found and provide and effective, workable remedy to the winner. While recording the decision with clarity, the Court is also supposed to record sufficient reasons in taking a particular decision or arriving at a particular conclusion. The reasons should be such that they demonstrate that the decision has been arrived at on objective consideration.

When one talk of giving "reasons" in support of a judgment, what is meant by "reasons"? In the context of legal decision making, the focus is to what makes something a legal valid reason. Thus, "reason would mean a justifying reason, or more simply a justification for a decision is a consideration, in a non-arbitrary ways in favour of making or accepting that - decision. If there is no justification in support of a decision, such a decision is without any reason or justifying reason. [**M/s. Shree Mahavir Carbon Ltd v. Om Prakash Jalan (Financer) & Anr., (2016) 1 SCC(Cri); (2016) 1 SCC]**

Section 357-A— Compensation to the victim of rape - No amount of money can restore the dignity and confidence that the accused took away from the victim - But where the victim is unable to maintain her and no family to support her either emotionally or economically – Compensation warranted.

While going through different schemes for relief and rehabilitation of victims of rape, we have also come across one Scheme made by the National Commission of Women (NCW) on the direction of this court in Delhi Domestic Working Women's Forum vs. Union of India and Ors. [Writ Petition (Crl) No. 362/93], whereby this Court inter alia had directed the National Commission for Women to evolve a "scheme" so as to wipe out the tears of unfortunate victims of rape. This scheme has been revised by the NCW on 15th April 2010. The application under this scheme will be in addition to any application that may be made under Section 357, 357A of the Code of Criminal Procedure as provided in paragraph 22 of the Scheme. Under this scheme maximum of Rs.3,00,000/- (Three lakhs) can be given to the victim of the rape for relief and rehabilitation in special cases like the present case where the offence is against an handicapped woman who required specialized treatment and care.

Indisputably, no amount of money can restore the dignity and confidence that the accused took away from the victim. No amount of money can erase the trauma and grief the victim suffers. This aid can be crucial with aftermath of crime.

The victim, being in a vulnerable position and who is not being taken care of by anyone and having no family to support her either emotionally or economically, we are not ordering the respondent-State to give her any lump sum amount as compensation for rehabilitation as she is not in a position to keep and manage the lump sum amount. From the records, it is evident that no one is taking care of her and she is living alone in her Village. Accordingly, we in the special facts of this case are directing the respondent-State to pay Rs.8,000/- per month till her life time, treating the same to be an interest fetched on a fixed deposit of Rs.10,00,000/-. By this, the State will not be required to pay any lump sum amount to the victim and this will also be in the interest of the victim. [**Tekan Alias Tekram v. State Of Madhya Pradesh (Now Chhattisgarh), 2016 (2) Supreme 753]**

Section 357-A—Victim compensation - Acid attack case - Impact on his social, economical and personal life – Requires permanent treatment for the damaged skin be seen - Can give even more amount of compensation than Rs.3,00,000/- as directed in Laxmi Versus Union Of India case.

The direction given in Laxmi Versus Union Of India & Ors., (2014) 4 SCC (Cri) 802; (2014) 4 SCC 427 is a general mandate to the State and Union Territory and is the minimum amount which the State shall make available to each victim of acid attack. The State and Union Territory concerned can give even more amount of compensation than Rs.3,00,000/- as directed by this Court. It is pertinent to mention here that the mandate given by this Court in Laxmi's case nowhere restricts the Court from giving more compensation to the victim of acid attack, especially when the victim has suffered serious injuries on her body which is required to be taken into consideration by this court. In peculiar facts, this court can grant even more compensation to the victim than Rs. 3,00,000/-.

The Guidelines issued by orders in the Laxmi's case are proper, except with respect to the compensation amount. We just need to ensure that these guidelines are implemented properly. Keeping in view the impact of acid attack on the victim on his social, economical and personal life, we need to enhance the amount of compensation. We cannot be oblivious of the fact that the victim of acid attack requires permanent treatment for the damaged skin. The mere amount of Rs. 3 lakhs will not be of any help to such a victim. We are conscious of the fact that enhancement of the compensation amount will be an additional burden on the State. But prevention of such a crime is the responsibility of the State and the liability to pay the enhanced compensation will be of the State. The enhancement of the Compensation will act in two ways:-

1. It will help the victim in rehabilitation;
2. It will also make the State to implement the guidelines properly as the State will try to comply with it in its true sprit so that the crime of acid attack can be prevented in future.

In peculiar facts of the case, we are of the view that victim Chanchal deserves to be awarded a compensation more than what has been prescribed by this Court in the Laxmi's case (supra). In the instant case, the victim's father has already spent more than Rs. 5 lakhs for the treatment of the victim. In consideration of the severity of the victim's injury, expenditure with regard to grafting and reconstruction surgery, physical and mental pain, etc., we are of the opinion that the victim (Chanchal) should be compensated to a tune of at least Rs.10 Lakhs. Suffice it to say that the compensation must not only be awarded in terms of the physical injury, we have also to take note of victim's inability to lead a full life and to enjoy those amenities which is being robbed of her as a result of the acid attack. Therefore, this Court deems it proper to award a compensation of Rs. 10 lakhs and accordingly. [**Parivartan Kendra v. Union of India and others, (2016) 2 SCC (Cri) 143 ; (2016) 3 SCC 571]**

Section 378—Criminal Appeal – Principal thereof

In dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court; (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court." [**V. Sejappa v. The State By Police Inspector Lokayukta, Chitradurga 2016(3) Supreme 150]**

Section 378—Criminal Appeal - Two views possible - The trial court acquitted - The appellate court should not interfere.

No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after re-appreciating the evidence if the charge is proved beyond reasonable doubt on record, and convict the accused. In the present case from the evidence on record, the trial court has taken a view which was not possible from the evidence on record. The trial court has unnecessarily emphasized on the point that there is no direct evidence to connect the accused with the crime. In the facts and circumstances of the case, there was no possibility of direct evidence to be on the record.

[**Harijan Bhala Teja v. State of Gujarat 2016(3) Supreme 188]**

Section 436—Bail – Disposal – Consideration

After considering the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the accused could not be done due to the anticipatory bail, the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon was rightly cancelled. [**Sudhir v. The State of Maharashtra and another, (2016) 1 SCC(Cri) 234; (2016) 1 SCC 146]**

Section 482 -- Quashing of proceedings

Where the exoneration of the person in the adjudication proceeding was not on merits or that he was not found completely innocent, it would not be right and justified in accepting the prayer for quashing of the proceedings. **[Air Customs Officer, IGI, New Delhi v. Pramod Kumar Dhamija, (2016) 2 SCC (Cri) 253; (2016) 4 SCC 153]**

Criminal Trial

ALIBI - Required to be proved only after prosecution has proved its case

The word alibi means "elsewhere". The plea of alibi is not one of the General Exceptions contained in Chapter IV of IPC. It is a rule of evidence recognized under Section 11 of the Evidence Act. However, plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused. In the present case said condition is fulfilled. [**Darshan Singh v.s State of Punjab, (2016) 1 SCC (Cri) 702; (2016) 3 SCC 37]**

Fire arm injury - Blackening of the skin – Not always necessary.

As per Modi's Medical Jurisprudence and Toxicology[22nd edition page 354] wherein it is noted, with reference to blackening of the skin in a gunshot wound, as follows:

"If a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches round the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed, and the clothes

covering the part are burnt by the flame. If the powder is smokeless, there may be a greyish or white deposit on the skin around the wound. If the area is photographed by infrared light, a smoke halo round the wound may be clearly noticed. Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or a pistol discharged within about two feet. …"

Thus if the deceased was shot at from a close range of about two feet or less, there would have been some blackening of his skin. But if the deceased was wearing a vest and a shirt his skin was perhaps prevented from being blackened by the gunshot wound. That may be so, but there is no evidence, one way or the other, that the vest and shirt of the deceased were blackened or not, nor was any question asked of any witness in this regard. Therefore, no reason to dispute the conclusion of the Trial Court in favour of the prosecution. [State Of Rajasthan v. Daud Kha (2016) 1 SCC (Cri) 793 ; (2016) 2 SCC 607]

Non - examination of Witness - Effect Thereof-- Non-examination of the injured witness – Not always fatal.

Non-examination of the injured witness though the prosecution had made an attempt to produce him, they failed to do so as he was kidnapped at the relevant period. This stands proved by the registration of two FIRs which establish the fact that he was threatened and kidnapped. Therefore, non-examination of injured could not be fatal to the case of the prosecution and the same cannot be a ground to disregard the evidence of other witness. [**Sadhu Saran Singh v. State Of U.P. And Ors., (2016) 2 SCC (Cri) 275; (2016) 4 SCC 357; AIR 2016 SC 1160]**

Non-examination of the independent witness – Not always fatal.

The prosecution case cannot be doubted alone on the ground of non-examination of any other independent witness. In these days, civilized people are generally insensitive to come forward to give any statement in respect of any criminal offence. Unless it is inevitable, people normally keep away from the Court as they feel it distressing and stressful. Though this kind of human behaviour is indeed unfortunate, but it is a normal phenomena. The court cannot ignore this handicap of the investigating agency in discharging their duty. It cannot derail the entire case on the mere ground of absence of independent witness as long as the evidence of the eyewitness, though interested, is trustworthy. [**Sadhu Saran Singh v. State of U.P. And Ors., (2016) 2 SCC (Cri) 275 ; (2016) 4 SCC 357 ; AIR 2016 SC 1160]**

Improvement – When effected

The wife in her complaint as well as her statement before the police has not told that she witnessed the occurrence during which both the accused assaulted her husband with lathi and Danda. Only in her testimony before the Court she claimed to have witnessed the occurrence. The improved part of her testimony may be rightly ignored and no reliance could be placed on it. [**Rambraksh @ Jalim v. State of Chhattisgarh, AIR 2016 SC 2381]**

Presence of witness - Merely because one eye witness did not see other witness- Does not mean that he / she was not present

When we analyse the statements of witness we may found that they are not contradictory to each other, rather they are complementary to each other. Merely because one eye witness did not see other witness (who is the inmate of the house of the deceased rather she is his daughter) until the accused had left, does not mean that she was not present at the place of occurrence and she did not witness the occurrence. She has already stated that she was afraid of her own life and so she was hiding to some extent, and thus, other witness might not have seen her. He made a call to the police but did not mention her presence to the police at that time. This fact is quite natural as in the commotion, he had made a police call only to inform the police about the incident and could not provide details for the same. [**Sheikh Sintha Madhar @ Jaffer @ Sintha Etc v. State Rep. By Inspector Of Police, AIR 2016 SC 1844 ; 2016(3) Supreme 752]**

Presence of witness – Under natural process - Police Officer who was required to give evidence in the adjoining Court, was quite natural.

In case of any commotion as a result of any assault, a trained Police Officer would certainly be expected to reach the place in question, which he did with promptitude. The evidence thus inspires confidence about his presence at the time in question. After closing the shutters he had gone to make reporting to the local police. In the circumstances, if one witness did not refer to his presence, that by itself is not crucial at all. On the other hand two witnesses clearly referred to his presence. In the evidence every detail mentioned therein to be corroborated. [**Harijan Jivrajbhai Badhabhai v. State of Gujarat, AIR 2016 SC 2376]**

Conduct of witness – At the time of occurrence – Non-examination of subscriber of FIR – Not always fatal.

The facts narrated in the FIR dated 12.6.1996 are of sufficient clarity regarding the dual visits of the accused persons to the house of the deceased in search of his son Vinod. The contents thereof do not admit any doubt that the appellants along with two others had come in a jeep, the number whereof had been provided in the FIR, on the date of the incident at about 11 A.M. and had taken away with them the deceased, father of Vinod in presence of the informant-Rajo Devi, his daughters Bina and Manju. There is a clear averment that though the daughters raised alarm and that the people of the locality were present, nobody did come forward to prevent the abduction. The omission on the part of the people in the neighbourhood to intervene per se, in our opinion, does not detract from the truthfulness of the report made which admittedly had been done within the shortest possible time. Though the FIR was written by one H.S. Verma, his non-examination as well is of no adverse bearing on the prosecution case. The letter by Surender, a detenu in the District Jail, Bijnour hinting at the plot to kill Chaman also, in our comprehension, is not of any definitive significance. [**Chaman And Another v. State Of Uttrakhand Criminal, AIR 2016 SC 1912]**

Place of occurrence-- Blood trail – Not always necessary.

The absence of blood at the place of occurrence or any blood trail from the place of occurrence to the place where the corpse was found not always led to doubt the prosecution story. However, the evidence on record in this case does not leave any doubt in this regard. One of the Medical Officer of the Board that conducted the post mortem, stated that he could not give any opinion about blood being spilt under such circumstances and that it is not necessary that blood would fall outside if any part of the body is injured. On the other hand, another member of the Board that conducted the post mortem, was of the view that blood might have fallen at the place of occurrence, “but the blood in small quantity comes out from [the] wound which is caused by the entry of the bullet and the blood in large quantity comes out from the exit injury of the bullet.” It is, therefore, not surprising that there was no spillage of the blood at the place of the incident. [State Of Rajasthan v. Daud Kha, (2016) 1 SCC (Cri) 793; (2016) 2 SCC 607]

No blood stained earth - Recovered - From the place of crime - Not relevant

No blood stained earth was recovered from the place of crime is not

relevant. It must be noted the laxity on the part of the police and may be rightfully concluded that the conviction was valid in light of the statements made by the deceased and the witnesses. From the failure of the investigating officer to recover blood stained earth from the scene of occurrence, it is not possible to infer that the occurrence had not taken place on the place told by the deceased and witness. [**Gulzari Lal v. State Of Haryana, (2016) 2 SCC (Cri) 325; (2016) 4 SCC 583]**

Place of incident – Proof thereof.

The place of occurrence is proved beyond doubt in the light of evidences of informant, eye witness, Constable and Sub Inspector. Apart from this, the investigating officer had recovered blood stained roll of the clay and plain clay from the place of incident and also had recovered cartridges from the place of the incident. Even as per the forensic report human blood was found on the roll of clay. The aforesaid circumstance would clearly establish the place of incident. [**Sadhu Saran Singh v. State of U.P. And Ors., (2016) 2 SCC (Cri) 275; (2016) 4 SCC 357; AIR 2016 SC 1160]**

Dowry Prohibition Act

Section-6 - Must be return - Within three months – Who received or have dominion over it.

There are no specific allegations that the dowry articles were entrusted to the accused persons (in laws except husband) and that they have not returned the dowry amount and the articles. Equally, there are no allegations that those dowry articles were kept in the house of the accused persons. They were separately living away from the couple in other district.

If the dowry amount or articles of married woman was placed in the custody of his husband or in-laws, they would be deemed to be trustees of the same. The person receiving dowry articles or the person who is dominion over the same, as per Section 6 of the Dowry Prohibition Act, is bound to return the same within three months after the date of marriage to the woman in connection with whose marriage it is given. If he does not do so, he will be guilty of a dowry offence under this Section. The section further lays down that even after his conviction he must return the dowry to the woman within the time stipulated in the order.

Giving of dowry and the traditional presents at or about the time of wedding does not in any way raise a presumption that such a property was thereby entrusted and put under the dominion of the parents-in- law of the bride or other close relations so as to attract ingredients of Section 6 of the Dowry Prohibition Act. As noticed earlier, after marriage, the husband and wife

were living in Bangalore at their matrimonial house. In respect of 'stridhana articles' given to the bride, one has to take into consideration the common practice that these articles are sent along with the bride to her matrimonial house. It is a matter of common knowledge that these articles are kept by the woman in connection with whose marriage it was given and used by her in her matrimonial house when the accused persons have been residing separately in Vizianagaram, it cannot be said that the dowry was given to them and that they were duty bound to return the same to Syamala Rani. Facts and circumstances of the case and also the uncontroverted allegations made in the complaint do not constitute an offence under Section 6 of the Dowry Prohibition Act against the accused persons and there is no sufficient ground for proceeding against them. [**Bobbili Ramakrishna Raju Yadav & Ors. v. State of Andhra Pradesh Rep. By Its Public Prosecutor High Court of A.P. Hyderabad, A.P. & Anr., (2016) 1 SCC (Cri) 850; (2016) 3 SCC 309]**

Evidence Act

Section 3-- Oral evidences-- Courts must be conscious of the length of time consumed in recording the evidence of the prosecution witness.

The examination and cross-examination had taken place several times in a piece-meal manner and the Court was forced to conduct the chief-examination repeatedly because of the subsequent surrender of some of the accused persons. While appreciating the evidence of such witness, the Courts must be conscious of the length of time consumed in recording the evidence of the prosecution witness. If the evidence of such witness, who is an eyewitness who lost three sons in the fateful incidentm was consistent and there are no major deviations or discrepancies and if at all any minor discrepancies that occurred in the evidence might have been due to the long gap between the date of incident and the long delay in examination, more so, those discrepancies are not material in bringing home the guilt of the accused, thus no reason whatsoever to disbelieve his evidence. [**Sadhu Saran Singh v. State Of U.P. And Ors., (2016) 2 SCC (Cri) 275 ; (2016) 4 SCC 357 ; AIR 2016 SC 1160]**

Section 3-- Circumstantial evidence-- Last Seen-Close proximity between the last seen evidence and death should be clearly established.

The prosecution story relies upon the 'last seen together' theory, which resulted into the death of Ganesh (Deceased). The Hon'ble Supreme Court has time and again laid down the ingredients to be made out by the prosecution to

prove the 'last seen together' theory. The Court for the purpose of arriving at a finding as to whether the said offence has been committed or not, may take into consideration the circumstantial evidence. However, while doing so, it must be borne in mind that close proximity between the last seen evidence and death should be clearly established. Where the prosecution has failed to prove the evidence which establishes the 'last seen together' theory beyond reasonable doubt to prove the guilt of the accused and the prosecution merely proved the motive which could have compelled the accused, and that the accused went to the bar with one other person, but the identity of that other person is not clearly established at all, the post-mortem report fails to specify any approximate time of death and in light of the recovery of the dead body on 20.01.2001, after 4 days, which is not a small gap since the deceased disappeared on 16.01.2001, it is not appropriate to convict the accused when his role is not firmly established. [**State of Karnataka v.Chand Basha, (2016) 1 SCC (Cri) 368; (2016) 1 SCC 501]**

Section 3-- Circumstantial evidence-- Last seen theory - Comes into play - Where the time gap, between last seen together alive and when the deceased found dead- Is so small - That possibility of any person other than the accused being the perpetrator of the crime becomes impossible.

It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused. **[Rambraksh @ Jalim v. State of Chhattisgarh, AIR 2016 SC 2381; 2016(3) Supreme 706]**

Section 3-- Circumstantial Evidence – Section 106 and 114 of Evidence Act – Presumption of facts – On proof of existence of certain facts – Unless the accused - by his special knowledge - succeed to offer any explanation - To draw a different inference.

Section 106 of the Evidence Act was not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but would applyto cases where prosecution had succeeded in proving facts from which a reasonable inference could be drawn regarding the existence

of certain other facts, unless the accused, by virtue of his special knowledge regarding such facts, succeed to offer any explanation, to drive the court to draw a different inference.

Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

The prosecution had succeeded in establishing that the deceased had been abducted by the accused, they alone knew what happened to him until he was with them and if he was found murdered in a short time, after the abduction, the permitted reasoning process would enable the court to draw the presumption that the accused had murdered him. It was held that such inference can be disrupted, if the accused would tell the Court what else had happened to the deceased at least until he was in their custody. [**Chaman and Another v. State of Uttrakhand, AIR 2016 SC 1912]**

Section 3-- Appreciation of evidence of conspiracy-- Conspiracy - always hatched in secrecy - Very difficult - to gather direct evidence – For the proof – But may be proved by chain of evidence.

A conspiracy is always hatched in secrecy and it is very difficult to gather direct evidence for the proof of the same. One witness, who was a coolie and who had overheard indistinct conversations between 6-7 persons in the first week of January, 1999, when they had come to take bath at the Mukkombu Dam. But he did not remember their faces. The another witness, who was a caretaker at the garden near Mukkombu Dam and who also could not identify the accused in the Court.

An important witness, who is a purse manufacturer and who stated that he knew accused persons. He was a member of the Al-Umma movement which was a banned organization and his job was to collect money for the undercover or arrested members of the organization. In July 1998, he then went to Mukkombu and he heard the discussion between some of accused that

Dr. Sridhar must be killed in Trichy to stop the growth of the BJP party. Around 20.1.1999, he along with all accused persons, went to Mukkombu and was told that the decision to kill Dr. Sridhar was finalized. This

is corroborated to this extent by the statements of coolie and caretaker who stated their presence at Mukkombu around that time. Also, after the incident, he saw some of accused in Madurai, where one of them described how they murdered Dr. Sridhar and that another accused hurt his left hand middle finger during the attack. This statement by purse manufacturer, who turned an approver, substantiates the allegation of conspiracy to murder Dr. Sridhar. Thus, the conspiracy was proved beyond reasonable doubt. [**Sheikh Sintha Madhar @ Jaffer @ Sintha Etc v. State Rep. By Inspector Of Police, AIR 2016 SC 1844]**

Chance witness – Relative witness – Reliable - If nothing has come out in his examination-in-chief or in cross-examination which creates a doubt on the veracity of his statement

A valiant attempt may be made by the defence to discredit the evidence of a key eyewitness, the relative of deceased, present at the time of incident on the ground that he is only a chance witness and not an eyewitness to the incident and his presence is doubtful. But, if nothing has come out in his examination-in-chief or in cross-examination which creates a doubt on the veracity of his statement, moreover, he has been consistent in his version and fully supported the prosecution story and his admission that at the time of panchnama, he has signed as suggested by the Darogaji and informant asked him as to whose names should be written and whose names should be left out in the panchnama, have to be seen in the context of preparing the panchnama and shall not be attributed otherwise to disbelieve his evidence. [**Sadhu Saran Singh v. State Of U.P. And Ors., (2016) 2 SCC (Cri) 275; (2016) 4 SCC 357; AIR 2016 SC]**

Hostile witness - Recording of evidence - Appreciation & procedures

The Investigation Officer in his evidence, has not at all spoken of the contents of the statement of the complainant, recorded by him under Section 161 of the Cr.P.C. Further, the complainant in the light of the answers elicited from him in the cross-examination by Public Prosecutor, with regard to the contents of 161 statement which relevant portions are marked in his cross-examination and the said statements were denied by him, the prosecution was required to prove the said statements of the complainant through the Investigating Officer to show the fact that the complainant in his evidence has given contrary statements to the Investigation Officer at the time of investigation and, therefore, his evidence in examination-in-chief has no evidentiary value. The same could have been used by the prosecution after it had strictly complied with Section 145 of the Indian Evidence Act, 1872. Therefore, the I.O. should have spoken to the above statements of the complainant in his evidence to prove that he has contradicted in his earlier

Section 161 statements in his evidence and, therefore, his evidence cannot be discarded to prove the prosecution case.

It becomes amply clear from the perusal of the evidence of I.O. in the case that the same has not been done by the prosecution. Thus, the statements of the complainant marked from Section 161 of Cr.P.C. in his cross-examination cannot be said to be proved in the case to place reliance upon his evidence to record the findings on the charge.

Thus, the contradiction of evidence of the complainant does not prove the factum of demand of bribe by the appellant from the complainant as the statement recorded under Section 161 of Cr.P.C. put to him in his cross-examination was not proved by the I.O. by speaking to those statements in his evidence and therefore, the evidence of the complainant is not contradicted and proved his Section 161 statement in the case. **[Krishan Chander v. State of Delhi, (2016) 1 SCC (Cri) 725; (2016) 3 SCC 108**

Section 9-- Joint TIP - No manner, affect the validity of the TIP it is merely a corroborative evidence- Actual identification-done in the Court- Is the substantive evidence

The questions are raised whether the Test Identification Parades were vitiated on account of delay or for holding those TIPs jointly, or on account of the identity of the accused having been already revealed before the TIP could be conducted. Where, it is clear from the evidence that there is no inordinate delay in conducting the TIP, as when the accused were arrested, within reasonable time they were produced for the TIP. Also, there is no invariable rule that two accused persons cannot be made part of the same TIP. Joint TIP would thus, in no manner, affect the validity of the TIP. The purpose of a TIP is to ensure that the investigation is going on the right track and it is merely a corroborative evidence. The actual identification must be done in the Court and that is the substantive evidence. If the accused is already known to the witness, the TIP does not hold much value and it is the identification in the Court which is of utmost importance. [**Sheikh Sintha Madhar @ Jaffer @ Sintha Etc v. State Rep. By Inspector Of Police, AIR 2016 SC 1844 ; 2016(3) Supreme 752]**

Section 9-- T I Parade-Occurrence at night-at a place with improper lighting–All the accused-appellants not known to witness–Identification-the first time in court- After a gap of more than 2 years - Not beyond reasonable doubt,

The prosecution witness identified the accused-appellants in court for the first time, during trial, in the year 1997-98 and the incident occurred in the year 1995. Thus, after considering some undisputed facts like occurrence of

incident at night, at a place with improper lighting and all the accused-appellants were not known to the forest officers, except one present at the place of incident, there should have been TIP conducted at the instance of the investigating officer. Therefore, the identification of the accused-appellants by the prosecution witness for the first time after a gap of more than 2 years from the date of incident is not beyond reasonable doubt, the same should be seen with suspicion. [**Noorahammad And Ors v. State Of Karnataka, (2016) 2 SCC (Cri) 97; (2016) 3 SCC 325]**

Section 32-- Dying declaration-- The principles of appreciation of Dying Declaration

On bare perusal of Section 32(1) of the Evidence Act, it is clear that the statement as to death must be made by the person himself and if any discrepancy arises, the same cannot be relied upon. The Hon'ble Supreme Court has in a catena of judgments laid down the parameters to gauge the veracity of a dying declaration. In Atbir v. Government of NCT of Delhi [(2010) 9 SCC 1; (2010) 3 (Cri) 1110] summarized the principles on its appreciation, laid down earlier, which are reiterated as under:

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and

consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration." [**State (Government Of NCT Of Delhi) v. Nitin Gunwant Shah, (2016) 1 SCC (Cri) 361; (2016) 1 SCC 742]**

Section 32-- Dying declaration based on - Recorded by Head Constable – His evidence reliable – Declarant was in fit mental condition.

One cannot question the reliability of the dying declaration of the deceased for the reason that at the time of recording his statement by Head Constable, the deceased was found to be mentally fit to give his statement regarding the occurrence. Further, evidence of Head Constable was shown to be trustworthy and has been accepted by the courts below. [**Gulzari Lal v. State Of Haryana, (2016) 2 SCC (Cri) 325 ; (2016) 4 SCC 583]**

Section 45-- Medical evidence – Doctor opinion – Use of weapon – Possibility of injury caused by the said weapons.

The Doctor, who conducted the post-mortem, stated that many of the injuries found on the deceased were all cut injuries and could have been caused by cutting weapons, like an Aruval and not by knives as stated by witness in her testimony. A knife is essentially used for stabbing but it can also be used for slicing and cutting depending upon the manner and angle at which it is used. The witness had stated that she saw the accused attacking the deceased and it cannot be technically taken to be stabbing or slicing. The post-mortem report states that most of the wounds are deep cut wounds but the same can be caused by a knife. To this extent, the statement of witness is corroborated by the medical examination. [**Sheikh Sintha Madhar @ Jaffer @ Sintha etc v. State Rep. By Inspector of Police, AIR 2016 SC 1844 ; 2016(3) Supreme 752]**

Section 106 - Fact is especially within the knowledge - Burden of proving - Upon him

Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly, when the prosecution has successfully proved that she died homicidal death. In the present case, the appellant has got hurriedly buried body of his wife before anyone from the parental side of his wife could reach. The post mortem report reveals that the tongue of the deceased was protruded from mouth from teeth inside the mouth, which further corroborates homicidal death of the deceased. Under all the above statements

and the medical evidence on record, the charge as against the appellant stood proved beyond all reasonable doubts that he committed murder of his wife, and attempted to destroy the evidence by hurriedly getting buried the body. [**Harijan Bhala Teja v. State of Gujarat, AIR 2016 SC 2065]**

Sections 123 and 124--

Government cannot claim privilege on the ground of nation interest in respect of report of a committee which enquired into allegation of sexual harassment by officials as the contents of the report do not relate to affirms of the State or anything concerning national security. It has not been shown that the contents of the report are in any manner detrimental to the interests of the country.

[Nisha Priya Hatia v. Ajt Sath AIR 2016 SC 2319]

Family Courts Act

Sections-7, 8 & 20—Suit for declaration as to validity of marriage and matrimonial status of a person—It is within the exclusive jurisdiction of the Family Court—It makes no difference as to whether it is an affirmative relief or a negative relief.

Under Section 7(1) Explanation (b), a Suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the Civil Courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.

In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside. The matter is remitted to the High Court to be decided on merits. **[Balram Yadav v. Fulmaniya Yadav, 2016 (4) SCALE 475]**

Family Law

Judicial separation - The legal relationship continues - As it has not been snapped - Finding the wife has ceased to be an "aggrieved person" -

Unsustainable.

The facts that we have enumerated as regards the "status of the parties", "judicial separation" and "the claim for Stridhan" are not in dispute. Regard being had to the undisputed facts, it is necessary to appreciate the scheme of the 2005 Act. Section 2(a) defines "aggrieved person" which means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Section 2(f) defines "domestic relationship" which means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Section 2(g) defines the term "domestic violence" which has been assigned and given the same meaning as in Section 3. Sub-section (iv) of Section 3 deals with "economic abuse".

The core issue that is requisite to be addressed is whether the appellant has ceased to be an "aggrieved person" because of the decree of judicial separation. Once the decree of divorce is passed, the status of the parties becomes different, but that is not so when there is a decree for judicial separation. There is a distinction between a decree for divorce and decree of judicial separation; in the former, there is a severance of status and the parties do not remain as husband and wife, whereas in the latter, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. Thus the finding that the parties having been judicial separated, the appellant wife has ceased to be an "aggrieved person" is wholly unsustainable. [**Krishna bhatacharjee v. sarathi choudhury and Anr, (2016) 1 SCC (Cri) 810; (2016) 3 SCC 705]**

Stridhana property - Exclusive property of the wife - On proof that she entrusted it to her husband or any other family member - No need to establish any further special agreement.

The stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. Further, the Court observed that it is always a question of fact in each case as to how the property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. [**Krishna bhatacharjee v. Sarathi Choudhury and Anr., (2016) 1 SCC (Cri) 810; (2016) 3 SCC 705]**

Continuing cause of action - Gets attracted from the date of deprivation of stridhan

For the meaning of "continuing cause of action", we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. As long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. Hence the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act. [**Krishna bhatacharjee v. sarathi choudhury and Anr., (2016) 1 SCC (Cri) 810; (2016) 3 SCC 705]**

General Clauses Act

Section 3(57)-- Definition of son

Adopted son is included in the definition of son, hence, if the plaintiff in the plaint stated that he is the only son of deceased plaintiff is sufficient, it is not necessary to further state that he is an adopted son. Seeking amendment in the plaint that plaintiff is adopted son of deceased is not necessary.

Registrar deputation received summon from the office of Sub-registrar is a public document. If it was registered more than 40 years back it is admissible in evidence. **[Pavan Kumar Pathak v. Mohan Prasad AIR 2016 SC 2155]**

Hindu Law

Child Custody—Determination of—Marriage between appellant-wife and respondent husband took place on 2.9.1999—A female child was born to them on 15.6.2006—In the year 2011, appellant-wife filed a petition before the Family Court for divorce—Family Court granted decree of divorce—Permanent custody of the child was given to appellant and respondent-husband was given visitation rights during weekend—On appeal filed by respondent-husband, High Court remanded the matter to the Family Court with a direction that the arrangement as to the custody of the child would be continued purely as an interim measure, during the pendency of the matters before the Family Court.

Having heard the learned counsel appearing on both sides, Court is of the view that in the interest of all the parties, the further steps should be taken before the Family Court, Hyderabad. Court only want to remind both, the father and the mother, that they may fight endlessly but the one person who is sandwiched, disturbed, pained, shocked and if not spoiled is their daughter. If the future of the daughter is kept in mind by both the father and the mother, they will think of disassociating themselves from all other differences between them. Court is sure the parties would be in a position to reach a workable solution with regard to custody. After all the child needs both father and mother.

With the above observations, Court dispose of the appeals directing the Family Court to take things forward and settle all the related aspects including custody of the child, bearing in mind the observation made by Court hereinabove.

The High Court in the impugned judgment has directed that the arrangement made by the Family Court will continue as an interim measure. Court is informed that the said arrangement has been subsequently varied by order dated 29.4.2015 after interacting with the child and thereafter the arrangement is that the child would be given in custody of father once in a fortnight from 10.00 a.m. to 5.00 p.m.

The custody as above, will be available with the father on first three saturdays of the month between 10.00 a.m. to 8.00 p.m. that is to say, from the 1st week of April, 2016 onwards. As far as the other times like vacations are concerned, it will be open to the parties to file application before the Family Court. Court also make it clear that this is purely a temporary arrangement and it is for the Family Court to pass appropriate orders as the situation warrants. Parties will appear before the Family Court on 25.04.2016. **[Tatineni Mayuri v. Edara Baldev, 2016 (4) SCALE 33]**

Hindu Marriage Act

Section 13-B(1)—Constitution—Article 136 r/w Article 142—Divorce by mutual consent—Waiver of six months' waiting period required u/s. 13-B(2) of the Act, invoking jurisdiction of this Court under Article 136 r/w Article 142 of the Constitution—Whether this Court should invoke its jurisdiction under Article 142 of the Constitution and waive the statutory period of six months—Held, yes—Allowing the appeal, Held.

The respondent has appeared in person. She was directed to file an affidavit before this Court. The respondent in the affidavit has endorsed the submission that they were not happy ever since their marriage in 2011. It is stated that with the set-back of a broken marriage, the respondent needs a change in environment and thus, she has proposed to move to New York and it would be difficult for her to get back to India after six months or even in the near future. It is further stated that both of them have realized the consequences of their decision and they have taken the decision out of their free will and without any undue influence or coercion.

The respondent is scheduled to leave the country by 29.04.2016 and it is not possible for her to return to India within six months or in the near future, it is submitted.

Having regard to the educational background of the appellant as well as the respondent, and the entire facts and circumstances, we feel that it is a very peculiar situation where this Court should invoke its jurisdiction under Article 142 of the Constitution of India for doing complete justice between the parties. We do so.

In the above circumstances, HMA No.272 of 2016 filed on 29.03.2016 before the Ld. Principal Judge, Family Courts, Tis Hazari District Courts, Delhi under Section 13-B(1) of the Hindu Marriage Act, 1955 is allowed. The statutory period of six months is waived and the marriage between the parties is dissolved. **[Nikhil Kumar v. Rupali Kumar, 2016 (4) SCALE 621]**

Hindu Succession Act

Sections 6 proviso, (as it stood prior to amendment in 2005), 8, 4, 19, 30-Succession to joint family property prior to amendment in 2005. Principles summarized.

One J. having interest in an ancestral Mitakshara joint family property along with other coparceners, died in 1973 leaving behind his widow M and sons. The appellant-plaintiff was the grandson of J who was born in 1977 i.e. after his grandfather's death. He filed a suit for partition of the joint family

property in 1998 in which the first four defendants were his father (D-3) and his father's three brothers (D-1, D-2 and D-4). He claimed a 1/8th share in the suit property on the footing that the suit property was ancestral property, and that, being a coparcener, he had a right by birth in the said property in accordance with the Mitakshara law.

The trial court in 2000 decreed the plaintiff's suit holding that it was admitted by DW.1 Mangilal that the property was indeed ancestral property, and that, on the evidence, there was no earlier partition of the said property, as pleaded by the defendants in their written statements. The first Appellate Court, while confirming the trial court's finding regarding the property being ancestral and there being no earlier partition, held that after death of the plaintiff's grandfather J his widow being alive, J's share would have to be distributed in accordance with Section 8 HAS as if J died had that after death of the plaintiff's grandfather J his widow being alive, J's share would have to be distributed in accordance with Section 8 HAS as if J died had interstate and as such the joint family property had to be devided in accordance with rules of intestacy and not survivorship. Accordingly, no joint family property remained to be divided when the suit for partition was filed by the plaintiff, and that since the plaintiff had no right while his father was alive, the father alone being a Class I heir (and consequently the plaintiff not being a Class I heir), the plaintiff had no right to sue for partition, and therefore the suit was dismissed not consequently the first appeal was allowed. The High Court dismissed the second appeal of the plaintiff following the same line of reasoning.

Dismissing the appeal, the Supreme Court

Held:

The law insofar as it applies to succession to joint, family property governed by the Mitakshara School, prior to the amendment of 2005, can be summarized as follows:

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6 HSA).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule

or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants. [**UTTAM v. Saubhag Singh and others, (2016) 4 SCC 68 : AIR 2016 SC 1169]**

House Tax, Kerala Building Tax Act

State Government issued a Government Order declaring tourism as industry and granting various concessions including concession/ exemption from building tax to those engaged in such industry. Petitioner on the basis of the said Government Order constructed hotel building. The mere fact that consequent exemption notification was not issued by the Government under section 3A of the act will not deprive the petitioner of the benefit granted by the Government Order. Non-issuance of notification under Section 3A is arbitrary act of the Government. Accordingly relief was granted to the petitioner on the basis of doctrine of promissory estoppel. Three earlier judgments of the Supreme Court of 1979, 1995 and 2011 distinguished**. [M/s Manuelsaons Hotels v. State of Kerala, AIR 2016 SC 2322]**

Indian Penal Code

SECTION 34- Common intention - The principle of joint liability- Acting in concert - Existence of a pre-Arranged plan - Be proved/inferred - Either from the conduct - Or from attendant circumstances.

Section 34 IPC embodies the principle of joint liability in the doing of a criminal act and essence of that liability is the existence of common intention.

Common intention implies acting in concert and existence of a pre-arranged plan which is to be proved/inferred either from the conduct of the accused persons or from attendant circumstances. To invoke Section 34 IPC, it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that:-

(i) there was common intention on the part of several persons to commit a particular crime and

(ii) the crime was actually committed by them in furtherance of that common intention . Common intention implies pre-arranged plan. Under Section 34 IPC, a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The essence of liability under Section 34 IPC is conscious mind of persons participating in the criminal action to bring about a particular result.

The question whether there was any common intention or not depends upon inference to be drawn from the proved facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted. [**Sudip Kr. Sen @ Biltu v. State Of West Bengal & Ors., (2016) 1 SCC (Cri) 695; (2016) 3 SCC 26]**

Section 149-- Ingredients of– Need of proof

For Section 149 IPC, which refers to participation of each member of an unlawful assembly, it has to be necessarily shown that there was an assembly of five or more persons, which is designated as unlawful assembly under Section 149 I.P.C. When once, such a participation of five or more persons is shown, who indulge in an offence as a member of such an unlawful assembly, for the purpose of invoking Section 149, it is not necessary that there must be specific overt act played by each of the member of such an unlawful assembly in the commission of an offence. What is required to be shown is the participation as a member in pursuance of a common object of the assembly or being a member of that assembly, such person knew as to what is likely to be committed in prosecution of any such common object. In the event of the proof of showing of either of the above conduct of a member of an unlawful assembly, the offence, as stipulated in Section 149, will stand proved. [**Susanta Das & Ors. v. State of Orissa, (2016) 2 SCC (Cri) 287; (2016) 4 SCC 371]**

Section-193-- Perjury - Change of stand by expert witness

Expert evidence needs to be given a closer scrutiny and requires a different approach while initiating proceedings under Section 340 of CrPC. After all, it is an opinion given by an expert and a professional and that too especially when the expert himself has lodged a caveat regarding his inability to form a definite opinion without the required material. The duty of an expert is to furnish the court his opinion and the reasons for his opinion along with all the materials. It is for the court thereafter to see whether the basis of the opinion is correct and proper and then form its own conclusion. But, that is not the case in respect of a witness of facts. Facts are facts and they remain and have to remain as such forever. The witness of facts does not give his opinion on facts; but presents the facts as such. However, the expert gives an opinion on what he has tested or on what has been subjected to any process of scrutiny. The inference drawn thereafter is still an opinion based on his knowledge. In case, subsequently, he comes across some authentic material which may suggest a different opinion, he must address the same, lest he should be branded as intellectually dishonest. Objective approach and openness to truth actually form the basis of any expert opinion.

Merely because an expert has tendered an opinion while also furnishing the basis of the opinion and that too without being conclusive and definite, it cannot be said that he has committed perjury so as to help somebody. And, mere rejection of the expert evidence by itself may not also warrant initiation of proceedings under Section 340 of CrPC. [**Prem Sagar Manocha v. State (NCT OF Delhi), (2016) 2 SCC (Cri) 315 ; (2016) 4 SCC 571 ; 2016(3) Supreme 485]**

Section 300 - Sufficiency of the injury in the ordinary course of nature to cause death

The prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words Clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part whether it was sufficient to cause death is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury. The language of Clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the

prosecution before the case can fall in that clause. The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end."

The emphasis in clause three of Section 300 IPC is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary course of nature. When the sufficiency exists and death follows, causing of such injury is intended and causing of such offence is murder. For ascertaining the sufficiency of the injury, sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant. Depending on the nature of weapon used and situs of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place. [**Nankaunoo v. State of U.P., (2016) 1 SCC (Cri) 857 ; (2016) 3 SCC 317]**

Section 300 - Culpable homicide not amounting to murder-Grave and sudden provocation

The occurrence originated on account of some minor grievance against a lady that she did not convey a telephone grave and sudden provocation ic message to the accused. For reasons which are not very clear, the juvenile offender Balu went to the house of the prosecution party and allegedly committed assault for which he was overpowered. It would be natural for the family members of juvenile offender Balu on hearing his cries, to rush for his help and when injury on the appellant has also been proved there is sufficient material to infer the reasonable possibility of a grave and sudden provocation. The assault on the deceased, in absence of intention to cause death could be on account of sudden fight without pre-meditation, in the heat of passion and upon a sudden quarrel. We therefore feel persuaded to and do set aside the conviction of the appellant under Section 302 IPC and substitute the same with conviction under Section 304 Part I of the IPC. [**Prabhakar**

Vithal Gholve v. State of Maharashtra AIR 2016 SC 2292; 2016(4) Supreme 38]

Section 498A - Demand dowry or to harass the wife-Court has to be careful in summoning distant relatives - Unless there is tangible material - Mere naming not enough

The court find merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out The Court has to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in absence of any specific role and material to support such role The Court has to adopt pragmatic view and when a girl dies an unnatural death, allegation of demand of dowry or harassment which follows cannot be weighed in golden scales. At the same time, omnibus allegation against all family members particularly against brothers and sisters and other relatives do not stand on same footing as husband and parents. In such case, apart from general allegation of demand of dowry court has to be satisfied that harassment was also caused by all the named members. [**Monju Roy & Ors. v. State Of West Bengal, (2016) 2 SCC (Cri) 340; (2016) 4 SCC 639]**

International Law

EXTRADITION-- General principles of international law do not debar the requisition for extradition - Where no binding extradition treaty exist

In a case where is no binding extradition treaty between India and other country exist, question arises that whether a requisition by other country invoking the principle of reciprocity and the general principles of international law for extraditing the petitioner from India is maintainable. In the opinion of the Apex court, the general principles of international law do not debar the requisition. However, whether the person ought to be extradited or not is a decision that the concerned Magistrate, before whom the extradition proceedings are pending, will need to take on the evidence and material before him. [**Verhoeven, Marie-Emmanuelle v. Union of India & Ors., 2016(3) Supreme 259]**

Interpretation of Statute

Principles of Interpretation of Statute: Rule of purposive construction

The principle of ‘purposive interpretation’ or 'purposive construction' is based on the understanding that the Court is supposed to attach that meaning to the provisions which serve the 'purpose' behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the Court is supposed to realise the goal that the legal text is designed to realize. Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language. Of the aforesaid three components, namely, language, purpose and discretion ‘of the Court’, insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualize. It is the function that the text is designed to fulfill.

The statutory interpretation of a provision is never static but is always dynamic. Though literal rule of interpretation, till some time ago, was treated as the ‘golden rule’, it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the Courts not only in this country but in many other legal systems as well.

Section 15(2) of the 1996 Act is also to be interpreted keeping in mind the ethos of the arbitration generally and also in the light of the spirit behind Section 89 of the Code of Civil Procedure, 1908 (for short, 'CPC') in particular. No doubt, in the instant case, there was no arbitration agreement between the parties when the suit was filed by the respondent herein. However, in the said suit which was filed, parties arrived at an agreement whereby it was agreed between them that the matter be decided through arbitration and not by the court of law. The Arbitration and Conciliation Act, 1996 governs the case where arbitration is agreed upon before a pending suit by all parties. This Act, however, does not contemplate a situation as in Section 89 of the CPC where the Court asks the parties to choose one or the other ADR methods, including arbitration, and the parties choose arbitration as their option. At the same time,

once the parties agree for arbitration under the Act and the matter is referred to arbitration, thereafter the situation is almost at par with what is contemplated in Section 89 of the CPC. [**Shailesh Dhairyawan v. Mohan Balkrishna Lulla, (2016)3 SCC 619]**

Juvenile Justice (Care and Protection of Children) Act

Section -7A-- Procedure for determination of the age - When matriculation certificate is doubtful - The ossification test - Be the resort

If the matriculation or equivalent certificates are available and there is no other material to prove the correctness, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then an enquiry for determination of the age of the accused is permissible. [**Parag Bhati (Juvenile) thrgh. Legal Guardian-Mother-Smt. Rajni Bhati v. State of Uttar Pradesh and Anr., AIR 2016 SC 2418]**

Land Acquisition Act

Same compensation paid to the appellant which was to other landholders whose lands were acquired by the same notification. However, it was directed that appellant shall not be entitled to any statutory benefit for the period of delay in filing special leave petition before the Supreme Court. **[Ramu Bai v. State of Haryana, AIR 2016 SC 2164]**

Section-4 r/w 17(1) & 17(4)—Acquisition of land by invoking urgency provisions—Dispensation of enquiry u/s. 5A of the Act—Justifiability—Writ petition filed alleging that there was no urgency to invoke Section 17 and dispense with the inquiry u/s. 5A of the Act—High Court dismissed the writ petition while holding that the delay in taking over the possession had been adequately explained—High Court also took the view that the present would not be a fit case for interference—Whether in exercise of the appellate jurisdiction, this Court ought to interference with the impugned notifications at a stage when the electricity sub-station has been completed and is functional—Held, No.

On the basis of the dates mentioned by Court in the preceding paragraph even if this Court to hold that the High Court was not justified in coming to its impugned conclusion and the dispensation of inquiry under Section 5A of the Act in the present case cannot be justified the further question that Court has to

answer is whether in the exercise of the appellate jurisdiction of this Court under Article 136 Court ought to interfere with the impugned notifications at a stage when admittedly the electricity sub-station has been completed and is functional.

In light of the view taken by this court in the case Anand Singh vs. State of U.P., 2010(7) SCALE 353 and as the facts of the present case are largely similar, Court is of the view that we ought not to interfere with the order of the High Court under challenge. The appeal, therefore, is dismissed and the order of the High Court is affirmed.

Before parting, Court would like to observe that by an interim order dated 17th February, 2012, this Court had observed that as the construction of electricity sub-station has been completed, the compensation payable should be on the basis of market value as on the date of taking over of possession and not on the date of the Section 4 notification. **[Abdul Aziz v. State of U.P., 2016 (3) SCALE 596]**

Sections- 4 and 48

No interest is payable for the period from the date of dispossession to the date of initial notification of intention to acquire under Section 4(1). However, the Supreme Court granted additional interest as damages at the rate of 15% per year for the said period. **[Balwan Singh v. Land Acquisition Collector, AIR 2014 SC 1565]**

Section-16

Unless the Government takes possession of the acquired land, it cannot transfer it to development authority. Mere symbolic possession is not sufficient for the said purpose. [*Shakuntala Yadav v. State of Haryana, AIR 2016 SC 1612]*

Section 23—Compensation claim—Determination of

The matter pertains to acquisition of land for the purpose of constructing extension of a Government Hospital by the State of Bihar. Thus, it is clear that the land is situated in the area which is quite developed as it abuts the hospital. The Land Acquisition Officer awarded a sum of Rs. 17,600/- per acre. Being aggrieved by the said valuation, the appellants filed applications under Section 18 of the Land Acquisition Act, 1894 and the Reference Court enhanced the amount to Rs. 20,000/- per kattha for the land on the back side whereas the land which was on the road side was valued at Rs. 25,000/- per kattha.

Court has heard the learned counsel for the parties and has also gone through the sketch which has been placed before this court by the appellants.

Upon perusal of the said sketch and upon knowing the locality of the land which has been acquired, we find that the land is not away from the city but it is abutting the hospital and the locality in which the land is situated is quite developed. In the circumstances, deduction to the extent of 60% does not appear to be fair.

It is an admitted fact that the sale instances which had been relied upon by the Reference Court were pertaining to sale of large area and therefore, deduction upto 30% was quite reasonable. Court is, therefore, of the view that the deduction of 60% is not justifiable. However, deduction should have been 30%. **[Prahlad Dubey v. State of Bihar, 2016 (4) SCALE 326]**

Section 23—Compensation claim—Enhancement of

The issue in these appeals pertains to the claim for higher compensation claimed by the appellants. The learned counsel for the State of Haryana fairly submitted that the claim for compensation is covered by the decision of this Court in "Sachin & Ors. vs. State of Haryana & Ors." passed in Civil Appeal No. 3412 of 2015, decided on 31.03.2015, whereby the cut in the development charges has been reduced from 40% to 30%.

Therefore, these appeals are disposed of in terms of the above referred Judgment.

Court makes it clear that in these appeals, the appellants will not be entitled to statutory benefits for the period of delay in refilling the petitions before this Court. **[Om Prakash v. State of Haryana, 2016 (5) SCALE 597]**

Land Acquisition Act Sections 23 and 30

Judgment delivered in *Paripoornan v. State of Kerala AIR 1995 SC 581* is not in conflict with the judgment delivered in *Union of India v. Raghbur Singh AIR 1989 SC 1933* (C.B.). Reference Court passed the award on 30.9.1985. Accordingly in view of *K.S. Paripoornan* land owners would be entitled to the benefits as per the said decision. [*Lila Wati Agarwal v. State of Jharkhand, AIR 2016 SC 1885]*

Prior to amendment Act 68 of 1984, the amount of compensation that could be awarded by the Court was limited to the amount claimed by the applicant. Section 25 read as under

"**25. Rules as to amount of compensation**

(1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount

awarded by the court shall in no case exceed the amount awarded by the Collector.
(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the court shall not be less than, and may exceed, the amount awarded by the Collector."
The amended Section 25 reads as under:
" 25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector- The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11."
The amendment has come into effect on 24.09.1984.

The pre-amended provision put a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, put a cap on the minimum; compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the court to award just and fair compensation taking into consideration the true market value and other relevant factors, irrespective of the claim made by the owner. [**Ashok Kumar v. State of Haryana, (2016) 4 SCC 544: AIR 2016 SC 1210]**

Limitation Act

Section-7, Article 60, 109, 110 and 113—Hindu Minority and Guardianship Act, 1956—Section 8, 8(1)(a), 8(2) & 11—Suit by a minor who has attained majority—To impeach the transfer of immovable property by the Guardian, the minor must file the suit within the prescribed period of three years after attaining majority—When there are several plaintiffs and when no discharge can be given u/s. 7 of the Limitation Act, time will not run against all of them until one of them becomes capable of giving discharge—Trial Court decreed the suit—In appeal, defendant 1 raised issue of limitation—Suit filed in the year 1989 with regard to the sale deed dated 20.1.1982 was challenged as barred by limitation as per Article 60 of the Limitation Act—Appellate court dismissed the appeal while holding that Article 60 of the Act was not applicable to the facts of the case as the 2nd defendant was not the guardian appointed by the Court—It was held that Article 109 of the Act, which prescribed period of 12 years was applicable—Second appeal was dismissed by the High Court – Whether the High Court as well as the trial Court erred in applying Article 109 of the Act—Held, Yes,

suit filed in year 1989 with regard to the deed dated 20.1.1982 was within the limitation.

Before venture to discuss the applicability of Section 7 of the Act which deals with disability of one of several persons, Court has to bestow our attention to the Articles which are applicable to the facts of the case.

In the case on hand, there cannot be any dispute about the fact that after the death of the 2nd defendant's husband automatically the 2nd defendant becomes a natural guardian to her children. On this, the finding of lower appellate court, that as she was not the guardian appointed on the day to alienate the Suit schedule property therefore Article 109 of the Act applies which gives 12 years limitation from the day the alienee takes possession of the property and the alienation made by the father of ancestral property of the Hindus who are governed by Mitakshara law, and that the Suit is well within limitation, cannot be sustained.

Even the High Court has proceeded on the same notion that Article 60 of the Act applies where the ward files a Suit after attaining majority, for setting aside transfer of property made by his guardian when he was minor.

The High Court has further observed that under Article 109 of the Act, a long rope is given to the file the Suit to the plaintiff than a Suit filed by the plaintiff under Article 60 of the Act and the case of the plaintiff strictly falls under Article 109 of the Act.

Hence, Court is of the considered opinion that a quondam minor plaintiff challenging the transfer of an immovable property made by his guardian in contravention of Section 8(1)(2) of the 1956 Act clearly speaks about alienation made by father governed by Mitakshara law and further Courts below proceeded in discussing about the long rope given under Article 109 of the Act and comparatively lesser time specified under Article 60 of the Act. It is well settled principle of interpretation that inconvenience and hardship to a person will not be the decisive factors while interpreting the provision. When bare reading of the provision makes it very clear and unequivocally gives a meaning it was to be interpreted in the same sense as the Latin maxim says "dulo lex sed lex", which means the law is hard but it is law and there cannot be any departure from the words of the law.

Hence, in view of Court's above discussion, the limitation to file the present Suit is governed by Article 60 of the Act and the limitation is 3 years from the date of attaining majority. When once Court arrives at a conclusion that Article 60 of the Act applies and the limitation is 3 years, the crucial question is when there are several plaintiffs, what is the reckoning date of limitation? A reading of Section 7 makes it clear that when one of several persons who are jointly entitled to institute a Suit or make an application for the execution of the decree and a discharge can be given without the concurrence

of such person, time will run against all of them but when no such discharge can be given, time will not run against all of them until one of them becomes capable o f giving discharge.

In the case on hand, the 1st plaintiff was 20 years old, the 2nd plaintiff was still a minor and the plaintiffs 3, 4 and 5, who are married daughters, were aged 29, 27 and 25 respectively, on the date of institution of the Suit in the year 1989. As per Explanation 2 of Section 7, the manager of a Hindu undivided family governed by Mithakshara law shall be deemed to be capable of giving a discharge without concurrence of other members of family only if he is in management of the joint family property. In this case, plaintiffs 3 to 5 though majors as on the date of institution of Suit will not fall under Explanation 2 of Section 7 of the Limitation Act as they are not the manager of Karta of the joint family. The first plaintiff was 20 years old as on the date of institution of the Suit and there is no evidence forthcoming to arrive at a different conclusion with regard to the age of the 1st plaintiff. In that view of the matter, the Suit is instituted well within three years of limitation from the date of attaining majority as envisaged under Article 60 of the Act. **[Narayan v. Babasaheb, 2016 (3) SCALE 661]**

Articles 64 and 65--

The Supreme Court thoroughly discussed the principles of adverse possession and placed reliance upon an authority of Allahabad High Court reported in *Ramashanker v. Om Prakash Likhdari 2013 (6) ADJ 119* holding the extinction of right of one party is often the mode of acquiring it by another and the right extinguished is virtually transferred to the person who claims it by prescription. The Supreme Court held that the respondent had not acquired any title through adverse possession as she remained in possession only for 7 years. It was further held that the fact that only paper possession was taken by the appellant development authority was immaterial. **[Bangalore Development Authority v. N. Jayamma AIR 2016 SC 1294]**

Motor Vehicle Act

Government issued two notifications on 12.5.2015 and 21.1.2016 protecting the interest of those persons who provide immediate help to those who are injured in a road accident. The Supreme Court held that the said notifications will have force of law under Articles 32 and 142 of the Constitution of India and they must be treated as binding precedents under Article 141 of Constitution of India. Supreme Court clarified that such persons shall not be compelled to appear and if they file affidavit before the police official it shall be sufficient. **[Save Life Foundation v. Union of India, AIR**

2016 SC 1617]

Mumbai Municipal Corporation Act

Election Petition.

Limitation starts from the date on which list specifying necessary details for declaring results is prepared by returning officer and is available for inspection and not from the date on which the result is notified.

If rules providing manner of declaration of result of election are not framed then the provision has to be read in such manner that it is favourable to returned candidate and not in the manner which may benefit the person challenging the election. **[Smita Subhash Savant v. Jagedeeshwari Jagdish Ami, AIR 2016 SC 1409]**

NDPS Act

Disposal of the seized drugs currently lying in the police maalkhans and other places used for storage shall be carried out by the DDCs concerned in terms of the directions:

(1) Cases where the trial is concluded and proceedings in appeal/revision have all concluded finally:

In cases that stood finally concluded at the trial, appeal, revision and further appeals, if any, before 29th May, 1989 the continued storage of drugs and Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is of no consequence not only because of the considerable lapse of time since the conclusion of the proceedings but also because the process of certification and disposal after verification and testing may be an idle formality. We say so because even if upon verification and further testing of the seized contraband in such already concluded cases it is found that the same is either replaced, stolen or pilferaged, it will be difficult if not impossible to fix the responsibility for such theft, replacement or pilferage at this distant point in time. That apart, the storage facility available with the States, in whatever satisfactory or unsatisfactory conditions the same exist, are reported to be over-flowing with seized contraband goods. It would, therefore, be just and proper to direct that the Drugs Disposal Committees of the States and the Central agencies shall take stock of all such seized contrabands and take steps for their disposal without any further verification, testing or sampling whatsoever. The concerned heads of the Department shall personally supervise the process of destruction of drugs so identified for disposal. To the extent the seized Drugs

and Narcotic Substances continue to choke the storage facilities and tempt the unscrupulous to indulge in pilferage and theft for sale or circulation in the market, the disposal of the stocks will reduce the hazards that go with their continued storage and availability in the market.

(2) Drugs that are seized after May, 1989 and where the trial and appeal and revision have also been finally disposed of:

In this category of cases while the seizure may have taken place after the introduction of Section 52A in the Statute book the non-disposal of the drugs over a long period of time would also make it difficult to identify individuals who are responsible for pilferage, theft, replacement or such other mischief in connection with such seized contraband. The requirement of para 5.5 of standing order No. 1/89 for such drugs to be disposed of after getting the same tested will also be an exercise in futility and impractical at this distant point in time. Since the trials stand concluded and so also the proceedings in appeal, Revision etc. Insistence upon sending the sample from such drugs for testing before the same are disposed of will be a fruitless exercise which can be dispensed with having regard to the totality of the circumstances and the conditions prevalent in the maalkhanas and the so called godowns and storage facilities. The DDCs shall accordingly take stock of all such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances in relation to which the trial of the accused persons has finally concluded and the proceedings have attained finality at all levels in the judicial hierarchy. The DDCs shall then take steps to have such stock also destroyed under the direct supervision of the head of the Department concerned.

(3) Cases in which the proceedings are still pending before the Courts at the level of trial court, appellate court or before the Supreme Court:

In such cases the heads of the Department concerned shall ensure that appropriate applications are moved by the officers competent to do so under Notification dated 16th January, 2015 before the Drugs Disposal Committees concerned and steps for disposal of such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances taken without any further loss of time. **[Union of India v. Mohanlal & Anr., (2016) 1 SCC (Cri) 864; (2016) 3 SCC 379]**

Negotiable Instruments Act

Section 138- Cheques issued in relation to acontinuing contract - Where the existence of the debt/liability - Never in dispute - Event of dishonour -

Launch of prosecution - Valid

The facts are that Nazimul Islam had received an amount of rupees ten lakhs from the complainant in connection with the agreement executed between the two. It is also not in dispute that upon termination of the agreement, the amount paid to Nazimul Islam was refundable to the complainant and that Nazimul Islam had agreed to refund the same within one month. The promissory note executed by Nazimul Islam contained an unequivocal acknowledgment of not only the debt/liability aforementioned but promised to liquidate the same within one month with interest at the bank rate. Five cheques handed over were to be returned but only upon payment of the amount in question. Such being the fact situation, it cannot be said that the cheques had nothing to do with any debt or other liability. As a matter of fact, the existence of the debt or liability was never in dispute. On the contrary, it was acknowledged by Nazimul Islam who simply sought one month's time to pay up the amount. The cheques were post dated, only to give to the drawer the specified one month's time to pay the amount. There is thus a direct relationship between the liability and the cheques issued in connection therewith. Thus far there is no difficulty.

The argument that the respondent had no liability to liquidate the debt owed by Nazimul Islam, has not impressed us. What is important is whether the cheques were supported by consideration. Besides the fact that there is a presumption that a negotiable instrument is supported by consideration there was no dispute that such a consideration existed in as much as the cheques were issued in connection with the discharge of the outstanding liability against Nazimul Islam. At any rate the endorsement made by the respondent on the promissory note that the cheques can be presented for encashment after 25-09-2007 clearly shows that the cheques issued by him were not ornamental but were meant to be presented if the amount in question was not paid within the extended period. [**Don Ayengia v. The State of Assam & Anr., (2016) 1 SCC (Cri) 673 ; (2016) 3 SCC 1]**

Section 141–Company-Other person in charge of or responsible to the company for the conduct of the business - At the time of commission of the offence - Deemed to be guilty.

On a perusal of the provision Under Sections 138 and 141 of the N I Act, it is clear as crystal that if the person who commits an offence under Section 138 of the Act is a company, the company as well as other person in charge of or responsible to the company for the conduct of the business of the company at the time of commission of the offence is deemed to be guilty of the offence. Thus, it creates a constructive liability on the persons responsible for the conduct of the business of the company.

The averments of the complaint clearly meet the requisite test. Accused No.1 is the Company, accused Nos.2 and 3 are the Chairman and Managing Director respectively and accused Nos.6 and 7 were signatory to the cheques. As far as the accused Nos.4 and 5 were concerned, they were whole- time Directors and the assertion is that they were in charge of day to day business of the Company and all of them had with active connivance, mischievously and intentionally issued the cheques in question. Thus, considering the totality of assertions made in the complaint and also taking note of the averments put forth relating to the respondent Nos. 2 and 3 herein that they are whole-time Director and Executive Director and they were in charge of day to day affairs of the Company, it is held that the asseverations made in the complaint meet the test. [**Standard Chartered Bank v. State of Maharashtra and Others Etc., 2016(2) Supreme 666; AIR 2016 SC 1750]**

Section-145 NI Act & 202 Cr. P.C. - Evidence of complainant on affidavit – permissible.

The non obstante clause in sub-section (1) of Section 145 is self-explanatory and over-rules the requirement of examination of the complainant on solemn affirmation under Section 200 of the Cr.P.C. Now the complainant is entitled to give his evidence on affidavit and subject to all just exceptions, the same has to be read in evidence in any enquiry, trial or other proceeding under the Cr.P.C.

The amendment in Section 202 of the Cr.P.C. inserted by the Act 25 of 2005, effective from 23.06.2006. has a purpose in requiring the concerned Magistrate to postpone the issue of process against the accused if he is residing at a place beyond the area of his jurisdiction and to hold an enquiry or direct an investigation by a police officer or any other person for the purpose of deciding whether or not there is sufficient ground for proceeding. It is to avoid unnecessary harassment to the proposed accused. In such an enquiry, the Magistrate may take evidence of witness on oath but in view of Section 145 of the Act, complainant's evidence on affidavit will also be permissible for the purpose of such enquiry. [**K.S. Joseph v. Philips Carbon Black Ltd. & Anr, AIR 2016 SC 2149]**

Practice & Procedure

General Rule of Prospective application of Legislation and its exception

……though the Legislature has plenary powers of legislation within the fields assigned to it and can legislate prospectively or retrospectively, the general rule is that in the absence of the enactment specifically mentioning that the concerned legislation or legislative

amendment is retrospectively made, the same is to be treated as prospective in nature. It would be more so when the statute is dealing with substantive rights. No doubt, in contrast to statute dealing with substantive rights, wherever a statute deals with merely a matter of procedure, such a statute/amendment in the statute is presumed to be retrospective unless such a construction is textually inadmissible. At the same time, it is to be borne in mind that a particular provision in a procedural statute may be substantive in nature and such a provision cannot be given retrospective effect. To put it otherwise, the classification of a statute, either substantive or procedural, does not necessarily determine whether it may have a retrospective operation. In **Maxwell v. Murphy (1957) 96 CLR 261**, Dixon C.J. formulated the aforesaid procedure in the following words:

The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events. But given rights and liabilities fixed by reference to the past facts, matters or events, the law appointing or regulating the manner in which they are to be enforced or their enjoyment is to be secured by judicial remedy is not within the application of such a presumption. [**District Collector Vellore District v. K. Govindaraj, (2016) 4 SCC 763]**

Reasonable doubt - Simply that degree of doubt which would permit a reasonable and a just man to come to a conclusion.

Proof beyond reasonable doubt is only a guideline and not a fetish and that someone, who is guilty, cannot get away with impunity only because truth may suffer some infirmity when projected through human processes. A caveat against exaggerated devotion to the rule of benefit of doubt to nurture fanciful doubts or lingering suspicion so as to destroy social defence has been sounded. Reasonable doubt is simply that degree of doubt which would permit a reasonable and a just man to come to a conclusion. It has been underlined therein that reasonableness of doubt must be commensurate to the nature of the offence to be investigated. [**Chaman and Another v. State Of Uttarakhand Criminal, AIR 2016 SC 1912]**

Prevention of Corruption Act

Factum of demand - Sine Qua Non for conviction

There is no substantive evidence in this regard and the appellant was erroneously convicted for the charges framed against him. The prosecution has failed to prove the factum of demand of bribe money made by the appellant

from the complainant, which is the sine qua non for convicting him for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. [**Krishan Chander v. State of Delhi, (2016) 1 SCC (Cri) 725; (2016) 3 SCC 108]**

'Proof of Demand' is a sine quo non

In order to constitute an offence under Section 7 of the Prevention of Corruption Act, 'proof of demand' is a sine quo non. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification. **[V. Sejappa v. The State By Police Inspector Lokayukta, Chitradurga, 2016(3) Supreme 150]**

Section 20 - Presumption under – Not rebutted - Prosecution case stood completely established

The immediate explanation offered by the accused was that the money was thrust into his pocket but this was given up and the appellant remained silent. In the absence of any evidence offered by the appellant to explain the circumstances, the presumption under Section 20 of the Act was not in any way rebutted and the prosecution case stood completely established. [**C. Chandrasekaraiah v. State Of Karnataka, (2016) 2 SCC (Cri) 351 ; (2015) 13 SCC 802]**

Sec. 197-- Act or omission - Must have been done - By the public servant - In course of his service and - In discharge of his duty.

Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is

concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted.

The accused was in-charge of the Primary Health Centre and he failed to provide Government jeep for shifting the patient Mrs. Runiabai to District Hospital, Raigad whereas the appellant himself travelled in the jeep to attend an official monthly meeting at Raigad which was District Headquarters. The Primary Health Centre did not have ambulance. Thus, negligence was attributed to the appellant for not providing the said vehicle for shifting the patient to District Hospital, Raigad. First Information Report was lodged and ultimately Police filed chargesheet under section 304-A IPC. The application filed by the accused under section 197 Cr.PC was rejected The omission complained of due to which offence is stated to have been committed, was intrinsically connected with discharge of official duty of the accused, as such the protection under section 197 Cr.PC from prosecution without sanction of the competent authority, is available to the accused. **[Amal Kumar Jha v. State of Chhatisgarh & Anr., 2016(3) Supreme 226]**

Prevention of Food Adulteration Act

In the case of many accused - Rright exercised under Section 13(2) of the PFA Act by any of the accused - The consequence would be for all the co-accused.

Where there are many accused, once right is exercised under Section 13(2) of the PFA Act by any of the accused leading to a certificate from the Director of the CFL, the consequence would be supersession of the report given earlier by the Public Analyst under sub-section (1) of Section 13 and such supersession must enure to the benefit of all the co-accused. The submission advanced on behalf of the respondents by Mr. S.S. Shamshery, learned Additional Advocate General for the State of Rajasthan that such supersession will be only to the benefit of the accused who exercised their right under Section 13(2) of the PFA Act does not merit acceptance. In the prevailing situation it will be a sheer waste of time and an empty formality to get the third sample also declared as deteriorated, by the CFL. There may also be cases like the present one where the number of accused is more than three. In such cases there is no possibility of complying with individual prayer of all the co-accused to send different samples for re-analysis by the CFL because Statute requires preparation of only 3 samples. [**Hindustan Unilever Ltd.v. State of Rajasthan & Anr, AIR 2016 SC 2121]**

Protection of Women From Domestic Violence Act

Power and/or jurisdiction-To allow the amendment-be exercised sparingly - With caution- Under limited circumstances

It cannot be said that the Court dealing with the application under DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events[escalation of prices in the instant case] or to avoid multiplicity of litigation, Court will have power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that respondent no.1 was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the complaints in criminal Courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited

circumstances. Even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. [Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari & Anr., AIR 2016 SC 2519]

C.P.C. Order 6 Rule 17--

Petition/ complaint under the Act may be amended. **[Kuna Pareddy v.K.S. Kumari, AIR 2016 SC 2519]**

Public Premises Eviction of Unauthorized Occupants Act/ Transfer of Property Act

Premises belonging to Delhi Development Authority are public premises and Transfer of Property Act does not apply.

Lease determined by afflux of time. Mere acceptance of amount toward rent by office of Delhi Development Authority does not amount to automatic renewal of lease. Lessee illegally transferred property to third person who remained in possession for 17 year. Both are liable to pay damages for unauthorized occupation. **[Delhi Development Authority v. M/s Anant Raj Agency, AIR 2016 SC 1806]**

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

Section 24—Land Acquisition Act—Section 11 & 16—Lapse of Acquisition proceedings—Proceedings initiated under the Land Acquisition Act and culminating in award would lapse in case the possession after passing of the award has not been taken within five years or more prior to commencement of the 2013 Act—Whether the High Court was justified in holding that the land acquisition proceedings culminating in passing of awards on different dates, has lapsed in view of Section 24 of the 2013 Act—Held, yes.

All these appeals have been filed by the Delhi Development Authority, aggrieved by the Judgment of the High Court of Delhi. In the impugned Judgment, the High Court has taken the stand that the land acquisition initiated under the Land Acquisition Act, 1894, and culminating in passing of awards on different dates, has lapsed in view of Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, "2013 Act") in respect of the land covered by these appeals.

It may be seen that under Section 24(2) of the Act, the proceedings

initiated under the Land Acquisition Act, 1894 and culminating in award under Section 11 of the said Act would lapse in case the possession after passing of the award has not been taken within five years or more prior to the commencement of the 2013 Act (9 of 2014). This Act came into force on 01.01.2014. UnderSection 24 (2) of the 2013 Act, the proceedings would also lapse in case the compensation has not been paid to the owners of the land before 01.01.2014. However, it is made clear under Section 24(2) of the 2013 Act that despite such lapse, it will be open to the appropriate Government to initiate fresh proceedings for acquisition in accordance with the provisions of the 2013 Act.

Learned counsel appearing for the appellant-Delhi Development Authority, has submitted that once an award has been passed, the property vests in the Government and, therefore, there is no lapse. We are afraid, the contentions raised by him cannot be appreciated.

Under the above provision, once an award has been made by the Collector under Section 11 of the Act, 1894, the Collector has to take possession of the land and only thereupon, the land will vest in the Government free from all encumbrances. Therefore, passing of the award by itself will not enable the appellant to take a contention that the land has automatically vested with the Government on passing of the award.

It is not in dispute that in all these cases, the land has not been taken possession of by the Collector within five years or more prior to 01.01.2014 when the 2013 Act came into force. **[Delhi Development Authority v. Reena Suri, 20-16 (4) SCALE 611]**

Section 24(2) Proviso—Punjab Regional and Town Planning and Development Act, 1995—Lapse of acquisition proceedings—Though an award was passed in respect of the land belonging to the appellant, the appellant has not been dispossessed—Following this Court's judgment in 2015(1) SCALE 598, Court allows the appeal and quashed the Notification.

It is not in dispute that though an award was passed in respect of the land belonging to the appellant, the appellant has not been dispossessed and hence the appellant is entitled for the protection under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In fact, Court finds that in respect of the same very acquisition Notification in a situation where the possession is still retained by the owner, this Court by Judgment dated 22.01.2015 in C.A.No.7424 of 2013 titled Karnail Kaur & Ors. Vs. State of Punjab & Ors. reported in 2015 (3) SCC 206 has quashed the Notification, therefore, this appeal is allowed. Proceedings for acquisition in respect of the land belonging to the appellant covered by this appeal stand quashed. **[Pawan Kumar**

Aggarwal v. State of Punjab, 2016 (4) SCALE 197]

Service Law

Compassionate appointment—Brother of deceased Constable given appointment to maintain family of deceased—Termination of his services after a lapse of 15 years on the ground that he did not fall within the definition of expression 'dependant of deceased' to claim compassionate appointment—Not justified.

Keeping in view the peculiar undisputed facts of the case and having regard to the totality of the circumstances, we are of the considered view that the State was not justified in terminating the appellant's services. In other words, the ground on which the appellant's services were terminated by the State after a period of 15 years of appellant's appointment does not appear to be well founded. This we say for the following reasons: Firstly, the appellant and wife of the deceased at the time of seeking compassionate appointment did not conceal any fact and nor filed any false or incorrect document/declaration. On the other hand, both of them disclosed their true family relations and conditions prevailing in the deceased family on affidavit. Secondly, the appellant, who is the brother of the deceased, undertook to maintain the family of the deceased in the event of his securing the compassionate appointment and he accordingly also gave such undertaking to the State. Thirdly, there was no one in the family of the deceased to claim compassionate appointment except the appellant who, as mentioned above, was the close relative of the deceased, i.e., real younger brother and used to live with the deceased. He was otherwise eligible to claim such appointment being major, educated and only male member in the family. Fourthly, the appellant after securing the employment throughout maintained the family of the deceased in all respects for the last more than 15 years and he is continuing to do so.

In the light of aforementioned reasons, which rightly persuaded the State to grant compassionate appointment to the appellant, we do not find any justification on the part of the State to dig out the appellant's case after 15 years of his appointment and terminate his services on the ground that as per the State policy, the appellant did not fall within the definition of the expression "dependent of deceased" to claim compassionate appointment.

The fact that the appellant was younger brother of the deceased was within the knowledge of the State. Similarly, the State was aware that the brother does not fall within the definition of dependent at the relevant time and still the State authorities obtained the undertaking from the appellant that he would maintain the family of the deceased once given the appointment.

In Court's considered view, the aforesaid facts would clearly show that it was a conscious decision taken by the State for giving an appointment to the appellant for the benefit of the family members of the deceased who were facing financial hardship due to sudden demise of their bread earner. The appellant being the only close relative of the deceased could be given the appointment in the circumstances prevailing in the family. In our view, it was a right decision taken by the State as a welfare state to help the family of the deceased at the time of need of the family.

In these circumstances, Court is of the view that there was no justification on the part of the State to woke up after the lapse of 15 years and terminate the services of the appellant on such ground. **[Md. Zamil Ahmed v. The State of Bihar, 2016 (4) SCALE 626]**

Judicial Services—Removal —Enhancement of punishment by the High Court—Power of High Court

The legal position, as to the powers of the High Court to direct enhancement of punishment in a writ petition arising out of disciplinary action taken against an employee, stands concluded by the decisions of this Court, referred to above. In Pradeep Kumar's case, in a somewhat similar circumstances, a similar question had arisen for consideration before this Court. In that case too the High Court had found the punishment of reduction in pay and denial of increments awarded to the appellant to be inadequate, for the gravity of the misconduct. The High Court had accordingly remanded the matter back to the disciplinary authority to award the maximum punishment of dismissal from service which direction was then assailed before this Court on the ground that the High Court had no such power to direct enhancement either by itself or by remanding the matter to the disciplinary authority. An employee complaining against the punishment awarded to him could not, observed this Court, be placed in a worse-off position for coming to the Court.

Court has, in the light of the above decisions, no hesitation in holding that the High Court had fallen in a palpable error in directing issuance of a show cause notice to the appellant. The appellant could not, as observed earlier, be placed in a worse-off situation because of his having sought redress against the punishment awarded to him by the disciplinary authority which in the instant case is the High Court itself.

In the result, Court allow this appeal and direct setting aside of that part of the order passed by the High Court whereby the High Court had directed the issue of show cause notice to the appellant for award of a heavier punishment upon him. **[Ashok Kumar Nigam v. State of U.P., 2016 (4) SCALE 217]**

Specific Relief Act

Section 6--

If land is acquired under Land Acquisition Act and compensation is also paid to the plaintiff, then plaintiffs cannot institute suit for possession against private respondent particularly when the Government after acquisition had already taken possession of the land in dispute. **[Makt. Commtt. Hodal v. Sukhdevi, AIR 2016 SC 2226]**

Section 6--

Suit for possession without prayer for declaration is maintainable if relief for declaration is not necessary to be sought in the circumstances of the case. **[Muddasani Venkata Narsaiah (D) Thr. LRs. v. Muddasani Sarojaja, AIR 2016 (SC) 2250]**

Section 16--

Suit for specific performance of contract cannot be decreed merely after recording finding regarding genuineness of the agreement. Several other aspects like readiness and willingness are also required to be considered**. [Dheeraj Developers v. Dr. Om Prakash Gupta, AIR 2016 SC 1438]**

TADA

Aauthority higher in rank - Not be competent to give the approval

An authority higher in rank would not be competent to give the approval as required under sub-Section(1)of Section 21A of the TADA Act. Since the prior approval of the District Superintendent of Police was not taken in the instant case, the trial got vitiated on this ground itself. [**State of Rajasthan v. Mohinuddin Jamal Alvi & Anr., AIR 2016 SC 2386]**

Telecom Regulatory Authority of India Act

Call Drop.

Regulation of 2016 making service providers liable for payment in case of call drop quashed by the Supreme Court as it found that it did not carry out purpose of the Act i.e. protection of interest of service providers and consumers to promote orderly growth of telecom sector. **[Cellular Operators Association of India v. Telecom Regulatory Authority of India, AIR 2016 SC 2336]**

Tort

Strict liability—Negligence in not maintaining particular level of water in the dam—Doctrine of strict liability—Applicability of

The admitted facts on record are that the damage to the trees and plantation of the appellants is caused due to the release of water from the dam by the respondents. A specific plea is raised that the respondents had stored more than the retention capacity of the water in the dam during the month of June 1997 despite knowing fully well that during the ensuing monsoon season there would be more flow of water in the dam.

Since the dam is constructed and maintained by the respondents and the appellants suffered losses as a result of release of water from the said dam, onus was on the respondents to prove that they had taken proper care in maintaining appropriate level of water in the dam taking into account the provision for the water that can get accumulated in the said dam due to the forthcoming rainy season. The respondents are the owners of the dam in question. They are expected to keep the said dam in such a condition which avoids any loss or damage of any nature to the neighbours or passers by. The doctrine of strict liability, which has its origin in the case of Rylands v. Fletcher, will have application in the instant case.

There are two exceptions to the aforesaid rule of strict liability, which were recognized in Rylands v. Fletcher itself, viz.: (a) where it can be shown that the escape was owing to the plaintiff's default, or (b) the escape was the consequence of vis major or the act of God. An act of God is that which is a direct, violent, sudden and irresistible act of nature as could not, by any amount of ability, have been foreseen, or if foreseen, could not by any amount of human care and skill have been resisted. Generally, those acts which are occasioned by the elementary forces of nature, unconnected with the agency of man or other cause will come under the category of acts of God. Examples are: storm, tempest, lightning, extraordinary fall of rain, extraordinary high tide, extraordinary severe frost, or a tidal bore which sweeps a ship in mid-water. What is important here is that it is not necessary that it should be unique or that it should happen for the first time. It is enough that it is extraordinary and such as could not reasonably be anticipated. **[Vohra Sadikbhai Rajakbhai v. State of Gujarat, 2016 (5) SCALE 534]**

Transfer of Property Act

Section 58(c) & 60—'Mortgage by conditional sale' and 'sale with an option to repurchase'—Distinguishing features

The defendants contested the suit, and pleaded that deed dated 30.12.1960 is not a mortgage transaction but a conditional sale with stipulation of repurchase within a period of five years. Denying that the plaintiffs have any right to redeem the property, it is stated by the defendants that the land was purchased by the defendants for a consideration of Rs.10,000/- and possession was delivered to them in 1960 along with execution of the deed.

In the case at hand the document in question (Exh. 23) contains the condition as under:-

> "In this deed condition is that the said amount of Rs.10,000.00 when we pay back to you within five years from today, you shall give back the said property to us with possession. And in the same manner, we shall have no right to ask back the same after expiry of the time limit."

The above condition in Exh.23 that if the plaintiffs (respondents) make repayment of Rs.10,000/- within a period of five years, the defendants shall handover the possession of property in suit back to the plaintiffs, reflects that the actual transaction between the parties was of a loan, and the relationship was of debtor and creditor existed, as such, we are of the view that the High Court has rightly held that the deed in question Exh.23 read with Exh. 37 is a mortgage by way of conditional sale and the decree passed in favour of the plaintiffs does not require to be interfered with. **[Patel Ravjibhai Bhulabhai (D) Thr. Lrs. v. Rahemanbhai M. Shaikh (D) Thr. Lrs., 2016 (4) SCALE 600]**

Section 54--

Third party cannot question passing of sale consideration. **[Madda Sani Jentata Narsaiah v. Muddsani Seerokere AIR 2016 SC 2250]**

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

Section 2(2), Explanation I—CPC—Order 32 Rule 2—Suit for eviction—Applicability of the Act—Provisions of the Act will not apply for ten years to a constructed building from the date on which the construction is completed—In case of building subject to assessment, the construction of a building shall be the date on which the first assessment thereof comes into effect.

In Section 2 of the Act, it is provided that the provisions of the Act will not apply for ten years to a constructed building from the date on which the

construction is completed. Explanation (1) to sub-section (2) provides that the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction. However, in the case of building subject to assessment, the construction of a building shall be the date on which the first assessment thereof comes into effect and where the said dates are different, the earliest of the dates.

As noticed above, the assessment was with effect from 1st April, 1984 in respect of the property in question. Consequently, in term of Explanation I to Section 2(2) of the Act, the date of construction of the property in dispute is required to be taken as 1st April, 1984.

A perusal of Explanation I as above, makes it abundantly clear that the date of occupation would be taken to the date of completion of the construction only when there is no report or record of completion of the construction or no assessment thereof. However, if there is any assessment, the date of the first assessment will be the date of completion of the construction.

Insofar as the present appeal is concerned, there is, therefore, no doubt that the date of construction is required to be taken as 1st April, 1984. In that view of the matter, since the suit was instituted by the appellant on 8th April, 1993, the provisions of the Act would not apply insofar as the premises in dispute are concerned.

The High Court has unfortunately ignored the provisions of Explanation I to Section 2(2) of the Act and has also not referred to the decision rendered by this Court in Saleem vs. District Judge, Muzaffarnagar, 1998 (5) SCALE 360. In our opinion the High Court came to an erroneous conclusion, that the date of first assessment would be 1st April, 1979, since the construction was said to have been completed sometime in April, 1983. The High Court has also overlooked the decision rendered in the case of Manoj Kumar where it has been categorically stated that all the shops including the shop in question were constructed simultaneously and would be deemed to be constructed on 1st April, 1984. **[Jhony vs. Dinesh Kumar, 2016 (5) SCALE 1]**

West Bengal Co-operative Societies Act

Flat allotted by Co-operative Society to one of its members who appointed his married daughter as successor even though his wife and son were alive. On the death of the allottee the co-operative society was bound to handover the possession of the flat to the successor. However other heirs may pursue for such remedy which may be available to them in respect of right in the said flat by inheritance. **[Indrani Wahi v. Registrar of Co-operative Society, AIR 2016 SC 1969]**

Miscellaneous

Deposit in treasury under wrong head of chalan is not fatal. Bihar Land Reforms Act 1962. **[Kedar Misra v. State of Bihar, AIR 2016 SC 2110]**

Order reported in AIR 2015 SC 2286 directing that in the Government advertisements only the photographs of President, Prime Minister and Chief Justice of India may be shownmodified and in addition thereto photographs of Governors and Chief Ministers of States also permitted to be published in the Government advertisements. **[State of Karnataka v. Common Cause AIR 2016 SC 1437]**

Law officers of State – Appointment / Removal

For making appointment of law officers of state at any level there must be fair and realistic assessment which shall be reasonable, transparent and credible.

A lawyer has no right to be appointed as Government Counsel. Similarly if appointed he has no vested right to claim extension. State Governments shall reform prevalent system of appointment and provision similar to Section 24 Cr.P.C. may be made for appointment of State Govt. Counsel. **[State of Punjab v. Brijeshwar Singh Chahal, AIR 2016 SC 1629]**

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PART – 2 (HIGH COURT)

Administrative Law

Principles of natural justice is fundamental basis and essential part of fair procedure guaranteed U/A 14 of the Constitution of India

The principles of natural justice is a foundational basis of administrative law and is essential part of fair procedure guaranteed by Article 14 of the Constitution. The same necessarily implies not only giving a notice and opportunity to show cause, but also considering the explanation, if any, submitted to the show cause notice, which should reflect from the order, failing which the action cannot pass the test of the natural justice. **(Babita Kasaudhan v. State of U.P. and others, 2016 (116) ALR 114)**

Arbitration and Conciliation Act

S. 2 (i) (e) –Expression "court"-Scope of –Explained

Section 2(1)(e) would define the 'court' to mean principal civil court of original jurisdiction in a district and includes High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court or any Court of small causes. If the High Court does not exercise original civil jurisdiction, it would not be a "court" within the meaning of said provisions. **(M/s Rathore Builders Registered Partner Firm through Santosh Kumar Rathore v. State of U.P. through Collector Lalitput and another, 2016 (116) ALR 202)**

S. 2 (1) (e)- Court- Definition- High Court of Allahabad does not exercise original civil jurisdiction is not "Court" as defined in above section

Section 2(1)(e) would define the 'court' to mean principal civil court of original jurisdiction in a district and includes High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court or any Court of small causes.

Section 9 also confers powers upon the 'court' to grant interim measure, section 14 again refers the 'court'. By the expression court used in various

provisions of the Act is meant that District Court i.e. principal civil court of original jurisdiction in a district, which would have jurisdiction to decide, if a suit had been brought in regard to subject matter of reference. High Court of Allahabad, does not exercise original civil jurisdiction, therefore, is not court as defined under Section 2(e), hence, application under Section 34 to set aside an award is not entertainable in the High Court of Allahabad. **(Ashish Kumar Sadh v. Smt. Putul Chaubey, 2016 (3) ALJ 150)**

S. 8- Scope of –Does not enable the court to appoint an arbitrator

The petition under Section 8 would not be maintainable at the behest of the applicant-plaintiff. Constitution Bench (7 Judges), in S.B.P. & Co. vs. Patel Engineering Ltd. and another2, held that when the defendant to an action before a judicial authority raises the plea that there is an arbitration agreement and the subject matter of the claim is covered by the agreement, the judicial authority would have to refer the parties to approach the arbitrator. Thus, the provisions of Section 8 of the Act, 1996 can be invoked by a defendant and not by the plaintiff.

The conditions which are necessarily to be satisfied under sub-sections (1) and (2) of Section 8 before the Court can exercise of its power are : (1) there is an arbitration agreement; (2) a party to the agreement brings an action in the Court against the other party; (3) subject matter of the action is the same as the subject matter of the arbitration agreement; (4) the other party moves the Court for referring the parties to arbitration before it submits his first statement on the substance of the dispute. (Ref.-- P. Anand Gajapathi Raju v. P.V.G. Raju, AIR 2000 SC 1886).

Section 8 of the new Act is not in pari materia with Section 20 of the old Act. It is only if in an action which is pending before the Court that a party applies that the matter is the subject of an arbitration agreement does the Court get jurisdiction to refer the parties to arbitration. Section 8 does not contemplate, unlike Section 20 of the old Act, a party applying to a Court for appointing an arbitrator when no matter is pending before the Court. [Ref.-- Sundaram Finance Ltd Versus NEPC India Ltd. AIR 1999 SC 565].

Appointment of arbitrator or arbitrators is governed only by the provisions of Section 11 of 1996 Act. Section 8 does not enable the court to appoint an arbitrator, as was the case under Section 20 of old Act. When an application under Section 8 is filed in court and the conditions provided under the section are satisfied, Court is bound to refer the parties to arbitration. The court is not called upon to require the parties to name the arbitrator or arbitrators and refer the dispute to that arbitrator. It only provides for an order referring the parties to arbitration. (Ref.-- M. Vijaya Narayanan v M. Prabhakaran, AIR 2006 Ker 373). **(M/s Rathore Builders Registered Partner**

Firm through Santosh Kumar Rathore v. State of U.P. through Collector Lalitpur and another, 2016 (116) ALR 202)

Ss. 34 and 36- Scope of Discussed

Once the arbitrator announces its award under the Arbitration and Conciliation Act, the same is open to challenge by making an application for setting aside the same under Section 34 of the Arbitration and Conciliation Act. Section 34 of the Act is quoted as under:-

"34. Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application furnishes proof that-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. -Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

After the award is made and time for making an application to set aside the award under Section 34 of the Act expires, or such application having been made is refused, the arbitral award becomes enforceable under the Code of Civil Procedure in the same manner as if it were a decree of a court. Section 36 of the Act is extracted below:-

36. Enforcement.-Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (V of 1908) in the same manner as if it were a decree of the Court. **(M/S Bharat Harmonium Works Thru Partner Ramesh Bahadur Singh v. State Of U.P. Thru Prin.Secy.Deptt. Of Law Civil Sectt.& Ors, 2016 (116) ALR 632)**

Benami Transactions (Prohibition) Act

Ss. 2(a), 3 and 4- Attractibility of

It is pleaded in plaint that plaintiff had purchased the disputed property from his own personal money, but property was purchased in the name of his brother, who had soled the same, later on, by registered sale-deed under challenged. If plaintiff-appellant's case is taken to be true, then alleged purchase by him was a 'benemi' transaction. The plaintiff-appellant's claim on disputed property is not as member of Hindu undivided family or the purchase for benefit of any coparcener or as a trustee. If the facts mentioned in plaint are taken to be true on its face value, then in such circumstances also, the plaintiff's suit cannot be decreed, as being barred by the provisions of the Benami Transactions (Prohibition) Act, 1988.

Therefore if plaint case is taken to be correct, in that case also case of the plaintiff was liable to be dismissed. The trial court had also considered the evidences, facts and circumstances of the matter and thereafter given finding of fact against the appellant which are based on apparently correct and acceptable findings. So the contentions of learned counsel for the appellant on merits are found unacceptable. **(Siyaram Saxena v. Bishambhar Dayal Saxena And**

Others, 2016 (131) RD 67)

Civil Procedure Code

S. 96- An application contending appeal undervalued it should be aggregate of value of suit and counter-claim- Application rejected – Justification- Valuation of an appeal would be valuation of the suit which would determine the jurisdiction and not contained value of suit and counter-claim

Learned counsel for the applicant placed heavy reliance upon the judgement rendered by Kerala High Court to urge that where the plaint claim has been allowed and the counter claim has been disallowed, the respondents were bound to challenge both the findings, therefore, the valuation of appeal would be the aggregate sum of the suit and counter claim. In the facts of the present case, the respondents challenged the judgement and decree of the suit, accordingly, valued the appeal; but have not challenged the dismissal of the counter claim in appeal. In such circumstances, the respondents cannot be compelled to value the appeal by adding valuation of the suit and counter claim. The valuation of the appeal would be valuation of the suit which would determine the jurisdiction.

The jurisdiction of the Appellate Court cannot be made dependent on the fluctuating valuation of the claim in appeal. The valuation of claim in appeal has relevance only for the purposes of court fee. The valuation for the purposes of determining jurisdiction and for the purpose of court fee are two distinct factors. They need not be identical or common. The appellant may restrict or relinquish part of the claim and accordingly pay proportionate court fee thereon.

The courts below in my opinion have correctly held that valuation of the suit would be valuation of the appeal for determining the jurisdiction of appellate court and not the combined value of the suit and counter claim. **(Ashok Kumar Singh Sengar v. Om Prakash Chaturvedi And 4 others, 2016 (1) ARC 880)**

S. 96, Order XLI- Bengal, Agra and Assam Civil Courts Act- Section 21- Court fees Act- Jurisdiction of the Appellate Court cannot be made dependent upon fluctuating valuation of claim in appeal- Valuation of Claim only relevant for purpose of Court fee, part of claim may be relinquished

The jurisdiction of the Appellate Court cannot be made dependent on the fluctuating valuation of the claim in appeal. The valuation of claim in appeal has relevance only for the purposes of court fee. The valuation for the purposes of determining jurisdiction and for the purpose of court fee are two distinct factors. They need not be identical or common. The appellant may restrict or

relinquish part of the claim and accordingly pay proportionate court fee thereon.

The courts below in Hon'ble High Court Judge opinion has correctly held that valuation of the suit would be valuation of the appeal for determining the jurisdiction of appellate court and not the combined value of the suit and counter claim. **(Ashok Kumar Singh Sengar v. Om Prakash Chaturvedi and others, 2016 (116) ALR 305)**

S. 100- Specific Relief Act, Ss. 34 and 41- There are concurrent findings of fact of two courts below that plaintiff- Appellant had failed to prove his plaint case regarding alleged agreement to sell between him and respondent No. 1- Effect of- No right accrues to any person in immovable property

Original Suit No. 59/ 2004, Shiv Sampat Vs. Sushil Kumar & others, was filed for relief of cancellation of sale deed, which was dismissed by judgment dated 17.11.2009 of Civil Judge (Junior Division), Chitrakoot. Against this judgment Civil Appeal no. 67/2009, Shiv Sampat Vs. Sushil Kumar & others was preferred, which was dismissed by judgment dated 07.08.2015 of Additional District Judge, Court No.-4, Chitrakoot with special cost. Against both the judgments of the trial court and the first appellate court, this second appeal has been preferred by the plaintiff of the original suit.

There are concurrent findings of fact of the two courts below that the plaintiff-appellant had failed to prove his plaint case regarding alleged agreement to sell between him and respondent no.-1 Sushil Kumar. Both the courts have given specific finding that there has been no agreement to sell between plaintiff-appellant and defendant-respondent, and that plaintiff-appellant had stated incorrect facts in pleading and evidence. Both the lower courts had given finding of fact that plaintiff-appellant could not prove grounds for cancellation of sale-deed mentioned in plaint. These findings have been given after consideration of facts, circumstances and evidences. In this matter plaintiff-appellant had pleaded his rights on basis of an unregistered agreement and had utterly failed to prove the same. It is settled legal position that no right can accrue to any person in immoveable property on basis of unregistered agreement.

On examination of the reasonings recorded by the trial court, which are affirmed by the learned first appellate court in first appeal, court is of the view that the judgments of the trial court as well as the first appellate court are well reasoned and based upon proper appreciation of the entire evidence on record. No question of law much less a substantial question of law was involved in this case before the High Court. No perversity or infirmity is found in the concurrent findings of fact recorded by the trial court that has been affirmed by

the first appellate court to warrant interference in this appeal. **(Shiv Sampat v. Sushil Kumar and others, 2016 (131) RD 145)**

S. 100- Second Aappeal- U.P.Z.A. and L.R. Act, S. 3(14)- Adverse possession –Plea of- Mere long period of time of possession not satisfy requirement of adverse possession.

In Maharaja Sir Kesho Prasad Singh Bahadur , it was held that in order to obtain a favourable finding of adverse possession, one must have to satisfy all the qualities of adequacy, continuity and exclusiveness. Reliance was placed on Kuthali Moothavur Vs. P. Kunharankutty AIR 1922 PC 181.

In the present case, in a very vague and cryptic manner, the plea of adverse possession has been taken in written statement. The defendant-appellant himself is not aware as to against whom he or his ancestors, as claimed, were holding property in dispute as alleged hostile possession. The exact time is also not there. It appears that the understanding of appellant was that mere long period of time of possession, if pleaded, would satisfy the requirement of adverse possession, if above period is more than 12 years. This is apparently against the well established legal requirement.

The defendant-appellant specifically pleaded that on persuasion of villagers his ancestors were permitted by Zamindar to occupy disputed land and that is how possession of defendant-appellant has continued. This was apparently a pleading of permissive possession and not hostile. Further, defendant-appellant did not adduce any evidence to show such permission granted by alleged Zamindar to ancestors of defendant-appellant to occupy disputed property. Further, no evidence has been led by defendant-appellant to show that construction over land in question was raised by predecessors of appellant or appellant himself. What has been done is that a defence has been taken and thereafter an attempt is being made to treat it as proved since that defence, according to appellant, has not been dislodged. This assumption is clearly erroneous. Thus, to my mind, initial onus stood discharged by plaintiffs-respondents and it shifted upon defendant to prove the facts pleaded by him, which he has failed. There is no pleading of adverse possession on the part of appellant in the manner required in law.

Moreover, assumption on the part of defendant-appellant that his plea of long standing possession would result in confirment of title upon him, is also fallacious inasmuch as if defendant-appellant otherwise did not hold title over disputed property, the same could not have been claimed by mere assumption of application of adverse possession or alleged long possession. Plea of adverse possession require to be established with substantive pleading and proof and it does not apply by default. Even the alleged long possession is not proved.

In the circumstances, in my view, the plea of adverse possession neither has

been taken with sufficient facts pleaded in the written statement nor any question can arise to lead evidence for something which is not pleaded.
Thus looking to the question of title of defendant-appellant on disputed premises, in absence of any pleading to this effect as also evidence, Court find no substance in the submission advanced by learned counsel for the appellant.
It only says that in second appeal filed under Section 100 C.P.C., Appellate Court shall not interfere with the findings of fact unless found perverse or where such findings stand vitiated on wrong test, on the basis of assumptions and conjectures. Since I do not find any perversity or any wrong assumption on the part of LAC is reversing judgment of Trial Court in respect to that part of issue 1 wherein Trial Court recorded its conclusion against plaintiff, despite holding him owner of land in dispute. **(Bans Raj v. Raj Pat and others, 2016 (3) AWC 2225)**

S. 114-Review- Scope of interference- There is limited scope of interference under the review jurisdiction

It is also to be noted that there is limited scope of interference under the review jurisdiction. This view find support from the judgment and order dated 31.10.2014 passed by this Court in Review Petition No. 517 of 2014; Smt. Sheshpati and others Vs. Ram Krishna. The relevant paragraphs on reproduction read as under:-

> "In this regard Hon'ble the Apex Court in the case of M/s. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 SC 1372, held that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. but lies only for patent error. Court did not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

Thus, in view of the abovesaid facts, review can be allowed only on (1) discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) on any analogous ground. But review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court.
In View of the above discussion , the law of review can be summarized that it

lies only on the grounds mentioned in Order 47, Rule 1 CPC . The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other' sufficient reason' must satisfy that the said reason is analogous to the conditions mentioned in Order 47, Rule 1 CPC. Under the garb of review, a party cannot be permitted to re-open the case and to gain a full-fledged inning for possible for the Court to take a view contrary to what had been taken earlier. Review lies only when there is error apparent on the face of the record and that fallibility is by the over-sight of the Court. **(Ram Pratap Dubey v. Harishchandra, 2016 (131) RD 15)**

Second Review Application –Maintainability of- Second review application cannot be maintained against order passed in earlier review application

The petitioner, who appears in person, could not demonstrate before this court as how a 2nd review application could be maintained against the order passed on earlier review application and that too on the same grounds which were subject-matter of first review/recall application. Filing of such application, in court's view, results in wastage of valuable time of the Court. In view of the above, this review/recall application No. 69346 of 2011 is dismissed. **(Deepak Kumar Gupta, Advocate v. Amrit Abhjijat, District Magistrate, Allahabad, 2016 (116) ALR 641)**

S. 115- Application for deciding a issue as preliminary issue –Rejection of- Revision against it- Whether it is revisable or not?- Held, not revisable.

Rejection of the application for deciding the issue as a preliminary issues does not comes within the definition of "an order passed in a case decided" hence not revisable under Section 115 CPC- Impugned order quashed. In view of settled proposition of law relating to the interpretation of an statute it may be safely held that unless an issue or controversy is determined or decided finally, it shall not be appropriate to say that "case has been decided" or the issue has been decided by the court to attract the revisional power conferred by Section 115 of the Code of Civil Procedure. **(Rajrani (Smt.) v. District & Session Judge Gonda And Anotehr , 2016 (1) ARC 900)**

Order 1, Rule 9- Suit –Misjoinder of party- Not a ground for vitiating the proceedings of suit

Original Suit No. 710/1986 (Shivraj Saran Agrawal v. Shambhal Gun House and 2 others), was filed by one partner of the dissolved firm (defendant no.-1) against other partners of the said firm (defendant nos. 2 & 3) for relief of accounting and permanent injunction. The said suit was decreed by the

judgement dated 24.05.1997 of the Court of Additional Civil Judge (/J.S.C.C), Moradabad, by which it was directed that decree for 3/10th share of firm defendant no.-1 be prepared in favour of plaintiff Shivraj Saran Agrawal, and the defendants are directed to hand over the possession of the disputed property to plaintiff and pay an amount of damages at the rate of Rs. 50/- per day till handing over of the possession.

Against the judgement of the trial court, defendant no.-1 - firm and defendant no.-2 Sri Krishna Avatar Agrawal had preferred Civil Appeal No. 80/1997 (M/s Shambhal Gun House & another v. Shivraj Saran Agrawal & another), which was heard and dismissed by the judgement dated 06.11.2008 of Additional District Judge, Court no.-1, Moradabad.

Aggrieved by the judgements of the Trial Court as well as the first appellate Court, the present second appeal is preferred on behalf of defendant no.-1 (dissolved partnership Firm) and defendant no.-2 of the original suit .

In this regard there is specific provisions of Order I, Rule 9 C.P.C, which reads as under:

> "No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:
>
> "Provided that nothing in this rule shall apply to non-joinder of a necessary party".

In present matter, since there is no non-joinder of necessary party, therefore in spite of impleadment of non legal entity plaintiff no.-1 (/appellant no.-1) being a mis-joinder of party in this case, such mis-joinder of a party cannot be a ground for vitiating the proceedings of suit or the judgments by trial court or first appellate court. **(M/S Sambhal Gun House And Others v. Sri Shiv Raj Saran Agarwal And Another, 2016 (116) ALR 257)**

Order 1, Rule 10- Impleadment of party- Petitioner not necessary or proper party -Test of –Mere interest of party in suit cannot be true test for being impleadment as party- Only necessary or proper party may be added.

By means of the present writ petition, the petitioners have challenged the impugned order dated 30.11.2015 passed by Additional District Judge, Court No.2, Sultanpur by which the petitioners' application for impleadment in Regular Suit No.192/97 has been rejected.

Opposite party no.4/Daya Ram filed a suit for permanent injunction in respect of the property mentioned in paragraph 3 of the plaint.

From the perusal of order 1 Rule 10 (2) CPC, it covers two types of of cases:-

(a) of a party who ought to have been joined but not joined and is a necessary party, and
(b) of a party without whose presence the question involved in the case cannot be completely decided.

The former is called a necessary party and the latter a proper party. Sub-R. (2) of O.1, R.10, therefore, is attracted when the question is covered by one of the above. A party seeking such a joinder as a proper party will have to prima facie establish that such a party has interest in the subject-matter of the litigation and as such should be before the Court.

The simple test in such controversy would be as to whether the presence of such a party is appropriate in view of the subject-matter in adjudication. If the answer be in the affirmative, joinder can be permitted. By reason of direct interest in the subject-matter or even by reason of eventual reliefs sought, such a test would be answered. Power being there, it is all a matter of appreciation of the controversy in issue and its possible ramifications.

O. 1, R. 10 (2), C.P. Code gives a very wide discretion to the Court to deal with any such situation which may result in prejudicing the interest of affected party if not impleaded in the suit and where the impleadment of the said party is necessary and vital for the decision of the suit. It is true that the discretion has to be exercised judicially but at the same time the concerned civil or appellate court where the suit on appeal is pending has also to take into consideration that the party which is necessary to be impleaded will be put to a greater difficulty if not impleaded by the plaintiff who may have ulterior motives of not impleading such party and if the decision is given which may affect the interest of the said party greater prejudice would be caused to the said party as a result of not impleading while no prejudice or loss would be caused to the plaintiff because he will have full opportunity to defend his rights and interest as against aggrieved party who has been impleaded as a party to the suit.

The important aspect which should be looked into by the Civil Courts while deciding the applications under O.1, R.10(2), C.P. Code is to avoid multiplicity of litigation and also conflicting decisions being passed in different suits which will be safeguarded as a result of allowing necessary party to be impleaded in the suit.

As such, court did not find any illegality or infirmity in the impugned order dated 30.11.2015 passed by Additional District Judge, Court No.2, Sultanpur. **(Paras Nath & another v. Addl. District Judge Court No. 2 Sultanpur & others, 2016 (3) ALJ 311)**

Order 1, Rule 10- Impleadment –Specific Performance Suit- Transferee pendente lite is a necessary and proper party and should be impleded

In a suit for specific performance, the defendant transferred the property

during the pendency of the suit. The third party filed an application stating that he has purchased the property, therefore, is a proper party to the lis, thus, may be impleaded. The Trial Court rejected the application, however, in revision the application was allowed.

In Thomson Press (India) Ltd. V. Nanak Builders and investors P. Ltd. And others, 2013 (98) AKR 280 (SC) the Hon'ble Supreme Court observed that transferee pedente lite is a necessary and proper party and should be impleaded. This Court declined to interfere with the impugned order. The petition being devoid of merit is accordingly dismissed **(Hari Kishan and another v. State of U.P. and others, 2016 (131) RD 640)**

Order VI, Rule 17- Amendment of plaint- Principles established by judicial divisions in respect of sought should not cause prejudice to other side which cannot be compensated

The principles established by judicial decisions in respect of amendment of plaint are :

(i) All amendments will be generally permissible when they are necessary for determination of the real controversy in the suit;

(ii) All the same, substitution of one cause of action or the nature of the claim for another in the original plaint or change of the subject-matter of or controversy in the suit is not permissible;

(iii) Introduction by amendment of inconsistent or contradictory allegations in negation of the admitted position on facts, or mutually destructive allegations of facts are also impermissible though inconsistent pleas on the admitted position can be introduced by way of amendment;

(iv) In general, the amendments should not cause prejudice to the other side which cannot be compensated in costs; and

(v) Amendment of a claim or relief which is barred by limitation when the amendment is sought to be made should not be allowed to defeat a legal right accrued except when such consideration is out-weighed by the special circumstances of the case.

Amendment can be refused in the following circumstances :

(i) where it is not necessary for the purpose of determining the real question in controversy between the parties;

(ii) where the plaintiff's suit would be wholly displaced by the proposed amendment;

(iii) where the effect of amendment would take away from the defendant a legal right which has accrued to him by lapse of time;

(iv) where the amendment would introduce totally different, new and inconsistent case and the application is made at a late stage to the proceeding; and

(v) where the application for amendment is not made in good faith.
Accordingly, in brief, it can be held that all amendments should be allowed which satisfy the following conditions :
(a) of not working injustice to the other side; and
(b) of being necessary for the purpose of determining the real question in controversy between the parties. They should be refused only when the other party cannot be placed in the same position as if the pleading had originally been correct but the amendment would cause him an injury which cannot be compensated by costs.
However, under the cover of seeking amendment it is not open to any party to substitute a new cause of action or to change the nature of the suit or to substitute the subject-matter of the suit except when the Court thinks it just and necessary. (See Ganeshi Rai v. Ist Additional District Judge A.I.R. 1992 All.25) and no amendment of plaint can be allowed if because of lapse of time some right has vested in the other party and the effect of allowing amendment would tantamount to the taking away of that right. Allowing such amendment cannot be compensated for by costs.

Thus, keeping in view the abovesaid facts as well as the facts that no reason has been given by the revisional court while passing the order dated 09.05.2012 whereby allowing the revision and setting aside the order dated 08.08.2011 passed by trial court/VIIth Additional Civil Judge (Jr. Div.), Gonda by which the petitioner's application for amendment has been allowed. the said order is liable to be set aside. **(Mahajan Singh v. I Additional District Judge, Gonda & Others, 2016 (115) ALR 789)**

Order VI, Rule 17-Amendment of plaint-Limitation –Once the amendment of plaint is allowed, it has to relate back to the date of filing suit

The plaintiffs' suits (Nos. 124 of 1982 and 125 of 1982) for declaration of title and injunction were dismissed by the learned Trial Court. In first appeal, the learned District Judge reversed the decree of dismissal and decided the suits in favour of the plaintiffs. The said decree has been affirmed in second appeal by the Bombay High Court. Aggrieved by this the present appeals have been filed by the defendants in the two suits.

So far as the plea of limitation is concerned there can be no manner of doubt that the amendment of the plaint(s) to incorporate the relief of declaration of title has necessarily to relate back to the date of filing of the suit. Once the said amendments were allowed and were not challenged by the defendants, the issue with regard to limitation has to be decided in favour of the plaintiffs. **(Vasant Balu Patil and others v. Mohan Hirachand shah and others 2016 (131) RD 147)**

Order VI, Rule 17 -Amendment of plaint –Condition for – Allowance of- Permissible if necessary for determination of real controversy in the suit

In nutshell, the provisions of amendment of pleading provided under Order 6 Rule 17 CPC as exits today can be summarized and crystallized as under:-

" Order 6 Rule 17 of the Code deals with amendment of pleadings . By Amendment Act 46 of 1999, this provision was deleted. It has against been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment to any stage. Now , if application is filed after commencement of trial, it has to be shown that in spite of the due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous application which are filed to delay the trial. There is no illegality in the provision."

The principles established by judicial decisions in respect of amendment of plaint are :

(i) All amendments will be generally permissible when they are necessary for determination of the real controversy in the suit;

(ii) All the same, substitution of one cause of action or the nature of the claim for another in the original plaint or change of the subject-matter of or controversy in the suit is not permissible;

(iii) Introduction by amendment of inconsistent or contradictory allegations in negation of the admitted position on facts, or mutually destructive allegations of facts are also impermissible though inconsistent pleas on the admitted position can be introduced by way of amendment;

(iv) In general, the amendments should not cause prejudice to the other side which cannot be compensated in costs; and

(v) Amendment of a claim or relief which is barred by limitation when the amendment is sought to be made should not be allowed to defeat a legal right accrued except when such consideration is out-weighed by the special circumstances of the case.

Amendment can be refused in the following circumstances :

(i) where it is not necessary for the purpose of determining the real question in controversy between the parties;

(ii) where the plaintiff's suit would be wholly displaced by the proposed amendment;

(iii) where the effect of amendment would take away from the defendant a legal right which has accrued to him by lapse of time;

(iv) where the amendment would introduce totally different, new and

inconsistent case and the application is made at a late stage to the proceeding; and

(v) where the application for amendment is not made in good faith.

Accordingly, in brief, it can be held that all amendments should be allowed which satisfy the following conditions :

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

(b) of being necessary for the purpose of determining the real question in controversy between the parties. They should be refused only when the other party cannot be placed in the same position as if the pleading had originally been correct but the amendment would cause him an injury which cannot be compensated by costs.

However, under the cover of seeking amendment it is not open to any party to substitute a new cause of action or to change the nature of the suit or to substitute the subject-matter of the suit except when the Court thinks it just and necessary. (See Ganeshi Rai v. Ist Additional District Judge A.I.R. 1992 All.25) and no amendment of plaint can be allowed if because of lapse of time some right has vested in the other party and the effect of allowing amendment would tantamount to the taking away of that right. Allowing such amendment cannot be compensated for by costs. **(Mahajan Singh v. 1st Additional District Judge Gonda and others, 2016 (131) RD 694)**

Order VI, Rule 17- Application for amendment in written statement – Rejection- Legality of- He cannot be allowed to take 'U' turn from earlier statement made by him in written statement

In the instant matter, from the perusal of the judgment and order passed by the Court below, the admitted position which emerge out is that petitioner's application for amendment in written statement has been rejected on the ground the petitioner cannot resile from the admission made by him earlier in the written statement. Keeping in view the above said fact as well as settled proposition of law, defendant cannot be allowed from reciling rather taking U turn form the earlier statement made by him in the written statement in the garb of amendment that will prejudice the case of the plaintiff and it will cause injustice to him.**(Jagroop Singh v. District Judge, Hardoi and others, 2016 (131) RD 699)**

Order-VII, Rule-10- Permanent injunction-Return of plaint on the ground that dispute in suit was governed by arbitration agreement Dependent-Respondent was not party to agreement- Hence, application submitted by defendant respondent for rejection of plaint on the ground of existence of arbitration agreement was not maintainable- Validity of

This appeal under Order 43 Rule 1(a) C.P.C. has come up at the instance of plaintiffs arising from order dated 23.12.2015 passed by Miss.

Sweta Verma, Additional Chief Judicial Magistrate/ Additional Civil Judge (Senior Division), Court No. 12, Allahabad, returning plaint under Order VII Rule 10 C.P.C. in Original Suit No. 889 of 2015 on the ground that there is arbitration agreement between parties and, therefore, under Section 8 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act, 1996"), parties must avail their remedy before Arbitrator and suit cannot proceed.

Cause of action and relief sought in suit when are interconnected, cannot be split so as to hit some part thereof by referring to Section 8 of Act, 1996 and for other part to allow suit to continue. In the present case however even that situation has not occurred since court below has returned plaint under Order VII Rule 10 CPC holding that dispute in suit is governed by arbitration agreement and parties must relegate their remedy thereunder. It has clearly committed manifest error having ignored the fact that defendant-respondent 2 is not party to either of agreement, i.e., MOU 20.09.2011 and Builder Agreement dated 20.10.2011, hence application submitted by defendant-respondent 2 under Section 8 of Act, 1996 read with Order VII Rule 11 CPC for rejection of plaint on the ground of existence of arbitration agreement was not maintainable as there was no agreement enforceable in law at the instance of defendant-respondent 2 seeking arbitration in a matter with plaintiffs-appellants. Unless there is an agreement between parties to suit Section 8 would not be attracted.

In the present case defendant-respondent 2 has no such agreement with plaintiffs-appellants and in that view of the matter there was no justification for court below to reject/return plaint under Order VII Rule 10 and 11 CPC by allowing application filed by defendant-respondents ignoring the fact that defendant-respondent 2 has no binding agreement with plaintiffs-appellants containing arbitration clause enforceable in law. The impugned order, therefore, cannot sustain. **(Smt. Rita Bagga and another v. Milan Developers and another, 2016 (3) AWC 2362)**

Order VIII, R. 6 –A (2) and Order XX, Rule 19(1) –Counter Claim- Nature of- Counter- Claim has effect as a cross-suit to enable the court to pronounce the judgment in the same suit both on the original claim and the counter claim.

Under Order 8, Rule 6-A (2) of the C.P.C. 1908, it is provided that a counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce final judgment in the same suit, both on the original claim and the counter-claim and Order 8 Rule 6-A (3) entitles the plaintiff to file a written statement in answer to the counter-claim while Order 8 Rule 6-A (4) clearly provides that the counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

Recognizing that a counter-claim is a cross-suit and not a separate suit, there is firstly, no registration of a counter-claim as a separate suit. Secondly, the Legislature has made a provision in Order 20, Rule 19(1) C.P.C., 1908 that whenever a set-off or counter-claim is allowed, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant and shall be for the recovery of any sum which appears to be due to either party. Therefore, essentially a setoff or counter-claim is allowed, then the provision of Order 20, Rule 19(1) of the C.P.C., 1908 comes into play.

There is no specific provision for drawing a separate decree for a counter-claim in as much as a counter-claim is not registered separately. What the law contemplates is treating the counter-claim as a cross-suit.

Consequently, when a counter-claim is allowed or partly granted or dismissed by a common judgment, a single decree is drawn up by the Court and no separate decrees are drawn up in respect of the plaint and the counter-claim. Similarly, under Order 20, Rule 19(1) C.P.C., 1908, no separate decree is required to be drawn if counter-claim is allowed, but just one decree is provided therein. **(Ashok Kumar Singh Sengar v. Om Prakash Chaturvedi and others, 2016 (116) ALR 305)**

Order IX, Rule 13- Provincial Small Causes Courts Act- Sec. 17, Proviso- Nature of- Mandatory- Non compliance would entail dismissal of application under Order IX, Rule 13 CPC- Conditions enumerated to be satisfied

The present case are that opposite parties/ land lord filed a suit for ejectment and recover of rent on the ground of default, structural additions and alterations . Accordingly a SCC Suit no. 54 of 2006 has been registered before the Judge, Small Cause Court/ Additional District Judge, Court no.13, Lucknow, decided ex parte vide judgment and decree dated 1.9.2007.

Thereafter, on 2.2.2008 Tenant/ revisionist filed an application under Order IX Rule 13 CPC alongwith application under Section 17 of the

Provincial Small Cause Courts Act, registered as Misc. Case No.2C of 2008 and on 7.2.2009, land lord/ respondent filed an objections.

By an order dated 1.2.2016 Misc. Case no.2C of 2008 was dismissed . In view of the said factual back ground present revision has been filed under Section 25 of the Provincial Small Cause Courts Act.

A bare reading of the provision shows that the legislature have chosen to couch the language of the proviso in a mandatory form and court see no reason to interpret, construe and hold the nature of the proviso as directory. An application seeking to set aside an ex-parte decree passed by a Court of Small Causes or for a review of its judgment must be accompanied by a deposit in the court of the amount due from the applicant under the decree or in pursuance of the judgment.

In the case at hand, the application for setting aside ex parte decree was not accompanied by deposit in the court 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 and allowed."

The same view has been reiterated by this Court in the case of Jai Prakash Pandey Vs. Baboo Lal Jaiswal, 2009 (3) ARC 497 after placing reliance of the judgment given by Hon'ble the Apex Court in the case of Kedarnath that the provisions of Section 17 of the Provincial Small Cause Courts Act are mandatory in nature and non compliance would entail dismissal of the application and such non compliance cannot be condoned or overlooked by the Court.

In the instant matter, it is not in dispute between the parties that an application Order IX Rule 13 CPC has been moved by the tenant/ revisionist for setting aside ex parte decree dated 1.9.2007 passed in SCC Suit No. 54 of 2006 as the revisionist has not deposited the decreetal amount as per the provisions as provided under Section 17 of the Provincial Small Cause Courts Act so an order dated 1.2.2016 was passed in Misc. Case No.2C of 2008.

However in the instant matter an offer given by learned counsel for the opposite parties/ landlords that in case tenant/ revisionist deposits the entire decreetal amount in that circumstances, application moved by him under Order IX Rule 13 CPC may be considered in accordance with law and the same is accepted by learned counsel for the revisionist.

For the foregoing reasons, revision is allowed. **(Shakeel Ahmad v. Zameer Ahmad Siddiqui and another, 2016 (116) ALR 574)**

Order XVIII, Rule 17- Recalling of witness under Order XVIII, R 17- Ambit and Scope

In this case, the revisionist has come up challenging the order dated 18.11.2015 whereby his application being Paper No. 108-C for seeking recall of the witness nos. PW-1, PW-2 and PW-3 was moved under Order 18 Rule 17 of C.P.C.

the Hon'ble Apex Court in the case of Vadiraj Naggappa Vernekar Vs. Sharadchandra Prbhakar Gogate, 2009 (4) SCC 410. Paragraphs 25, 28 and 29 of the aforesaid judgment are quoted as under:-

> "25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

A reference may also be made to a decision of Hon'ble Apex Court in the case of K.K. Velusamy Vs. N. Palanisamy, 2011 (11) SCC 275. Relevant paragraph 19 of the aforesaid judgment is quoted as under:-

> "19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs."

A reference may also be made to a decision of the Hon'ble Apex Court in the case of Bagai Construction Vs. Gupta Building Material Store, 2013 (14)

SCC 1, wherein the Hon'ble Apex Court has held that when evidence is closed, arguments are heard and case is to come up for judgment, Order 18 Rule 17 should not be pressed into service.

In such view of the matter, court did not find any illegality in the order impugned herein. In the facts and circumstances of the case as already discussed, the present revision lacks merit and is accordingly dismissed. **(Pankaj Kumar v. Smt. Chhaya and others, 2016 (131) RD 294)**

Order XLI, Rule 9- Limitation Act, Sec. 5- Delay condonation application in filing appeal of- Rejection of

The applicant filed a suit being suit No. 1309 of 1994 for cancellation of an agreement to sale which was decreed by judgment and order dated 23rd January, 2010, aggrieved the applicant preferred a time barred appeal.

The delay condonation application under Section 5 of the Limitation Act Act which was registered as Misc. Case being Misc. Case No. 530 of 2011. The lower appellate court rejected the sec. 5 application by the impugned order dated 20th, May 2013. The applicant has approached this Court assailing the order passed by the appellate court/ Additional District Judge, Court No. 5 Agra under Article 227 of the Constitution.

The question for determination is whether the appeal would stand dismissed upon dismissal of an application filed under Section 5 of the Limitation Act for condonation of delay.

This Court in Prem Wati and another v. Munni Devi @ Minakshi and another, 2009 (2) ADJ 56 : 2009 (2) AWC 1099, relying upon the aforementioned judgments and several other judgments of various High Court held that rejection of an application for condoning the delay in filing the appeal is a decision in appeal, therefore, even if no order is passed on the appeal while dismissing the delay codonation application would have no bearing, the appeal would automatically stand dismissed.

Similar view was taken in Smt. GeetaBal Goyal and another v. Kailash Chandra and others, 2009 (1) ALJ 350: 2009 (1) AWC 573, wherein holding that the rejection of memorandum of appeal where a decision is given on merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary grounds i.e., limitation or default in printing, it must be held that such dismissal confirms the decision of the appellate court on merits itself.

The Law, therefore, on the subject is clear and unequivocal that an appeal presented beyond time was nevertheless an appeal in the eyes of law for all purposes and an order dismissing the appeal on whatever ground was a decree that could be subject to second appeal. Rule 3A of Order XLI introduced by

Amendment Act 104 of 1976, did not in any way affect the principle. An appeal of the code had to be disposed of according to law and a dismissal of an presentation, upon dismissal of the application for condonation of the delay, is in substance and effect the confirmation of the decree appealed against. Thus, the position that pronouncements is that an appeal filed along with an application for condonation of delay when dismissed on the refusal to condone the delay is nevertheless a decision in the appeal. **(Aruna Sahkari Awas Samiti Ltd. V. Prem Singh and another, 2016 (3) AWC 2496)**

Order XLI, Rule 27- Additional evidence at appellate stage not open to make fresh allegation

The applicant instituted a suit for permanent injunction which was dismissed on 30 March 2011. Aggrieved, the applicant preferred an appeal. During pendency of the appeal, an application was moved under Order 41 Rule 27 C.P.C. for bringing on record the document as additional evidence, the appellate court rejected the application by the impugned order.

It is not in dispute that the document was in the knowledge of the applicant, but no effort was made by the applicant to bring on record, before the trial court, after obtaining certified copy of the deed from the office of the Registrar. It is, therefore, not open to the applicant, at the appellate stage to make fresh allegation and call upon the other side to admit or deny the additional evidence sought to be taken on record. Such an attempt is contrary to the requirement of Order 41 Rule 27 of C.P.C., therefore, the additional evidence in order to enable the applicant to remove certain lacuna cannot be permitted.

In view of the above, I find no illegality, infirmity or jurisdictional error in the impugned order, this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution declines to interfere with the impugned order. **(Pramod Kumar Saini v. Vasheer Mohd. Baina, 2016 (131) RD 649)**

Order XLI, Rule 31- Suit for permanent injunction based on adverse possession- The trespasser could not get relief available to owner against real owner on basis of adverse possession

In Original Suit No. 1184/2002 (Prem Prakash Sharma v. Uttar Pradesh Awas Evam Vikas Parishad & another), plaint case in brief was that earlier owner of disputed land was Kishan Lal, but plaintiffs had occupied the said land about 28-29 years ago and had raised his construction and boundary wall over it. From then he is continuing in his open adverse possession over this property. Said Kishan Lal had accepted the adverse possession of plaintiff and had not initiated any legal proceeding against him. But in year 1985, and then in May, 2002 the officials of defendant U.P. Awas Evan Vikas Parishad had

threatened the plaintiff to demolish his constructions and taken its possession forcibly. Therefore he has filed suit for permanent injunction restraining the defendants from demolishing the construction of plaintiff and interfering in his peaceful possession.

It is proved, and also admitted fact during the evidence, that disputed land has been acquired in favour of defendants U.P. Awas Evam Vikas Parishad. It is also settled legal possession that Civil Court has no jurisdiction to quash the acquisition proceedings or declared it as illegal, void or ineffective. Therefore after the acquisition of said property the status of defendants-appellant becomes that of its true owner, and in absence of any other right, the status of plaintiff-respondents becomes that of a trespasser, therefore even if the plaintiff-respondents had the possession of disputed property, he cannot acquire the right to get injunction against true owner, that is defendants-appellants.

A trespasser cannot get relief available to owner, against real owner, on the basis of adverse possession. In case of long continuous adverse possession, the owner may be deprived of his legal right to get back his possession from the trespasser because his such right to get such remedy would be time barred. In such circumstances, right of ownership would exist and continue, but his remedy may be barred by law of limitation. In other words long uninterrupted adverse possession of a trespasser may bar the remedy to owner if he seeks it against trespasser after the lapse of period of limitation. In such situation also his right exists but remedy is barred by law of limitation. The unauthorized possessor of any property may have good title against all the other persons but not against the true owner. Therefore, in any case if the trespasser is in wrongful possession, he cannot succeed in the legal proceedings for the relief of declaration or recognition of title in garb of permanent injunction against real owner. Plea of acquiring any right or title of trespasser on basis of adverse possession, against the true owner, can be raised only in defence as defendant.

In present case plaintiff-respondents have claimed their right on disputed property as owner, on basis of plea of long adverse possession, which they have failed to prove. Therefore their original suit and the first appeal was rightly dismissed.

On the basis of above discussions, it is explicitly clear that judgment of lower appellate court is erroneous and totally perverse without following procedure of law, without appreciating or reversing the judgment of trial court and is without any merit. Since these findings of trial court is found correct that plaintiff has failed to prove his case and court has no jurisdiction to decide the matter in hand, therefore the judgment of trial court dismissing the original suit is found correct which is, hereby, confirmed. **(U.P. Awas Evam Vikas Parishad and another v. Prem Prakash Sharma, 2016 (2) AWC 1869)**

Order XLI, Rule 33- Scope of –Appellate Court has power to pass any decree which ought to have been passed

This provision makes it clear that the appellate court has power to pass any decree which ought to have been passed. It is admitted case of the parties that plaintiff Amarnath had executed the registered sale-deed dated 20.07.2004 of his whole share in said land in favour of defendant Bhuwaneshwar Prasad Gupta for consideration of Rs. 3,40,000/- and had received Rs. 1,76,000/- as sale consideration from defendant. It is also admitted that at the time of registration of said sale-deed the defendant had agreed to pay remaining consideration of Rs. 1,64,000/- to the plaintiff within one month, but had not paid remaining consideration to plaintiff. Therefore plaintiff is entitled to receive remaining unpaid consideration from defendant. Even the firstappellate court had also held that the plaintiff-appellant is entitled to recover his loss from defendant-respondent. This finding was never challenged.

Conventionally, this relief is sought in every plaint that if the plaintiff is found entitled for any relief, it may be granted to him. Also, conventionally this issue is framed in every plaint that to what relief, if any, plaintiff is entitled. The purpose of these two practices is that if the plaintiff is found entitled for any relief, then the Court should and may grant such relief, without going into minor technicalities. It comes within inherent jurisdiction of the Court. In present matter also the plaintiff had prayed for grant of any relief, to which he is found entitled; and also issue no. 9 was framed by the trial Court as to what relief, plaintiff is found entitled. In the present matter it is found that plaintiff-appellant had sold his property to defendant-respondents and had received part consideration. He has been found entitled for remaining unpaid consideration, as discussed above. Therefore, he is entitled for the decree of payment of unpaid consideration. Apart from it, as discussed above, this is a fit case where the powers of Court under Rule 13 of Order 41 C.P.C should be exercised.

Therefore, this appeal is allowed, the judgment and decree of trial court in original suit no. 115/2006 as well as of lower appellate court in Civil Appeal no. 23/2013 are set aside. **(Amarnath v. Bhuwaneshwar Prasad Gupta, 2016 (116) ALR 701)**

Constitution of India

Art. 226- Power of Attorney Act- Writ petition U/A 226 of constitution of India can be filed by a power of attorney holder

When a writ petition under Article 226 of the Constitution is instituted through a power of attorney holder, the holder of the power of attorney does not espouse a right or claim personal to him but acts as an agent of the donor of the

instrument. The petition which is instituted, is always instituted in the name of the principal who is the donor of the power of attorney and through whom the donee acts as his agent. In other words, the petition which is instituted under Article 226 of the Constitution is not by the power of attorney holder independently for himself but as an agent acting for and on behalf of the principal in whose name the writ proceedings are instituted before the Court.

Having held so, we must, at the same time, emphasize the necessity of observing adequate safeguards where a writ petition is filed through the holder of a power of attorney. These safeguards should necessarily include the following:

(1) The power of attorney by which the donor authorises the donee, must be brought on the record and must be filed together with the petition/application;

(2) The affidavit which is executed by the holder of a power of attorney must contain a statement that the donor is alive and specify the reasons for the inability of the donor to remain present before the Court to swear the affidavit; and

(3) The donee must be confined to those acts which he is authorised by the power of attorney to discharge.

For these reasons, we hold and have come to the conclusion that the question referred for adjudication before the Full Bench must be answered in the affirmative and is accordingly answered, subject to due observance of the safeguards which we have indicated above. **(Syed Wasif Husain Rizvi v. Hasan Raza Khan & 6 Ors. 2016 (1) ARC 872)**

Art. 226- Scope of –Quashing of original proceedings before the statutory Court- Held, Not permissible unless barred under any Law or suffers from lack of jurisdiction

Constitution Bench of Supreme Court in State of M.P. v. Bhai Lal Bhai, AIR 1964 SC 1006 has held that in exercise of writ jurisdiction, the original proceeding before the statutory court should not be quashed, unless it is barred under any law or suffers from lack of jurisdiction. The present proceedings do not come in those categories. **(Parmeet Singh and another v. Collector/District Magistrate, Barabanki and others, 2016 (34) LCD 1031))**

Art. 227- Consideration for- interference with the concurrent finding of fact recorded by two courts below –Discussed

This petition filed under Article 227 of the Constitution of India impeaches the validity of the judgment and order dated 12.02.2013, passed by the prescribed authority, whereby the application moved by respondent no.3 under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 (hereinafter referred to as 'the U.P. Act No.13 of 1972')

for eviction has been allowed.

The petitioner also challenges the order dated 08.03.2016, passed by the appellate court, whereby the Rent Appeal preferred by the petitioner against the order of the prescribed authority, has also been dismissed.

Court is afraid while hearing the petition under Article 227 of the Constitution of India in a matter where finding of facts are concluded by both the courts below, this Court can interfere unless, of course, any apparent perversity in the findings can be pointed out. Having perused the judgment and order passed by the prescribed authority as well as the appellate court, it cannot be said that the findings suffer from perversity to the extent that the same may be warranted to be interfered with in these proceedings under Article 227 of the Constitution of India.

In the result, the petition deserves to be dismissed, which is hereby dismissed.

(Asad Ali v. Special Judge E.C.Act/District Judge Hardoi And Ors., 2016 (116) ALR 624)

Court Fees Act

Sections 7 (iv-A), Schedule II, Article 17(iii)- Payment of court fee in declaratory suit with no consequential relief has to be paid in accordance with Law U/A 17 (iii) of Schedule II of above mentioned Act.

The position has now been crystallized that the matter relating to valuation of suit and payment of Court-fee solely rests upon the pleadings and the relief claimed in a particular suit.

The similar controversy has been considered by Hon'ble Apex Court. The principle regarding payment of Court-fee has been dealt by Hon'ble Apex Court in case of Shailendra Bhardwaj and others vs. Chandra Pal and another (2013) 1 Supreme Court Cases 579. The relevant paragraphs dealing with the controversy is being reproduced herein below :

> "8. On comparing the above mentioned provisions, it is clear that Article 17(iii) of Schedule II of the Court Fees Act is applicable in cases where the plaintiff seeks to obtain a declaratory decree without any consequential relief and there is no other provision under the Act for payment of fee relating to relief claimed. Article 17(iii) of Schedule II of the Court Fees Act makes it clear that this article is applicable in cases where plaintiff seeks to obtain a declaratory decree without consequential reliefs and there is no other provision under the Act for payment of fee relating to relief claimed. If there is no other provision under the Court Fees Act in case of a suit involving cancellation or adjudging/declaring void or voidable a will or sale deed on the question of payment of court fees, then Article 17(iii) of Schedule II shall be

applicable. But if such relief is covered by any other provisions of the Court Fees Act, then Article 17(iii) of Schedule II will not be applicable. On a comparison between the Court Fees Act and the U.P. Amendment Act, it is clear that Section 7(iv-A) of the U.P. Amendment Act covers suits for or involving cancellation or adjudging/declaring null and void decree for money or an instrument securing money or other property having such value.

From the perusal of proposition of law laid down in Shailendra Bhardwaj Vs. Chandra Pal (Supra), it can safely be deciphered that Court fee in declaratory suit with no consequential relief is to be paid in accordance with law under Article 17(iii) of Schedule-II of the Court Fees Act of 1870 where there is no provision elsewhere in the Act for such suits. It clearly indicates that the provisions of Article 17 (iii) of the Schedule-II of Court Fees Act is residuary in nature and is attracted only in respect of category of cases not otherwise provided in the Act. The amending provisions of Court Fees Act has been well appreciated by Hon'ble Apex Court and it categorically lays down payment of Court fee in the cases where suit is for or involving cancellation or adjudging/declaring null and void,decree for money or instrument under Article 17 (iii) of the Court Fees Act would not apply. The U.P. Amendment Act, therefore, is applicable in the present case despite the fact that no consequential relief has been claimed.

In view of the categorical guidelines of the Apex Court propounded in the case referred to above, the learned Court below has rightly directed the plaintiff-appellant to pay the Court fee in terms of Article 7(IV-A) of Court Fee Act 1870 as amended by U.P. Amendment Act.

In view of the reasons stated above, court is of the opinion that learned court below has rightly recorded the finding in respect to valuation of suit and for payment of court fee in accordance with Section 7(IV-A) of Court Fees Act, 1870 and has not committed any error of law. **(Ashok Kumar Singh v. Smt. Meera Rathore @ Sitanshu and others, 2016 (116) ALR 101)**

Criminal Procedure Code

S. 154- FIR –Delay in lodging- Offence of rape -Effect of

In the present case, according to the chick report, the occurrence took place about 3 to 4 months prior to the lodging of the first information report which was lodged on 28.02.2008 at 16:10 hrs. The distance of the police station from the place of occurrence being 4 Kms. Now it has to be seen, whether any explanation has been given by the prosecution for the delay in lodging the first information report and whether the said delay is reasonable in the peculiar facts of the case.

But in this particular case, the complainant kept mum not for the reputation of her family but she said that she kept mum due to fear and threaten to her life. For a moment, keeping a side this explanation, coming to the incident of 23.02.2008 when the accused again took away the victim who was returned and dropped her at the door of her house on 24.02.2008 but again the informant did not lodge the report and from 24.02.2008 to 28.02.2008, she waited for what, is not clear from the record. Thus, according to the informant, due to fear, she did not report both the matters to the police. The feeling of self-preservation is generally carried by the people but repeated injury to the reputation and self-respect and physical violence with a young daughter should not have been tolerable to the informant.

PW-1 Nirmala has stated that she is ignorant about any litigation between Babban Giri father of the scribe and the accused. Thus, shadow of doubt has been cast on the first information report itself. Hence, I conclude that besides there being inordinate delay in lodging the first information report, there is shadow of doubt on the first information report itself which leads to the conclusion that there are chances of embezzlement and the exaggeration in the first information report. Whereas PW-2 the prosecutrix has admitted that there is enmity between her family and the family of the accused inasmuch as civil and revenue litigation were pending between both the parties so chances of embezzlement and exaggeration in FIR would be possible. Hence FIR would not be reliable. **(Daya Shankar Giri v. State of U.P., 2016 (3) ALJ 659)**

Sections 156(3), 401-- At the pre cognizance stage when only a direction has been issued by the Magistrate under section 156(3) Cr.P.C. to investigate, Order challenged through this revision-Held, order was only directing the police to investigated the case- Revisionist were prospective accused persons- No right to challenge.

In the case of Father Thomas v. State of U.P. and another, 2011(72) ACC 564 (F.B.), it has been held “at the pre cognizance stage, when only a direction has been issued by the Magistrate under section 156(3) Cr.P.C. to

investigate, the prospective accused has not no locus standi to challenge such direction for investigation of a cognizable case before cognizance or the issuance of process. An order under Section 156(3) Cr.P.C. passed by a Magistrate directing a police officer to investigate a cognizable case is not an order which impinges on the valuable rights of the party. An order by the Magistrate for the investigation is an ancillary step in aid of investigation and trial, and is interlocutory in nature, similar to order granting bail, calling for records, issuing search warrants, summoning witnesses and other like matters which do not infringe upon valuable rights of a prospective accused and hence not amenable to challenge in a criminal revision in view of bar the contained in section 397(2) of the Code."

In the recent judgment of *Jagannath Verma v. State of U.P., 2015 (88) ACC 1(LB-F.B.),* another Full Bench of this Court while reiterating the law laid down in *Father Thomas* case has held that a direction to the police to register a first information report in regard to a case involving a cognizable offence and for investigation is interlocutory in nature and, therefore, attracts the bar under sub section 2 of section 397 of the Code. However, if the application under section 156(3) Cr.P.C. is rejected, the rejection order cannot be termed as interlocutory order and such an order is amenable to the remedy of criminal revision under section 397 Cr.P.C. and in such case the prospective accused or the person suspected of having committed a crime is entitled to an opportunity of being heard.

As in the present case the impugned order is an order directing the police to investigate the case, the revisionists, who are prospective accused persons, have no right to challenge this order by way of revision. **[Brijesh @ Sonu and others Revisionist v. State of U.P. & Another, 2016 (93) ACC 743 (Allahabad High Court)]**

S. 311 – Section 311 Cr.P.C. empowers a court to recall a witness for the purpose of re-examination and not for cross-examination

First of all it may be observed that witness may be cross-examined in order to impeach his testimony with regard to his previous statement and not with regard to the statement which he might give subsequently after having being examined in the court. This process can possibly never end and witnesses may go on giving many statements contrary to the facts about which they have already stated in the court. If before being examined in the court witness had given statements which were contradictory in nature, then he can always be cross-examined with regard to it and his attention may be drawn to the same and he may be confronted under section 145 of the Evidence Act with such previous contradictory statements.

It is so apparent that when a witness is being examined in the court there is no question to cross-examine him with regard to his future statements which he has not yet given. Apart from this as has already been said that if subsequently after the deposition of witness is over, he gives at different forums any other statement incompatible with his earlier deposition in the court, it is so very difficult to know or guess the possible reasons behind the same. If the witness shall be called back to explain such incompatibilities he may offer some kind of explanation or the other in this regard. But thereafter again after leaving the court he may give yet further inconsistent statements. Such kind of situation would lead the courts in utter wilderness and might even result in an anarchic situation. There is no other option for the courts than to proceed according to the procedure established by law.

Apart from this we should also not loose sight of the fact that the power under section 311 Cr.P.C. is not meant for recalling a witness for the purpose of cross-examination. Section 311 Cr.P.C. empowers a court to recall a witness for the purpose of re-examination and not for cross-examination. Recalling and re-examining the witness can be done at the instance of the party which has already examined the witnesses. Re-examination cannot be done by the adverse party who can only cross-examine the witness. It shall be germane to keep in sight the unambiguous language of Section 311 of Cr.P.C. **(Veer Pal and another v. State of U.P. and another, 2016 (3) ALJ 446)**

S. 354- The measure of punishment should be proportionate to the gravity of the offence

It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of the offence and the manner in which it was executed or committed. It is the obligation of the court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large can never be marginalized. The measure of punishment should be proportionate to the gravity of the offence. Object of sentencing should be to protect society and to deter the criminal in achieving the avowed object of law. Further, it is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. The punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must be consistent with the atrocity and brutality which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal' **(Sadan Bhadauriya alias Jagat Pal Singh v.**

State of U.P. 2016 (3) ALJ 465)

S. 386- Tenability of new plea at appeal

So far as the question of ante timing of lodging of F.I.R. is concerned, it is evident from the record that no question was ever put to the eye-witnesses with regard to the possibility of ante timing of the F.I.R. before the trial court, the appellant cannot be permitted to take such plea at this stage that the F.I.R. was ante timed. The learned counsel failed to show any circumstances which could possibly be taken into consideration for holding the F.I.R. ante timed. **(Bhura alias Jitendra s/o Jaipal Singh and another v. State of U.P., 2016 (3) ALJ 319)**

Criminal Trial

Age of Prosecutrix-Non Production of Matriculation certificate of the victim by the prosecution-Adverse inference has to be drawn.

According to Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007, the first preference should be given to the high School certificate admittedly and there is no quarrel about this proposition of law. The victim has also admitted that she was having her high School certificate and could produce it, according to which she is minor. But neither the prosecution submitted High School certificate nor the Court bothered to summon the high school certificate. Withholding of the high School certificate by the prosecution leads to the inference that if the high school certificate would have been produced, it would have gone against the prosecution. Hence in this regard adverse inference has to be withdrawn. **[Anju v. State of U.P., 2016 (94) ACC 618]**

Withdrawal of Case- S. 321 Cr.P.C.- Matter related to S. 307/504 I.P.C. and 3(1)(x) of S.C./S.T. Act of 1989-Charge-sheet submitted against accused –Grounds of withdrawal of prosecution irrelevant and non-existent. Application rejected by Magistrate – No illegality.

Two grounds have been taken in the application filed by Public Prosecutor (1) Case has been filed on account of enmity (2) Report was lodged under S. 156(3) Cr.P.C. So for as enmity is concerned that is very often cause of offence. This alone cannot be the ground to say that charge is fake especially when Police has submitted charge-sheet.

So far as second ground is concerned, S. 156(3) Cr.P.C. provides a statutory mode whereby investigation is ordered. Informant/injured was medically examined in a Govt. Hospital on same night and when F.I.R. is not registered then informant approaches Magistrate under S. 156(3) Cr.P.C. who order investigation. After investigation C.O. Sarila submitted charge-Sheet.

The grounds mentioned for withdrawal of prosecution are irrelevant and nonexistent. If in this background, learned Magistrate has rejected the application under S. 321 Cr.P.C. by refusing consent, no illegality has been committed by him. **[Mahendra Singh alis Mahedra v. State of U.P. and another, 2016 (94) ACC 673**

Section 376 IPC-- Offence of rape- Absence of injuries and delay in lodging F.I.R. - Cannot be a ground to hold that no rape was committed.

It is trite law that mere fact that no injuries were found on the body of the victim cannot be ground to hold that no rape was committed. Absence of injuries and delay in lodging the First Information Report cannot be a ground to disbelieve the prosecution theory if otherwise found reliable. **[Munna @ Deevan and another v. State of U.P., 2016 (94) ACC 124**

Evidence Act

Section 3-- Evidentiary value of child witness-Evidence thereof.

As far as the child witness is concerned, it is well settled in law that the Court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say, the corroboration is not a must to record a conviction, but as a rule or prudence, the Court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, applies to a child witness who is competent and whose version is reliable. **[Haneef v. State of U.P., 2016 (94) ACC 646**

Family Law

Hindu Law- Hindu Succession Act, 1956- Sec. 14(1)- Moral obligation, when becomes legal obligation- Discussed

In this matter, argument of the counsel for the petitioner that interest of Smt. Parag Devi under gift deed dated 17.07.1956 was due to her pre-existing right of maintenance as such it was enlarged under Section 14(1) of Hindu Succession Act, 1956 as held by Supreme Court in Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna and others passed in Civil Appeal No. 375 of 2007 decided on 6.11.2015, is also liable to be accepted. Supreme Court in Laxmappa Vs. Balawa Kom Tirkappa Chavdi (Smt), (1996) 5 SCC 458, held that the position of the married daughter is somewhat different. It is

acknowledged that if the daughter is unable to obtain maintenance from her husband, or, after his death, from his family, her father, if he has got separate property of his own, is under a moral, though not a legal, obligation to maintain her. The High Court has concluded that it was clear that the father was under an obligation to maintain the plaintiff-respondent. Seemingly, the High Court in doing so was conscious of the declaration made in the gift deed in which she was described as a destitute and unable to maintain herself. In that way, the father may not have had a legal obligation to maintain her but all the same there existed a moral obligation. And if in acknowledgment of that moral obligation the father had transferred property to his daughter then it is an obligation well-fructified. In other words, a moral obligation even though not enforceable under the law, would by acknowledgment, bring it to the level of a legal obligation, for it would be perfectly legitimate for the father to treat himself obliged out of love and affection to maintain his destitute daughter, even impinging to a reasonable extent on his ancestral property. It is duly acknowledged in Hindu law that the Karta of the family has in some circumstances, power to alienate ancestral property to meet an obligation of the kind. Court would be rather construe the said paragraph more liberally in the modern context having regard to the state of law which has been brought about in the succeeding years. Therefore, in court's view, the High Court was within its right to come to the conclusion that there was an obligation on the part of the father to maintain his destitute widowed daughter. **(Smt. Prem Kali v. Deputy Director Of Consolidation Sitapur And Others, 2016 (131) RD 154)**

Will- Execution of- Idea behind- Explained

In view of the important judicial pronouncement, the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural/adopted heirs would be debarred in every case of Will. As the argument advanced on behalf of the petitioner that orders under challenge in the instant case is contrary to the provisions of section 16 of the Hindu Adoption and Maintenance Act has got no force. **(Kapil Deo v. D.D.C. Faizabad and others, 2016 (131) RD 602)**

Family Courts Act

S. 7 (2) –Application for maintenance by divorced Muslim woman is not 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.

In the present case, application has been filed before the Judge Family Court, Moradabad. It is contended that application under Section 3 of Act of 1986 is not admissible before the family Court, as it is not attracted by virtue of Section 7 of Family Court Act, 1984 (hereinafter referred to as "Act 1984")
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.

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. **(Mohammad Yaseen v. Smt. Mehrajunnisha, 2016 (2) ALJ 559)**

Hindu Adoptions and Maintenance Act

Ss. 6, 7 and proviso of section 7- Adoption in absence of any finding that wife is incompetent or of unsound mind, falling in exceptional category of proviso- consent of wife was mandatory, hence law is otherwise settled that proviso to section 7 of above Act is mandatory

Plaintiff-appellant filed a suit for a declaration that he is adopted son of one Jagdish Saran, son of Mangal Das. According to the plaintiff's case, his natural parents Hari Ram and Smt. Usha Devi gave the plaintiff in adoption to Jagdish Saran while he was about 5 years of age in 1990. Admittedly, no document evidencing such adoption or deed of adoption so executed was brought on record. The suit was itself filed in the year 2006, after Jagdish Saran had expired. According to the plaint allegation, the need for filing of the suit arose as Jagdish Saran was an employee of the North Central Railway and in order to consider plaintiff's case for compassionate appointment, the Authorities had insisted upon a decree of competent civil court evidencing and acknowledging such adoption before the plaintiff's candidature could be considered and that is why the suit was filed. The suit was contested by Smt. Pushpa Devi, opposite party No. 3, who was stated to be wife of late Jagdish Saran by denying the plaint allegations and it was stated that the plaintiff belongs to a different caste and was not related to the deceased and no adoption had actually taken place of the plaintiff. It was further stated that such suit had been filed only in order to secure an appointment with the railways, whereas at

no point of time, the plaintiff had been taken in adoption. Various other grounds were urged to contest the plaintiff's case.

In the facts of the present case, a finding based upon appreciation of fact has been returned by both the courts below, which is not shown to be perverse or erroneous that defendant No. 3 is the legally wedded wife of the deceased, Jagdish Saran. In view of such finding, the consent on the part of the wife was mandatory before the plaintiff could have been taken in adoption by Jagdish Saran. It is the consistent case of defendant No.3, who is the wife of the deceased that plaintiff had not been taken in adoption and she had not consented to plaintiff's adoption. There is no evidence worth consideration available on record to show that Smt. Pushpa Devi had consented to the adoption of plaintiff by the deceased. Appellate court has relied upon the decision of the M.P. High Court in Bholu Ram vs. Ramlal AIR 1989 MP 198, wherein it has been stated that except for the categories specified in the proviso itself, the requirement of consent by the wife is mandatory. Admittedly, in the facts of the present case, it is not the plaintiff's case that the wife had either renounced the world or had ceased to be a Hindu or had been declared by a court of competent jurisdiction to be of unsound mind. In the absence of case falling in excepted category of the proviso, the consent of wife was mandatory, which is not shown to exist in the facts of the present case. Not much will turn on the statement of the wife that she heard about adoption having taken place in the year 2002, inasmuch as the consent has to be before the Act of adoption itself, by virtue of the plain reading of the provisions itself. The adoption is claimed to have taken place much prior to the year 2002, i.e. sometime in the year 1989/99. The statement of wife therefore would not amount to nor can be construed as a act of consent on her part for the adoption. The findings returned by the appellate court on the aspect of applicability of proviso to section 7 has not been shown to be not applicable in the facts of the present case once that be so, this ground itself is sufficient for the dismissal of the plaintiff's case. Law is otherwise settled that proviso to section-7 of the Act is mandatory. Hon'ble Supreme Court in Ghisalal vs Bhapubai reported in 2011 (2) SCC 298 had clearly held that consent cannot be inferred and has to be in writing or reflected by an affirmative or positive act voluntarily and willingly by her.

Although there are other issues, which have been relied upon by the courts below including the issue with regard to adoption not being in consonance with section 16 of Hindu Adoption and Maintenance Act, but all such issues are not required to be deliberated any further in view of the findings already returned above with regard to violation of proviso to section-7.

In view of the discussions made above, this Court finds that the judgment and decree passed by both the courts below are concluded by findings of fact, which are not shown to be erroneous or perverse. **(Beeru v. Aam**

Janata and others, 2016 (131) RD 131)

Hindu Marriage Act

S. 12 (1) (a), (c) –Dissolution of Marriage on the ground of non-consummation of marriage- Consideration of

There is the evidence of the respondent that he went on making attempts on several occasions for consummation of the marriage but had never been successful due to repugnance to the sexual act by appellant due to her physical condition that made consummation impossible. It was never specifically denied in pleading (written-statement) of appellant that the husband was potent and that he had made frequent attempts to consummate the marriage; but could not succeed owing to the physical inability of the wife. Under those circumstances the conclusion to be drawn from the evidence was that the wife's refusal was due to physical inability of consummation and, as such, the husband was entitled to a decree of nullity. It is evident that the marriage had not been consummated and parties could not cohabit in future also. Therefore the marriage should be annulled for the reason that these people cannot consummate the marriage. The two people should not be tied up together for the rest of their lives in a state of misery.

In these circumstances, and also the fact that there has been long separation between the parties, during which appellant had been levelling wild allegations of infidelity on her husband, there appears no possibility of compromise. Such allegations and acts of appellant after their separation amounts to cruelty, which may be a ground of divorce but these grounds surfaced after separation of the parties, but cannot be out rightly ignored at the time of consideration of circumstances.

The only question to be determined in this matter was as to whether petitioner-respondent is entitled for relief of annulment of his marriage with respondent on ground of impotency and that his consent for marriage was obtained by fraud as to any material fact or circumstance concerning the respondent. This was not a question of law, but has been a question of fact that can be decided on basis of pleadings evidences, as has been done by lower court. The findings of lower appellate court in this regard are not infirm or perverse. So the same cannot be interfered in second appeal by re-appreciation of evidences. **(Smt. Sulekha v. Ashok Kumar, 2016 (3) ALJ 263)**

Ss. 13 (1) (i-a) and 9 –Divorce petition by husband and application for restoration of conjugal rights by the wife –Ground for divorce- Merely because the husband not willing to live with wife is no good ground to

grant divorce

The delay condonation application under Section 5 of the Limitation Act which was registered as Misc. Case being Misc. Case No. 530 of 2011. The Lower Appellate Court rejected the Section 5 application by the impugned order dated 20 May 2013. Aggrieved, the applicant has approached this Court assailing the order passed by the appellate court/Additional District Judge, Court No. 5, Agra under Article 227 of the Constitution.

The question for determination is whether the appeal would stand dismissed upon dismissal of an application filed under Section 5 of the Limitation Act for condonation of delay.

The term appeal wherever used clearly appears to be of wide import so as to take in all types of appeals. Where the memorandum of appeal has been presented as indicated in Sub-rules (1) and (2) of Rule 1 of Order XLI and within the period of limitation prescribed therefore, it must be held that there is a valid and competent appeal. However, where the presentation of memorandum of appeal is defective on some ground or other and is not in consonance with the provisions of Sub-rules (1) and (2) of Rule 1 of Order XLI or is presented beyond the period of limitation, it may be called irregular, incompetent, unmaintainable appeal. Nonetheless, it is an appeal in eye of law for all practical purposes and it is not non-est.

The law, therefore, on the subject is clear and unequivocal that an appeal presented beyond time was nevertheless an appeal in the eyes of law for all purposes and an order dismissing the appeal on whatever ground was a decree that could be subject to second appeal. Rule 3A of Order 41 introduced by Amendment Act 104 of 1976, did not in any way affect the principle. An appeal registered under Rule 9 of Order 41 of the Code had to be disposed of according to law and a dismissal of an appeal for the reason of delay in its presentation, upon dismissal of the application for condonation of the delay, is in substance and effect the confirmation of the decree appealed against. Thus, the position that emerges on a survey of the pronouncements is that an appeal filed along with an application for condonation of delay when dismissed on the refusal to condone the delay is nevertheless a decision in the appeal.

For the reasons stated herein above, the petition is dismissed being not maintainable. **(Aruna Sahkari Awas Samiti Ltd., Agra through its Member/Authorized Agent Raju Hussain v. Prem Singh and another, 2016 (116) ALR 56)**

Hindu Minority and Guardianship Act

S. 2- Guardianship application –Jurisdiction of Court- Determination

Section 2 of Act, 1956 provides that provisions of Act, 1956 shall be in addition to, and not, save as expressly provided, in derogation of Act, 1890.

Thus where specific provision has been made in Act, 1956 which is inconsistent or in derogation of Act, 1890 to that extent only the provision of Act 1890 would stand superceeded by Act, 1956. In respect to determining jurisdiction of the Court in which application for guardianship can be filed, court find no otherwise inconsistent or contrary provision in Act, 1956. Therefore, in this regard court has no manner of doubt that the provision of Act, 1890 would continue to apply and Section 9 which determines jurisdiction to file application for guardianship would continue to govern this issue. Question No.2, therefore, is answered in favour of appellant observing that for the purpose of determining jurisdiction it has to be determined in the light of Section 9 of Act, 1890. **(Chatrasal Singh v. Smt. Priyanka, 2016 (3) ALJ 122)**

Indian Penal Code

Section 304-B- Evidence Act, 1872-Section 113-A and 113-B- Deeming provisions under- Initial burden always on the prosecution to establish the existence of all the ingredients of the offence by cogent and reliable evidence.

It is also well settled that despite the deeming provisions of section 304-B of I.P.C., section 113-A and 113-B of the Indian Evidence Act, the initial burden is always on the prosecution to establish the existence of all the aforesaid ingredients by some cogent and reliable evidence. However, the initial burden of the prosecution is not so heavy to discharge as in cases related to other offences. **[Smt. Dropa Devi and another v. State of U.P., 2016 (94) 740 (Allahabad High Court)]**

Section 376-- Evidence Act, 1872-Section 114-A- Presumption determination of-Indian Penal Code, 1860-Section 376-Evidence Act, 1972-Section 114-A-Buden of accused-Victim was above 16 years- Has denied consent.

In the present case since the prosecutrix has stated in her evidence that she did not consent to act of sexual intercourse done by the accused on her which, as per her statement, was committed by the accused against her will and the accused failed to give any satisfactory explanation in his defence evidence on this issue, the Court will be entitled to draw the presumption under section 114-A of the Evidence Act against the accused holding that he committed the act of sexual intercourse on the prosecutrix against her will and without her consent. The question as to whether the sexual intercourse was done with or without consent being a question of fact has to be proved by the evidence in every case before invoking the rigour of section 114-A of the Evidence Act.

[**Suresh Pal v. State of U.P., 2016 (94) ACC 947]**

Indian Stamp Act

S. 47 –A (4)- Penalty on deficit stamp duty –Collector can impose penalty not exceeding four times.

While it is true that sub section (4) of section 47-A empowers the Collector to impose penalty not exceeding four time the proper stamp duty, the same stands attracted in a case where it is found that the market value of the property was not truly set forth. There must therefore necessarily be an intention to evade payment of duty, which entails the levy of penalty. Secondly the words "not exceeding..." confer on the Collector a discretion to levy penalty dependent upon the facts of each individual case. The mere prescription of a maximum does not necessarily mean that in each case a penalty equivalent to four times the proper duty is liable to be paid. In any view of the matter, the imposition of penalty has serious civil consequences and therefore must be preceded by due application of mind and a consideration of all relevant factors including whether there was an intention to evade payment of duty. Court find that the Collector has failed to advert to this aspect also while passing the impugned orders. **(Smt. Vijay Jain v. State of U.P. and others, 2016 (3) ALJ 278)**

Ss. 47-A and 33- Stamp deficiency- Along with penalty- Whether order of stamps deficiency based on presumed future use of property for residential purposes is sustainable- Held, "No"

Section 47A (3) as a plain reading of the provision would indicate comes into operation if the Collector has before him material which may lead him to believe that the market value of the property comprised in an instrument has not been truthfully disclosed. In the present case the Collector proceeded in the matter solely on the basis of the report of the Sub Registrar dated 7 February 2012. This report doubted the valuation of the property on the ground that in the area abutting it, various residential houses had come up and that Greater NOIDA had become a development hub. Bearing in mind the location of the plot and its likely use, the Sub Registrar opined, it would be inappropriate to value the property at agricultural rates. Court find that the very bedrock upon which the opinion of the Sub Registrar based his report was faulty and could not have consequently formed the basis for further action under section 47A (3).

Court may note that on the date of execution of the instrument the land was admittedly recorded as agricultural. In fact the Khasra of the property remained unchanged throughout and continued to represent the land as

recorded for agricultural purposes. The respondents were in our opinion wholly unjustified in initiating proceedings based on an unsubstantiated assumption that the property in future was likely to be put to non-agricultural use.

The perceived or presumed use to which a buyer may put the property in the future can never be the basis for adjudging its value or determining the stamp duty payable. The Act, court may note is a fiscal statute. The taxable event with which it concerns itself is the execution of an instrument which is chargeable to duty. The levy under the statute gets attracted the moment an instrument is executed. These propositions clearly flow from a plain reading of the definition of the words "chargeable", "executed" and "instrument" as carried in the Act. In the case of an instrument which creates rights in respect of property and upon which duty is payable on the market value of the property comprised therein, since the tax liability gets fastened immediately upon execution it must necessarily be quantified on the date of execution. The levy of tax or its quantum cannot be left to depend upon hypothetical or imponderable facets or factors. The value of the property comprised in an instrument has to be adjudged bearing in mind its character and potentiality as on the date of execution of the instrument. For all the aforesaid reasons court fail to find the existence of the essential jurisdictional facts which may have warranted the invocation of the powers conferred by section 47A (3). Court therefore of the firm opinion that the initiation of proceedings as well as the impugned order based upon a presumed future use of the property for residential purposes was wholly without jurisdiction and clearly unsustainable.

Court finds that the proceedings taken against the appellant were even otherwise liable to be quashed outright. The reason which compels us to arrive at the above conclusion is this**. (Shri Sumati Nath Jain v. State of U.P. And Another, 2016 (131) RD 34)**

Indian Succession Act

S. 278- Allahabad High Court Rules; Rs. 36, 38 –Testamentary suit- Filing of caveat- Plea for discharge of caveat on ground of objection not filed within fourteen days- Held, 'not tenable'

In this case, the point requiring consideration therefore is, whether the caveat that has been lodged in the instant case is liable to be discharged since the caveators have not filed an objection stating the right and interest of the caveator and the ground of objection to the application for grant of letters of administration as required under Rule 36. Rule 36 provides that the objection to be filed within fourteen days of the caveat being lodged, must be accompanied by an affidavit and the objection should state right and interest of the caveat or the ground of objections. Although in the instant case the aforesaid

objection has not been filed, yet there is substance in the submission made by learned counsel for the caveator that the caveat is accompanied by an affidavit which does state the right and interest of the caveators and their ground of objection to the application namely that the will is forged and that the testator had a limited interest in the property that had been bequeathed. Therefore, find that there is substantial compliance of Rule 36.

Even otherwise, Rule 38 provides that where the caveator fails to file an objection in compliance with Rule 36 or Rule 37 (not relevant in the instant case) the caveat may be discharged by the court. It is therefore, clear that the court has a discretion whether or not to discharge the caveat upon non compliance of Rule 36. The use of the word 'may' necessarily indicates that filing of objection is not mandatory. In case, the intention was that filing of such an objection was mandatory, the word used would have been 'shall' rather than 'may'. **(In the matter of Goods of Late Vatan Lal Cahurasiya, 2016 ALJ 702)**

Land Acquisition Act

S. 23- Determination of market value on basis of settlement awards – Consideration of

In the present case, impugned award itself shows that documentary and oral evidence have been relied by the parties but there is no discussion whatsoever of such evidence. Since award has been made by Court below, straight-way following compromise award of other 90 references. Court found it difficult to subscribe to the view that the same would be binding upon appellant claimants also. Therefore, the court Impugned award, in court's view, cannot sustain. The matters require to be remanded to Court below to decide these references on merits afresh, looking into the evidence on record available before Reference Court by a fresh order.

Counsel for appellants, in courts view, has rightly contended that settlement award in other matters cannot be held binding on appellants who never agreed to the rate determined therein and that is why they have chosen to contest the matters. Court below has completely erred in law by forcing the said settlement upon the appellants also for deciding references by impugned award. **(Smt. Chhaya Devi v. State of U.P. & another, 2016 (2) ALJ 545)**

S. 48 (1) –Release of land from acquisition- Prior notice or opportunity of hearing not given to beneficiary- Release notification liable to be declared as illegal

Neither a perusal of the impugned notification nor counter-affidavit filed on behalf of the State of U.P. spells out that the petitioner which was beneficiary of the acquisition proceedings, was given any notice or opportunity

of hearing before issuing the impugned notification and thus the same is directly in the teeth of the law laid down by the Hon'ble Apex Court in State Govt. Houseless Harijan Employees' Association (AIR 2001 SC 437) (supra) and cannot be sustained.

As a result, the impugned notification dated 10.04.2006 under Section 48 (1) of the Land Acquisition Act (Annexure No. 6 to the writ petition) is quashed. **(Moradabad Development Authority, Moradabad v. State of U.P. & others., 2016 (2) ALJ 456)**

Limitation Act

Sec. 5-- Criminal Proceedings- Limitation Act does not apply to Criminal proceedings-Unless there is express and specific provisions to that effect.

The Apex Court in a series of decisions, held that the Limitation Act, 1963 does not apply to criminal proceedings unless there is express and specific provision to that effect. It is also settled law that a criminal offence is considered as a wrong against the State and the Society even though it is committed against an individual. In Shyam Babu v. State of U.P., 2012 (6) ALJ 10 (decided on 7.9.2012), after considering various decisions including the decision of Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225 and Kartar Singh v. State of Punjab, (1994) 3 SCC 596 and a decision rendered by seven learned Judges in P. Ramachandra Rao v. State of Karnataka, 2002 (44) ACC 974 (S.C.) and Ranjan Dwivedi v. C.B.I. through Director General, 2013 (81) ACC 402 (Decided on 17.08.2012), the Apex Court rejected similar argument based on delay either at the stage of trial or thereafter. The Court in Shyam Babu Held:

"In this case, merely because the High Court had taken nearly 25 years to dispose of the appeal, the present appellant cannot be exonerated on the ground of delay." [**Ramkhilari v. State of U.P., 2016 (94) 388 (Allahabad High Court)].**

Prevention of Food Adulteration Act

Ss. 7, 16 10(7) -Scope and Nature-Adulteration of milk- Provision of S. 10 (7) requiring that Food Inspector must make genuine efforts to get corroboration of one or more person present on spot to witness his act of taking sample and completion of other formalities is mandatory- Attempt made by Food Inspector to get independent witness at time of taking sample and seizure- But none came forward and Food Inspector proceeded further- Signature of independent witness at time of collection of sample can not be obtained- No non-compliance of S. 10(7) –Proceedings not

vitiated on such count

In this case, the accused himself had admitted that sample was collected by Food Inspector from the accused, but he has tried to explain the fact that he was not carrying milk for sale but there was a religious ceremony at his residence and he was taking milk thereat. Before this Court, the contention has been advanced but the fact that the members of public who gathered at the time of taking sample were not agreeable to become witness could not be shown otherwise. In absence of any person being ready to witness the procedure of taking sample and seizure, the factum that no independent witness has signed collection of sample and seizure does not vitiate the proceedings, particularly, when collection of sample from accused is admitted by him.

In the present case, the prosecution has clearly proved that an attempt was made to get independent witness at the time of taking sample and seizure but since none came forward, hence, the Food Inspector proceeded further. Hence the mere fact that independent witness is not there, proceedings would not vitiate. **(Nathoo Sarjoo v. State of U.P. 2016 (3) ALJ 610)**

In the present case, application has been filed before the Judge Family Court, Moradabad. It is contended that application under Section 3 of Act 1986 is not admissible before the family Court, as it is not attracted by virtue of Section 7 of Family Court Act, 1984 (hereinafter referred to as "Act 1984")

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. **(Mohammad Yaseen v. Smt. Mehrajunnisha, 2016 (2) ALJ 559)**

Provincial Small Causes Courts Act

Right to information Act-- S. 2(f)- 'Information'- Meaning and scope of- Inaction of statutory authorities on non- Statutory applications or complaints does not fall within definition of information

In the instant case, it is an undisputed fact that a criminal case was registered against the petitioner's brother wherein after completion of investigation a charge-sheet has been submitted before the competent court on 07.01.2015. The petitioner appears to have filed an application under Section 173(8) of the Code of Criminal Procedure praying therein for fresh investigation.

From a plain reading of the above provision, it is clear that an application for fresh investigation is not maintainable at the instance of an accused person and respondent no.2 even otherwise not being the Investigation Officer could not enter into any investigation within the purview of Section 173 (8) of the Code of Criminal Procedure on any such application being filed by

the petitioner who happens to be the brother of the accused. The information to be furnished under Right to Information Act may broadly fall under two categories i.e. action and inaction:

(1) Actions of the State Government culminating into an information are to be understood in the light of definition provided under Section 2 (f) which reads as under:-

> "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

The aforesaid provision defining information makes it clear that an inaction on a non-statutory representation filed by any person does not fall within the strict sense of definition of information. On a close scrutiny of the other provisions of definition clause, it is further seen that inaction on the part of the authorities cannot be construed to be an information unless and until there is a statutory obligation on the part of the competent authority to take a decision on any representation or complaint filed by an aggrieved person and even if such an inaction is noticed, the representation remains at the stage of investigation and the protection of section 8 (f) comes into play.

Court has no hesitation to record that inaction on non-statutory applications/complaints filed by any person where the State Authorities are not obliged to take a decision would not fall within the definition of information giving rise to a cause under Section-6 of the Act. If all such inactions are construed to be cognizable under the Right to Information Act, the misuse of the Act would become rampant and the provisions of the Act in that view of the matter would result into an abuse of the process of law. Once it is held that the application filed by the petitioner did not fall within the scope of information under the Right to Information Act, the impugned order passed by respondent no.1 on 24.11.2015 does not call for any interference and the writ petition being devoid of merit deserves to be dismissed. **(Subhash Chandra Vishwakarma v. Chief Information Commissioner U.P. State Information & Ors., 2016 (2) ALJ 463)**

S. 17- CPC Order IX, Rule 13- Application for setting exparte decree-Conditions –Enumerated

This Court in the case of Jai Prakash Pandey Vs. Baboo Lal Jaiswal, 2009 (3) ARC 497 after placing reliance of the judgment given by Hon'ble the Apex Court in the case of Kedarnath (Supra) that the provisions of Section 17 of the Provincial Small Cause Courts Act are mandatory in nature and non

compliance would entail dismissal of the application and such non compliance cannot be condoned or overlooked by the Court.

Subsequently Hon'ble the Apex Court in the case of Shyam Shanker and others Vs. Sahu Sarvesh Kumar and others, 2008 (3) ARC 115 held that deposit of the decretal amount can be dispensed with by Court if the application is accompanied alongwith th application filed under Order 9 Rule 13 CPC . (See also ; Zulfiquar Hussain Vs. Madan Gopal Chopra, 2012 (2) ADJ 463: 2012 (2) ARC 311 and Raj Kumar Makhija and others Vs. Raj Kumar Makhija and others, 2012 (9) ADJ 337)

Thus, keeping in view the law on the subject as well as moving an application under Order 9 Rule 13 CPC read with Section 17 of the Provincial Small Cause Courts Act, 1887 following conditions are to be satisfied:-

(1) That the proviso is mandatory
(2) the application seeking to set aside decree or review must be accompany by a deposit of decretal amount in Court.
(3) the application for dispensation of deposit can be filed upto the date of filing the application for setting aside the decree.
(4) the proviso dos not provide for extension of time. **(Shakeel Ahmad v. Zameer Ahmad Siddiqui and Another, 2016 (2) ARC 75)**

S. 23- Return of plaint- Involving question of title- Permissibly of

In Shamim Akhatar v. Iqbal Ahmad and another, reported in (2000) 8 SCC 123: 2000(2) ARC 770, the Apex Court took the view that the power vested, under Section 23(1) of the Provincial Small Causes Court Act, in the Court is discretionary. It was observed that the question of title of the plaintiff to the suit house court be considered by the Small Causes Court in the proceedings as an incidental question and final determination of the title could be left for decision of the competent Court. Following the said decision in the case of Ram Sewak v. Pramod Kumar, 2011 (84) ALR 634, this Court approved examination by the JSCC Court of a question relating to valid execution of Will by the erstwhile landlord in favour of the plaintiff by holding that such questions could be incidentally gone into while deciding the question of landlord-tenant relationship between the plaintiff and defendant. In fact, the correctness of the decision in Ram Sewak's case (supra), has not been doubted, rather it has been accepted. **(Fazalur Rehman v. Gopal Sahu, 2016 (2) ARC 72)**

S. 25- Exercise of power under revisional jurisdiction –The scope of revision U/s 25 is only whether the decree or order made by small cause Court according to Law or not, it is a supervisory power and not appellate power.

Some of the instances where the Court can interfere under Section 25 are, (1)

where the Court has no jurisdiction in the matter; (2) where a party had not been given a proper opportunity of being heard, or that the burden of proof had been misplaced on wrong shoulders; (3) where the Court had based its decision on evidence which should not have been admitted; (4) where there has not been a proper trial according to law; and (5) if on certain facts two views are possible, then a Court exercising jurisdiction under Section 25 was not interfered.

Act, 1887 constitute Small Cause Courts of exclusive on preferential and limited jurisdiction. The class of suits not cognizable by small causes is listed in the schedule appended to Act, 1887. The provisions of Civil Procedure Code inapplicable to Small Cause Court are provided in Section 7 of C.P.C. By Section 40 of Bengal, Agra and Assam Civil Courts Act, 1887 certain provisions thereof, i.e., Sections 15, 32, 37, 38 and 39 have been applied to Small Cause Courts. Vide Section 7 the applicability of Sections 96, 112 and 115 C.P.C. is made inapplicable to Small Causes Court, meaning thereby its judgment is made non-appealable. The Trial in Small Cause Court is summary and its decision is final subject to revision under Section 25 only. It is in these circumstances, one has to make a distinction between power of Revisional Court under Section 25 and other appellate and revisional powers under C.P.C. or other provisions of procedural statutes.

The circumstances where Revisional Court to find out whether decision of Small Cause Court is in accordance with law may look into the facts without assessment have been explained in para 19 and 20 of judgment of Division Bench in Laxmi Kishore and another Vs. Har Prasad Shukla, 1981 ARC 545 **(Sabiya Begum (Smt.) v. Dr. M Hayat Ansari, 2016 (2) ARC 82)**

Service Law

Determination of –Date of Birth –Certificate of High School- Significance of- It has a probative and presumptive value for the purpose of age determination

In court's opinion, the issuance of a High School certificate by the Board of High School intermediate Education, Uttar Pradesh is a statutory act and is an official document having been issued under the Regulations framed under the U.P. Intermediate Education Act, 1921. Thus, the same is an official document which has a probative and presumptive value for the purpose of age. **(Ram Dayal v. Chief Election Commissioner U.P. and others, 2016 (131) RD 325)**

U.P. Recruitment of Dependents of Govt. Servants Dying in Harness Rules, Sec. 2 (c)- Word "Family" –What does not includes- A married daughter

does not find mention in the definition of "Family", so married daughter has no claim for being considered for appointment on compassionate ground

The word 'Family' has been defined in Section 2 (c) of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying-In-Harness Rules, 1974 which reads as under:-

"(c) "Family" shall include the following relations of the deceased Government servant:

(i) wife or husband;

(ii) sons/adopted sons;

(iii) unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughter-in-law;

(iv) unmarried brothers, unmarried sisters and widowed mother depended on the deceased Government servant, if the deceased Government servant was unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent court:"

The Full Bench of this Court in Km. Shehnaj Begum (Supra) has considered the term 'Family' as defined in Section 2 (c) of the 1974 Rules and by way of conclusion has held the definition to be exhaustive. A married daughter does not find mention in the definition of 'family' and if the word 'family' has been held to be exhaustive it would mean that a married daughter would have no claim to be considered for appointment on compassionate ground. Therefore, in view of the law laid down by the Full Bench of this Court in Km. Shehnaz Begum (supra) the petitioner no.2 has no claim for being considered for appointment on compassionate ground. **(Somwati @ Girija And Another v. State of U.P. and another, 2016 (115) ALR 827)**

Pension –Computing of qualifying service- Civil Services Regulation, Regulation 370- Whether the period of service rendered as a work charged or a daily wage employee is liable to be counted for purpose of computing "qualifying service" for grant of pension –Held, " Not liable to be counted for the purpose of computing qualifying service.

Court accordingly conclude that the judgments of this Court which proceeded to follow Narata Singh failed to bear in mind the distinguishing features of the statutory regime in the backdrop of which it came to be delivered. As noted above, Rule 3.17(ii) of the Punjab Civil Service Rules had been struck down. The absence of Rule 3.17(ii) from the statute book formed the bedrock upon which Narata Singh was decided. Significantly, Regulation 370 continues to govern the field and in clear and unambiguous terms provides that the period of service rendered in a work charged establishment is liable to

be excluded while computing qualifying service.

Court therefore hold that the period of service spent in a work charged establishment is not liable to be countenanced for the purposes of computing qualifying service. The law in this regard stands correctly declared and elucidated in Jai Prakash, Navrang Lal Srivastava and Ram Nagina. The decision in Panchu and the other judgments of this Court which have followed the line of reasoning adopted therein shall accordingly stand overruled.

Court accordingly answer the reference by holding that the period of service spent by a person in a work charged establishment is not liable to be counted for the purposes of computing qualifying service. Regulation 370 of the Civil Service Regulations continues to govern and hold the field. The factual backdrop in which Narata Singh came to be rendered escaped the attention of the various Division Benches which followed it despite the existence of the unambiguous command of Regulation 370. Jai Prakash and the subsequent pronouncements following it and referred to above represent the correct position in law. The matter shall now be placed before the learned Single Judge for a decision on the writ petition in the light of what has been held above. **(Babu @Babu Ram (Retired Beldar) v. State of U.P. and others, 2016 (115) ALR 729)**

(i) Compassionate Appointment- Claim made much beyond the period of one year from death of the deceased employee- Rejection of representation – Legality of

The father of petitioner had died while working as Godown Durban on 20.3.1999. The mother of the petitioner had moved an application on 13.9.2003 to consider her son, the petitioner for compassionate appointment. The said application remained pending.The mother of the petitioner feeling aggrieved had filed a Writ Petition No.50839 (S/S) of 2003 which was disposed of with direction to opposite parties to consider and decide petitioner's representation as expeditiously as possible preferably within three months. It was thereafter that the claim of petitioner was considered and rejected by the impugned order dated 4.3.2004.

The order impugned clearly indicates that as per the scheme for appointment on compassionate ground for dependents of the deceased employee/employees the application for being considered for appointment on compassionate ground should be submitted within one year from the date of the death of the employee. In the present case the date of death was 20.3.1999 whereas the application was made on 13.9.2003 by Smt. Rama Devi which was delayed for more than four years without giving any reason.

The competent authority has come to the conclusion that as the death has taken place more than four years back from the date of application, as such the said application cannot be entertained and even otherwise also at this stage it cannot be said that there exists any sudden crisis in the family to warrant compassionate appointment.

It is also to be noted that even as per the said scheme, the dependents of an employee who has died or who has retired on health grounds and whose service record was blemished on account of disciplinary action having been taken against him will be ineligible for compassionate appointment in the Bank. Late Ram Naresh father of the petitioner was proceeded against deparmentally for major misconduct while he was posted at Kanpur Main Branch and on conclusion of the inquiry proceedings charges against him stood proved and penalty of stoppage of two increments in his scale of pay was imposed upon him on 12.8.1977. As such the application for compassionate appointment cannot be accepted.

The petitioner has also relied on the judgment of this Court in the case of Allahabad Bank Staff Association and others Vs. Chairman and M.D., Allahabad Bank, H.O.Kolkata and others; (2010) 2 UPLBEC 1030, wherein this Court has held that at the time when the petitioner had applied in the year 2002-2003, the scheme providing compassionate appointment was very much in force. The circular dated 4.2.2005 issued by the Bank w.e.f. 18.12.2004 providing ex gratia payment in lieu of right of compassionate appointment would not be applicable as at the relevant time the scheme providing compassionate appointment was in force.

The aforesaid judgments would not be of any help to the petitioner as the reasons to refuse the appointment of the petitioner on compassionate ground as given in the impugned order do not suffer from any infirmity or illegality.

Purpose of compassionate appointment is to provide immediate employment to one of the family member of the deceased employee. The father of the petitioner had died in the year 1999. In case the petitioner has not been given compassionate appointment, he cannot be considered and provided compassionate appointment at this stage after so much delay. As such, no interference is required by this Court at this stage. **(Radhika Prasad Shukla v. Chief General Manager State Bank Of India Lko. And Ors., 2016 (116) ALR 687)**

(ii) Compassionate Appointment –Civil death-Claim after attaining majority cannot be rejected on the ground of delay

The appellant's father had been discharging duties as Manager with U. P. District Co-operative Bank Ltd, Allahabad and appellant's father disappeared on 11.6.1983. Appellant and his family members after waiting for some reasonable time applied for succession certificate presuming his civil death and it transpires that the succession certificate was issued on 22.2.1992 and subsequently thereafter the appellant applied for grant of compassionate appointment on 14.10.1997. Appellant's case was considered in the meeting held on 29.10.1997 and it was resolved to provide compassionate appointment to the appellant. However, when the appellant was asked to produce medical certificate, he appeared before the medical officer and obtained the certificate. Respondent no.3 i.e. Sachiv/Maha Prabandhak, U. P. Sahkari Sewa Sansthagat Sewa Mandal, Lucknow sent a letter to respondent no.2 i.e. Adyaksha, U. P. Sahkari Sewa Sansthagat Sewa Mandal, Lucknow for obtaining approval with regard to compassionate appointment of the appellant. Since then no action was taken, the appellant filed writ petition before the learned Single Judge. The learned Single noted that there is inordinate delay and the objective of providing compassionate appointment is to save the family which is in crisis but 23 years have elapsed after the father of appellant/petitioner has disappeared and, accordingly, dismissed the writ petition stating that there is no good ground for compassionate appointment after 23 years. Hence, this Special Appeal is before us.

In the judgment of the Hon'ble Apex Court in the case of Canara Bank and another vs. M. Mahesh Kumar & Others in para 15 referring to the Clause 3.2 of 1993 Scheme it has been held that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment, open till the minor attains the majority.

The fact in the said rulings provide therein that till the age of attaining majority by the minor dependant, the time is relaxed to submit an application. In the case in hand, the appellant is said to be the only son of the deceased out of three sisters and although he has been offered appointment on compassionate ground by the bank authorities, the same was not considered and approved by the Chairman. In the facts and circumstances of the case, the filing of the application for compassionate appointment by the appellant does not appear

to be belated one and moreover, the Manager and other authorities have taken decision to offer compassionate appointment to the appellant, which was finally rejected by the Chairman. The circumstance has not been considered by the learned Single Judge that after looking into the facts of the case the benefit of dying-in-harness may be given to the family of deceased which is in crisis. In the case in hand, the deceased died leaving behind three daughters and one son and they have not been provided compassionate appointment. The learned Single Judge has ignored the explanation offered by the learned counsel for the appellant/petitioner that still the family of deceased was in crisis and he would not have been denied the eligibility to compassionate appointment. The respondent bank at the level of the Bank Manager and other authorities after considering the facts of the case agreed to provide the benefit of compassionate appointment to the appellant, but the same has been rejected by the Chairman of the Bank.

In such circumstance, the impugned order passed by the learned Single Judge dated 9.5.2006 as well as the impugned order not approving the appointment recommended by the bank manager are set aside and it is for the appellant to make a fresh representation within one month from the date of receipt of this order. If such a representation is made by the appellant, the respondent authority shall consider and shall do the needful to decide the same in the light of aforesaid observations as well as the observations of the Hon'ble Apex Court in the above cited judgments within two months. **(Manoj Kumar Shukla v. State of U.P. and others, 2016 (116) ALR 677)**

C.R.P.F Act- Section 11- C.R.P.F. Rules- Rule 29 (d) –Punishment- Quantum of- A minor punishment can be awarded in lieu of or in addition to suspension or dismissal

Section 11(1) makes it abundantly clear that a minor punishment as contemplated there can be awarded in lieu of, or in addition to, suspension or dismissal. Clause (c) of section 11(1) includes confinement to quarters, lines or camp for a term not exceeding one month. Under Rule 29 (d), a power is vested to confirm, enhance, modify or annul the award of any punishment in the Director General or Inspector General, amongst other officers. **(Union of India and others v. Brijesh Kumar, No. 871180872, Ex Constable, 2016 (116) ALR 264)**

Evidence Act, Ss. 107 and 108- compassionate appointment- Attractibiliy

of sections 107 and 108 for granting compassionate appointment

The father of the petitioner is said to have disappeared more than seven years ago, therefore, he claims compassionate appointment presuming his civil death in terms of Section 107 and 108 of the Indian Evidence Act.

Nevertheless the petitioner herein applied for compassionate appointment. The same has been rejected on the ground that unless the competent authority gives a declaration about the civil death of his father he can not be provided compassionate appointment.

A perusal of the said circular does not indicate any declaration is required under it from a Court. It only refers to the satisfaction of a competent authority which in this case appears to be the authority competent to provide compassionate appointment. In any case in view of the judgments cited herein above, the said circular can not come in the way if the conditions for applicability of Section 108 of the Indian Evidence Act are satisfied. Moreover, in the present case, it has been averred that the death-cum-retirement benefits consequent to the death of the father have been released in favour of the petitioner and other family members, therefore, this raises a presumption about the disappearance and civil death of the father having been accepted by the opposite parties themselves otherwise even this benefit would not have been extended.

In view of the aforesaid, the order impugned can not be sustained and the same is quashed. The competent authority which is empowered to provide compassionate appointment is directed to have a re-look at the matter in the light of the observations and the pronouncements referred herein above, after ascertaining the correct factual position as regards the acceptance or otherwise of the final report submitted as referred above. **(Mohd. Ishtiaq v. State of U.P. and others, 2016(2) AWC 2125)**

Employment- Imposition of punishment for misconduct without holding of inquiry- When permissible- When appellant admitted charges, there was no need for bank to hold any inquiry, hence Bank was justified in imposing punishment

Question as to whether the punishment imposed on the appellant was legal or not. Learned counsel for the appellant was not able to point out any illegality or perversity in the disciplinary proceedings or in the punishment order dated 20.3.2001.

As a matter of fact, since the appellant admitted the charges leveled against him in the charge sheet, there was no need for the Bank Charges. When the charges stood proved on admission of the appellant, the Bank was justified in imposing punishment on the appellant s prescribed in the Rules. Court, therefore, find not ground to interfere in the punishment order as court also find

that having regard to the nature and gravity of the charge, the punishment imposed on the appellant appears to be just and proper, calling no interference therein. **(Surjeet Singh Bhamra v. Bank of India and others, 2016 (2) AWC 2113)**

Compassionate appointment- Nature and Scope –Whether the appointment of person on compassionate basis on probation is permissible in Law- Question referred to F.B. –Held, "Permissible"

By a referring order of a Division Bench dated 5 August 2015, the following questions of law have been referred for adjudication by the Full Bench:

(i) Where a person is granted compassionate appointment as a member of the family of a deceased employee of the government who has died in harness in relaxation of the normal rules for recruitment, is it not necessary that even a compassionate appointee be placed on probation in the first instance, in the same manner as any other direct recruit, since the provision pertaining to appointment on probation has not been excluded or exempted in the case of a compassionate appointment;

(ii) Since an appointment on compassionate grounds on probation is also a regular appointment and a person appointed as such is not offered a temporary appointment, whether there is any violation of law or principle in appointing a person in this category on probation in the first instance;

(iii) In view of the clear distinction in service jurisprudence between a regular and a temporary appointee, whether the appointment of a person on a compassionate basis on probation is permissible in law.

Compassionate appointment is a concept which has been evolved in our service jurisprudence to meet situations where an employee of the State dies while in service. Compassionate appointment as a concept, recognizes that the family of an employee of the State, who has died while in service, is left to fend for itself without its wage earner on whom it was dependent. While the sorrow of an untimely death cannot be assuaged - time and memory being a healer of sorts - what compassionate appointment provides is an avenue for the family of the deceased employee to live with a sense of dignity by providing one of its members employment with the State.

With respect, court unable to agree with the principle of law which has been laid down by the Division Bench in Jagdish Narain. An appointment which is made on a compassionate basis has to be made on a regular basis.

Making an appointment on a regular basis is not incompatible with the placement of the person appointed on probation. Appointment on probation is nonetheless an appointment to regular service and does not detract from the nature of the appointment. Probationary appointment does not leave the

employee with a sword of uncertainty (as the Division Bench held in Jagdish Narain) hanging over his or her head. The period of probation is a period during which the appointing authority is entitled to assess the suitability of the employee for being retained in service. The retention or dispensation of the services of a probationer does not lie at the whim and fancy of the appointing authority, and is governed by the settled principles of service jurisprudence of making a bona fide assessment of the suitability for retention of the employee, based on his or her performance and work during the period of probation. An employee who is appointed on a compassionate basis is not immune from the operation of the general rules of service. What the scheme for compassionate appointment does is to provide certain exemptions and relaxations which are specifically codified (in Para 6 of the earlier O M dated 9 October 1998 and the O M dated 16 January 2013).

The Division Bench in Jagdish Narain has erred in holding that the Office Memorandum does not contemplate an appointment being made on probation and in concluding that an appointment on compassionate basis being "a special kind of legislation unknown to the general procedure of recruitment" in the service rules, a compassionate appointee cannot be placed on probation.

A person appointed on a compassionate basis has to fulfill all the other obligations and responsibilities of the service. Such an appointee cannot claim immunity from an assessment by the employer of the suitability for retention in service. Such suitability is determined during the period of probation. The policy which has been framed, does not provide that a person who is recruited on compassionate basis, would not be placed on probation nor does it grant an exemption from the normal rules of appointment on probation.

With respect, the Division Bench in Jagdish Narain erred in placing the test exactly in reverse, to the effect that there is nothing in the policy which requires appointment on probation. Once the policy clearly specifies that appointment would be made on a regular basis and against a regular vacancy, the appointment would have to be made in a manner consistent with the service rules. Court, therefore, hold that there is nothing intrinsically wrong or contrary to law in a person who is appointed to a post on a compassionate basis being placed on probation. Court, therefore, overrule the judgment of the Division Bench in Jagdish Narain (supra). Court hold that the earlier decisions of the Division Benches in Ravi Karan Singh, Sanjay Kuamr, and Ram Chandra did not deal with the issue which has fallen for determination.

Court, accordingly, answer the questions which have been referred to the Full Bench in the following terms:

(1) Re Question (1): Where a person is appointed on a compassionate basis as a dependent member of the family of an employee of the State who has died in harness, such an appointment can be made on probation. The object and

purpose of appointing a person on probation is to determine the suitability of the person for retention in service. Appointment of a person who is engaged on a compassionate basis on probation is not contrary to law or unlawful.

(2) Re Question (2): Since an appointment on compassionate grounds on probation is also a regular appointment and a person appointed as such is not offered a temporary appointment, such an appointee can be placed on probation in the first instance.
(3) Re Question (3): The appointment of a person on a compassionate basis on probation is permissible in law.
The reference is accordingly answered. **(Sr General Manager, Ordnance Factory, Kalpi Road, Kanpur v. Central Administrative Tribunal & Anr, 2016 (34) LCD 1084)**

Constitution of India, Art 311 (2) (a) –Dismissal from service –Ground of conviction in criminal case- Plea of delinquent that on basis stay on conviction in appeal he should be reinstated – Held, "Reinstatement on mere stay of conviction in appeal not automatic as dismissal based on conduct and not conviction

In the present case, though, the petitioner has not been convicted under the provisions of Prevention of Corruption Act but he has been convicted under Section 409, 419,420,467,468 and 471 IPC involving embezzlement of public money etc. which is no less grave an offence, especially considering the fact that the petitioner is a Government Servant convicted for embezzlement etc. for huge amount of about Rs.23 lacs and odd while working as Sub Cashier in Sub Treasury Mishrikh. In these circumstances, considering the expected standard of administration and the fact that petitioner's dismissal from service was based on consideration of his conduct which led to his conviction it cannot be said that merely because conviction has been stayed by the appellate court it would automatically lead to his reinstatement in service. To put back the petitioner in service that too as Sub Cashier in the Sub Treasury or even on any other assignment would be fraught with serious consequences, therefore, keeping in mind the aforesaid judicial pronouncements stay of such conviction cannot lead to his automatic reinstatement unless and until the conviction itself is annulled or set aside by the appellate or higher Court. Unless it is so, it is not advisable to retain such person in service. If he succeeds in appeal, then of-course the decision with regard to dismissal of service will be reviewed as it is based on conduct leading to his conviction, in such a manner that he suffers no prejudice but to put him back at this stage when criminal appeal is yet to be decided on merits, would be giving undue benefit at the interim stage. Moreover the stay of conviction is relevant when conviction attracts automatic disqualification under

a Statute. In the instant case penal consequences are not automatic but based on conduct leading to petitioner's conviction on a criminal charge. Dismissal etc. from service, based on such conviction, is not automatic, therefore, reinstatement on mere stay of conviction in criminal appeal can also not be automatic, therefore, relief no.(ii) for reinstatement cannot be sustained. The stay does not wipe out the conviction finally. **(Mohan Lal v. State of U.P. and Ors., 2016 (3) ALJ 76)**

Constitution of India, Art. 311- Departmental appeal- Pending Criminal appeal- Effect of- Departmental appeal cannot be disposed of merely on ground of stay in Conviction

As far as relief no.(i) regarding disposal of departmental appeal is concerned as the conviction has been stayed in criminal appeal and the appeal is still pending which is a continuance of the main criminal case, there is no way that the departmental appeal can be ordered to be disposed of nor can it be done by the appellate authority merely on account of stay of conviction, as, the stay order does not decide the merits of the criminal appeal which is still pending nor does it wipe off the conviction but only puts it in abeyance. **(Mohan Lal v. State of U.P. and Ors., 2016 (3) ALJ 76)**

Specific Relief Act

S. 31- Scope of- Suit for cancellation of void as well as voidable instruments being of civil nature are cognizable by a civil Court- Revenue Court or any other court cannot entertain such a suit including cancellation of a document

Section 31 of the Specific Relief Act, 1963 makes specific provision for cancellation of void, as well as, voidable instrument. Suits for cancellation of such documents being of civil nature are cognizable by a civil court and even otherwise suits claiming relief provided under Specific Relief Act are entertainable only by a civil court and no revenue court or any other court can entertain such a suit including for cancellation of an instrument or document.

Thus, one who has reasonable apprehension that any instrument, if left outstanding may cause him serious injury can approach a competent court of law to get it cancelled. Sub-section (2) of Section 31 casts a mandatory duty upon the court passing a decree to send a copy of the same to the registering officer, who is enjoined by law to make a note on the copy of such document regarding the order of its cancellation passed by a particular court and after such an endorsement is made, the document becomes legally ineffective and no benefit of the same can be derived by any one. If a certified copy of such a

document is issued it would obviously contain the note regarding its cancellation by a court of law.

On the finding that a particular instrument or document was void because of any reason, it will be of no legal consequence and binding on any one without even its cancellation. But existence of such a document or instrument, more particularly for a substantial period may cause injury to the person whose right are affected by it and place his right and title over any property in doubt and dispute and may create complications and give rise to unnecessary litigations.

Reasonable apprehension of serious injury from a void document provides a cause of action to a person to approach the competent court of law, that is, civil court for its cancellation.

The Full Bench did not make any distinction in this behalf in respect of void or voidable sale deeds and according to its observation, if cause of action for cancellation of a deed arises, the effective relief of cancellation under Section 31 of the Specific Relief Act would be in civil court and a suit in revenue court will not be an effective substitute. **(Sanjay Sharma and others v. Kashi Prasad and other, 2016 (131) RD 346)**

Statutory Provisions

The Indian Stamp (Uttar Pradesh Amendment) Act, 2015
[U.P. Act No. 1 0f 20l6]
(As passed by the Uttar Pradesh Legislature)

An Act further to amend the Indian Stamp Act, 1899 in its 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.-Presently, the powers conferred under Section 56(I-A) of Indian Stamp Act, which are vested in Chief Controlling Revenue Authority are exercised by Board of Revenue only with reference to the State of Uttar Pradesh. As a result of this, public in general is facing difficulties on account of appeals needed to be filed only in the Board of Revenue which is likely to cause delay in the disposal of the same. Till December, 2014 there are approximately 2300 stamp appeal cases in which an amount of Rs 1,14,73,50,500 is involved, are pending before Chief Controlling Revenue Authority. The powers conferred under Section 56(1-A) of Indian Stamp Act hither to exercised by Chief Controlling Revenue Authority is proposed to be delegated to Deputy Commissioner, Stamps of the concerned Division. Therefore it is necessary to amend Section *76-A(b)* of

Indian Stamp Act, 1899 in the interest of Government revenue, public in general and quick disposal of stamp appeal cases.

The Indian Stamp (Uttar Pradesh Amendment) Bill, 2015 is introduced accordingly.

1. Short title, extent and commencement.-(l) This Act may be called the Indian Stamp (Uttar Pradesh Amendment) Act, 2015.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall come into force on such date as the State Government may, by notification in
the Gazette, appoint.

2. Amendment of Section 76-A to Act No. II of 1899.-In Section 76-A of the Indian Stamp Act, 1899, as amended in its application to Uttar Pradesh, in clause *(b)* for the figures "56(1)" the figures and letter "56(1) (I-A)" shall be *substituted.*

The Uttar Pradesh Control of Goondas (Amendment) Act, 2015[1]
[W.P. Act No. I3 of 2016]

(As passed by the Uttar Pradesh Legislature)

An Act further to amend the Uttar Pradesh Control of Goondas Act, 1970 It is hereby enacted in the Sixty-sixth Year of the Republic of India as follows-

Prefatory Note-Statement of Objects and Reasons.-The Uttar Pradesh Control of Goondas Act, 1970 (U.P. Act No.8 of 1971) has been enacted to provide for making special provisions for the control and suppression of Goondas with a view to ensuring the maintenance of public order in the State. The High Court of Judicature at Allahabad, Lucknow Bench, Lucknow has in Case No. *2390/2012 Mushrraf A li, son of Shaukat Ali* v. *Uttar Pradesh State* in their order, dated January 8, 2013 suggested to bring the following offences in the ambit of the said Act and take action against the persons indulging in such offences under the said Act-

1. offences punishable under the Regulation of Money Lending Act, 1976;
2. offences punishable under the Unlawful Activities (Prevention) Act, 1966 and the Indian Forest Act, 1927;
3. illegally transporting and/or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the Prevention of Cruelty to Animals Act, 1960;
4. human trafficking for purposes of commercial exploitation, forced labour, bonded labour, child labour, sexual exploitation, organ

removing and trafficking, beggary and the like activities.

With a view to complying with the said orders of the Hon'ble High Court it has been decided to amend the said Act to include the said offences in the definition of the word "Goondas".

Since the State Legislature was not in session and immediate legislative action was necessary to implement the aforesaid decision, the Uttar Pradesh Control of Goondas (Amendment) Ordinance, 2015 (U.P. Ordinance No.2 of2015) was promulgated by the Governor on February 4, 2015.

The Bill is introduced to replace the aforesaid Ordinance.

1. Short title and commencement.-(1) This Act may be called the Uttar Pradesh Control of Goondas (Amendment) Act, 2015.

(2) It shall be deemed to have come into force on February 4, 2015.

2. Amendment of Section 2 of U.P. Act No. 8 of 1971.-In Section 2 of the Uttar Pradesh Control of Goondas Act, 1970, hereinafter referred to as the principal Act, in clause *(b)* after sub-clause *(vii)* the following sub-clauses shall be *inserted*, namely-

"(viii) is involved in offences punishable under the Regulation of Money Lending Act, 1976;

(ix) is involved in offences punishable under the Unlawful Activities (Prevention) Act, 1966 and the Indian Forest Act, 1927;

(x) is involved in illegally transporting and/or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the Prevention of Cruelty to Animals Act, 1960;

(xi) is involved in human trafficking for purposes of commercial exploitation, forced labour, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities.".

3. Repeal and saving- (1) The Uttar Pradesh Control of Goondas (Amendment) Ordinance, 2015 (U.P. Ordinance No. 2 of 2015) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the principal Act as amended by the Ordinance referred to in sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by this Act as if the provisions of this Act were in force at all material times.

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) (Amendment) Act, 2015

[U.P. Act No. 14 of 2016]

(As passed by the Uttar Pradesh Legislature)

An Act further to amend the Uttar Pradesh Gangster and Anti- Social Activities (Prevention) Act, 1986

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

Prefatory Note- Statement of objects and Reasons.- The Uttar Pradesh Gansters Act and Anti-Social Activities (Prevention) Act, 1986 (U.P. Act No. 7 of 1986) has been enacted to provide for making special provisions for the prevention of, and for copying with gangsters and anti-social activities in the State. The High Court of Judicature at Allahabad, Lucknow Bench Lucknow has in *Musharraf Ali, son of Shaukat Ali v. State of U.P. 2013 SCC* Online All 13925, in the order thereof date January 8, 2013 suggested to bring the following offences in the ambit of the said Act and take action against the persons indulging in such offences under the said Act-

1. offences punishable under the Regulation of Money Lending Act, 1976;
2. illegally transporting and /or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the Prevention of Cruelty to Animals Act, 1960;
3. human trafficking for purposes of commercial exploitation, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities.
4. Offences punishable under the Unlawful Activities (Prevention) Act, 1966;
5. Printing, transporting and circulating of fake Indian currency notes;
6. Involving in production, sale and distribution of spurious drugs;
7. Involving in manufacture, sale and transportation of arms and ammunition in contravention of Section 5, 7 and 12 of the Arms Act, 1959;
8. Felling of killing for economic gains, smuggling of products in contravention of the Indian Forest Act, 1927 and the Wildlife Protection Act, 1972;
9. Offences punishable under the Entertainment and Betting Tax Act, 1979;
10. Indulging in crimes that impact security of State, public order and even tempo of life.

With a view to complying with the said orders of the Hon'ble High Court it has been decided to amend the said Act to include the said offences in the

definition of the word “Gang”

Since the State Legislature was not in session and immediate legislative action was necessary to implement the aforesaid decision, the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) (Amendment) Ordinance, 2015 (U.P. Ordinance No. 1 of 2015) was promulgated by the Governor on January 20, 2015.

The Bill in intro0duced to replace the aforesaid Ordinance.

1. Short title and commencement.- (1) This Act may be called the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) (Amendment) Act, 2015

(2)It shall be deemed to have come into force on January 20, 2015.

2. Amendment of Section 2 of U.P. Act No. 7 of 1986.- In Section 2 of the Uttar Pradesh Gangsters and Anti- Social Activities (Prevention), Act, 1986, hereinafter referred to as the principal Act, in clause (b) after sub-clause (xv) the following sub-clauses shall be inserted namely-

“(xvi) offences punishable under the Regulation of Money Lending Act, 1976;

(xvii) illegally transporting and /or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the Prevention of Cruelty to Animals Act, 1960;

(xviii) human trafficking for purposes of commercial exploitation, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities.

(xix) offences punishable under the Unlawful Activities (Prevention) Act, 1966;

(xx) printing, transporting and circulating of fake Indian currency notes;

(xxi) involving in production, sale and distribution of spurious drugs;

(xxii) involving in manufacture, sale and transportation of arms and ammunition in contravention of Section 5, 7 and 12 of the Arms Act, 1959;

(xxiii) felling of killing for economic gains, smuggling of products in contravention of the Indian Forest Act, 1927 and the Wildlife Protection Act, 1972;

(xxiv) offences punishable under the Entertainment and Betting Tax Act, 1979;

(xxv) indulging in crimes that impact security of State, public order

and even tempo of life."

3. Repeal and saving- (1) The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) (Amendment) Ordinance, 2015 (U.P. Ordinance No. 1 of 2015) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the principal Act as amended by the Ordinance referred to in sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by this Act as if the provisions of this Act were in force at all material times.

Transfer of Property Act

Ss. 10 and 126- Scope and applicability

A bare reading of Sections 10 and 126 of Act, 1882, shows that Section 10 lays down that in a transfer, the condition restraining alienation, cannot be inserted. Section 126 of Act, 1882 lays down that on happening of certain condition, not depended on the will of the donor, the gift can be suspended or revoked. Present case is not covered under Section 126. According to the respondent, gift can be conditional. But there is no question as to whether a gift can be conditional but the real question is that condition, which has been specifically prohibited under Section 10 of Act, 1882 can be imposed in the gift or not. There is no reason to hold that the condition which is specifically prohibited under Section 10 of Act, 1882 is not applicable to gift. This Court has already taken the view that condition restraining donee from alienation of gift, cannot be imposed and such a condition is void under Section 10 of the Act, 1882. Court respectfully agree with the aforesaid view taken in Birj Devi case. **(Smt. Prem Kali v. Deputy Director of Consolidation Sitapur And Others, 2016 (131) RD 154)**

Sec. 54- Requirements as contemplated under- Discussed

It is not disputed that where there is a sale of an immovable property, the value of which is less than Rs.100/-, the execution of registered instrument is not required. The only requirement is that sale must be followed by delivery of possession. It has been held that the delivery of possession as contemplated by Section 54 of the Transfer of Property Act is actual delivery and not constructive and symbolic delivery. The question is where the co-sharer is already in possession of such a share in the property, even than actual delivery of possession is required. The requirement of law to deliver the possession at the time of sale of a tangible property if the value of the property is less than Rs.100/- has been interpreted so because of the fact that when a sale is affected

by a registered instrument, it is actual sale but when the value of tangible immovable property is less than Rs.100/- the execution of registered instrument is not required and sale can be affected by any other mode followed by delivery of possession. The requirement as contemplated under Section 54 of the Transfer of Property Act is because of the fact that when sale is not being affected by registered instrument, there must be at least some indication and act on the part of the vendor to show that the property has been sold. It is evident from the law laid down by the Hon'ble Supreme Court that where the legislature talks of delivery of possession, the delivery must be actual and not symbolic. The sale certificate issued by the Assistant Custodian although nowhere indicates that the property was also delivered to the purchaser but it cannot be ignored that the plaintiff-appellant was already in possession over a part of the property and the sale was in respect of undivided share. In these circumstances, since the plaintiff-appellant was a co-sharer and was also in possession of share, therefore, the delivery of possession of undivided share by Assistant Custodian to the plaintiff-appellant was not required. **(Barkat Ali and another v. Ali Ahmad Khan and others, 2016 (116) ALR 708)**

U.P. Consolidation of Holdings Act

Remand order- Nature of –Not an interlocutory order

The contention of the learned Counsel for the petitioner is that in the revision wherein the impugned order has been passed was not maintainable, since it was directed against an interlocutory order of remand , also cannot be accepted. The Division Bench of this Court in the case of Dinanath and others v. Deputy Director of Consolidation and others, has held that an order of remand is not an interlocutory order and this Court is bound by this decision of the Division Bench aforesaid. **(Smt. Samana v. Dy. Director of Consolidation and others. 2016 (131) RD 359)**

Nazul Land- Confiscated estates –State holds nazul land in trust and manages it with aid of local bodies –No tenural right can be conferred to any person over nazul land and it used to be settled according to the provisions of Government Grant Act, 1895

In present case, It has been held by Sub Divisional Officer that the land in dispute was nazul land. The petitioners have neither specifically denied this fact nor they have filed any evidence to prove otherwise. The nazul property are confiscated estates and State holds nazul lands in trust and manages it with aid of local bodies as held by this Court in Satya Narain Kapoor Vs. State of UP and others, 1998 (1) AWC, 1 (DB). The nazul land used to be settled according to the provisions of Government Grant Act 1895. By UP Act No. 13

of 1960, the Government Grants Act 1895 has been amended in State of UP with retrospective effect.

Thus from the above provisions, it is clear that neither Transfer of Property Act, 1882 nor UP Tenancy Act 1939 were applicable over nazul property. Due to exclusion of nazul property within the meaning of land as defined under UP Tenancy Act 1939 or UP Zamindari Abolition & Land Reforms Act, 1950, neither the provisions of UP Tenancy Act 1939 nor UP Zamindari Abolition & Land Reforms Act, 1950 were applicable over it. Thus no tenurial right can be conferred to any person over nazul land.

The right over nazul land can be granted by a grant executed according to the provisions of Government Grants Act, 1895. None of the petitioners have produced any document to show that they have obtained lease / grant from Government according to the aforesaid provisions. The petitioners claimed their right only on the basis of continuous possession over the land in dispute. As stated above, neither the provisions of Transfer of Property Act, 1882, nor the provisions of UP Tenancy Act 1939, or UP Zamindari Abolition & Land Reforms Act, 1950, are applicable as such only on the basis of continuous possession no right can be conferred upon the petitioners. Even otherwise also the provisions of UP Consolidation of Holdings Act 1953 is not applicable. The consolidation authorities have no right to confer any right to the petitioners over the land in dispute and the papers prepared during consolidation in the names of the petitioners conferring them 'sirdari' right are totally without jurisdiction. **(Guddu and others v. Commissioner, Lucknow Division, Lucknow and others, 2016 (131) 55)**

Ss. 4(2) r/w 5(2) (a) and 52 (2) –Scopes of- Any pending proceeding on notification u/s 52 C.H. Act shall continue even after notification

The High Court may now examine the effect of notification issued under section 52 of Act, 1953 for closing the consolidation operations.

From sub-section (2) of section 52 of Act, 1953, it is apparent that notwithstanding anything contained in sub-section (1), on close of consolidation operations under section 52 of Act, 1953, proceedings before the authorities as may be prescribed and the consolidation operations for the purpose be deemed to have not been closed, meaning thereby that the proceedings shall continue, as they were pending on the date of issuance of notification under section 52 of Act, 1953 irrespective of the close of the consolidation operations.

In court’s opinion, the legal consequences on joint reading of section 4 (2) and section 5 (2) Act, 1953 is that the proceedings before any other Court, would abate and rights etc. are to be decided through proceedings before the consolidation authorities. Any pending proceeding on the date of issuance of

notification under section 52 of Act, 1953 shall continue as such as if the consolidation operation has not been closed. **(Rameshwar Dayal v. Jumma and others, 2016 (131) RD 7)**

S. 5 (2) –Scope of –Abatement of suit etc. U/S 5(2) of Act is not automatic, order of abatement is required to be passed.

Purpose of abatement under section 5(2) of the Act as held by Supreme Court in Bibi Rahmani Khatoon v. Harkoo Gope, AIR 1981 SC 1450 is that when a scheme of consolidation is undertaken, the Act provides for adjudication of various claims to land involved in consolidation by the authorities set up under the Act. In order to permit the authorities to pursue adjudication of rival claims to land unhampered by any proceedings in Civil Courts, a wholesome provision was made that the pending proceedings involving claims to land in the hierarchy of Civil Courts, may be in the Trial Court, appeal or revision, should abate. This provision was made with a view to ensuring unhampered adjudication of claims to land before the authorities under the Consolidation Act without being obstructed by proceedings in civil Courts or without being hampered or impeded by decisions of the civil Court in the course of consolidation of holdings.

This Court in Pradeep Kumar Dixit v. U.P. Co-operative Bank, 2002 (2) AWC 1951 and Vishwanath Chaturvedi v. Union of India, 2011 (2) All LJ 370 (DB) held that there is no wrong without remedy. Abatement of the suit etc. under section 5(2) of the Act, is not automatic and the order of abatement is required to be passed. **(Thakur Ram Janki Ji Virajman Mandir and another v. Board of Revenue, U.P. at Allahabad, 2016 (131) RD 30)**

S. 19- Scope of –Explained

There is no absolute prohibition in allotting an uran chak during consolidation under the Act. Chak of the petitioner is on his original holding, taking some area of adjacent plot, which was necessitated for making the chaks in rectangular shape. In chak allotment according to principals of section 19, it is always possible to allot an uran chak. **(Sunder Lal v. Deputy Director of Consolidation, Unnao and others, 2016 (131) RD 344)**

S. 48- Scope of jurisdiction under- Revisional Court has no jurisdiction to interfere with the finding of the subordinate authority unless it is found to be perverse

The settled position of law which emerges from the judgments of Hon'ble Apex Court is that revisional authority while exercising the power under section 48 of the U.P. Consolidation of Holdings Act, has no jurisdiction to interfere with the findings of the subordinate authority unless same is found

to be perverse in the sense that same is not supported by the evidence brought on record or is against the law or suffered from the vice of the procedural irregularity. Revisonal Authority cannot assume power of the fact finding authority by appreciating himself facts de nov.

In view of the above, Court find that while passing the impugned judgment, revisional authority/Deputy Director of Consolidation has exceeded its jurisdiction. Therefore, judgment impugned does not sustain in the eyes of law. **(Pahal Singh v. Deputy Director of Consolidation/ Addl. Haridwar and others, 2016 (131) RD 50)**

S. 48- Revision against order either condoning the delay or refusal to condone the delay is maintainable before the D.D.C. U/s 48 of above mentioned Act

Through this writ petition, the petitioners have prayed for issuing a writ of certiorari quashing the order dated 24.7.2002 passed by the Settlement Officer Consolidation (in short SOC) and the order dated 4.1.2005 passed by the Deputy Director Consolidation (in short DDC). Vide order dated 24.7.2002 the SOC has condoned the delay in filing the appeal and fixed date for hearing of the appeal whereas by the subsequent order dated 4.1.2005 the DDC has dismissed the revision holding it to be not maintainable against the order dated 24.7.2002.

Court heard the learned counsel for the parties and perused the impugned orders. First of all Court want to consider the merit of the order dated 4.1.2005 passed by the DDC in Revision No. 774 (Ram Niwas Singh and others vs. the Deputy Director of Consolidation, Gorakhpur and others). It is not in dispute that the Revision was filed against the order dated 24.7.2002 by which the delay has been condoned in filing the appeal and the DDC has dismissed the revision holding it to be not maintainable taking note of the decision of this Court in Sukhjindar Jeet Kaur vs. Deputy Director of Consolidation, Rampur and others (2003 RD 448).

Learned counsel for the petitioner submitted that the law laid down in Sukhjinder Jeet Kaur now does not hold good law in view of the subsequent decision of this Court in Paras Nath vs. Deputy Director of Consolidation, Varanasi and others (2008(104) RD 516) wherein it has been held that in both the cases while condoning the delay or refusing to condone the delay a revision would lie as the orders either of condonation of delay or refusal to condone the delay does not fall in the ambit of an interlocutory order and the DDC will have jurisdiction under section 48 of the U.P. Consolidation of Holdings Act, 1953 to entertain the Revision. **(Ram Newas Singh v. Deputy Director of Consolidation, Gorakhpur and others, 2016 (131) RD 611)**

S. 49- Bar under –Nature of- Explained

The bar contained in Section 49 contemplates bar of entertainment of suit by a civil or revenue court in respect of following:

(a) the declaration and adjudication of rights of tenure holders,

(b) adjudication of any other rights arising out of consolidation proceedings, and

(c) adjudication of any right in regard to which a proceeding could or ought to have been taken under U.P. Consolidation of Holdings Act, 1953.

In view of the above, it is clear that any adjudication done with regard to land lying in the area in which a notification under Section 4(2) of the U.P. Consolidation of Holdings Act, 1953 has been issued operates a bar of reagitating in any other revenue or civil Court. Second limb of Section also creates a bar with regard to adjudication of any other right regarding which proceedings could or ought to have been taken under U.P. Consolidation of Holdings Act, 1953.

The present case of plaintiff-appellant is based on claim that he is owner and bhumidhar of disputed land. Admittedly the name of defendants-respondents are recorded as bhumidhar on disputed land i.e. agricultural 'land' as defined in UPZA & LR Act. Even the alleged relief of permanent injunction regarding disputed land is also based on the relief of declaration of title of disputed agricultural 'land'. Therefore it is explicitly clear that only the court of Assistant Collector has jurisdiction to grant these reliefs, and Civil Court has no jurisdiction to decide the suit or other proceeding based on cause of action for declaration of ownership rights of such agricultural land. So this finding of first appellate court is perfectly correct and is being upheld that plaintiff is not entitled for the relief of declaration of bhumidhari rights which is within exclusive jurisdiction of revenue courts. From above discussion, it is clear and proved that main relief sought by plaintiff-appellants are based on declaration of their alleged right of bhumidhari over disputed agricultural land but it cannot be granted to the appellants, and therefore, claim of plaintiff/appellant is barred by Section 331 of U.P.Z.A. & L.R. Act, so appellant is not entitled for any relief claim in spite of his possession. . **(Ram Ratan (Dead) Through L.R. v. Bhagwandeen and others, 2016 (131) RD 616)**

U.P. Imposition of ceiling on Land Holding Act

Object of enactment- Towards achieving the goal of agrarian reforms

The U.P. Imposition of Ceiling on Land Holdings Act, 1960 was enacted by the State Legislature towards achieving the goal of agrarian reforms. The pattas executed in the year 1992 in respect of the land which has been declared surplus cannot be permitted to be cancelled after a lapse of period of

23 years, specially when the petitioners have measurably failed to give any reason for moving the application under Section 27(4) of the Ceiling Act with so much of delay. Claim of the petitioners on the merit regarding their tenancy rights, Court is afraid, could not has been gone into in the proceedings sought to be instituted by the petitioners under Section 27 (4) of the Ceiling Act. Chapter IV of the Ceiling Act prescribes for disposal and settlement of surplus land. Section 25 provides that State Government may use or permit the use of the whole or any portion of such land for any purpose for which such land could have been acquired under the Land Acquisition Act, 1894. Section 26 similarly provides that all settlement of surplus land vested in the State is to be made on behalf of the State Government by the Collector. Section 27 provides that land declared surplus shall be settled in the village in which land is not available for the community purposes or in which the land as available is less than 15 acres with the Gaon Sabha. It further provides that land so settled with the Gaon Sabha shall be used for planting trees, growing fodder or for such other community purposes, as may be prescribed. Sub-Section (2) and (3) of Section 27 provide that surplus land shall be settled by the Collector in accordance with the order of preference and subject to the limits as specified in Section 198 of the U.P. Z.A. & L.R. Act. Thus, purpose of implementing the Ceiling Act is not only to vest land in State after declaration of land being surplus; rather it is to put such surplus land to use which would achieve the purpose of agrarian reforms. **(Afsar Ali and others v. Addl. Commissioner (Admn.) Devi Patan Gonda & Ors., 2016 (116) ALR 628)**

U.P. Land Revenue Act

Scope of –Discussed

In the facts of the case in hand it is not being disputed that the parties were recorded in the revenue record during consolidation proceedings. Upon close of consolidation proceedings in terms of Section 52 of Act, 1953, any proceedings in view of sub-section (2) of Section 52, if not pending, then finality would be attached to the findings recorded during consolidation proceedings. A finding recorded by a consolidation court cannot be questioned either before the civil court or revenue court in view of Section 49. Only clerical corrections are permissible, names recorded in revenue record, therefore, could not have been directed to be deleted under Rule 109, such an order is without jurisdiction. The revenue record attaining finality during consolidation proceedings, therefore, could not be corrected by the revenue authorities under Land Revenue Act, as long as, the sale deed subsists and is not declared void by the competent court. **(Sanjay Sharma and others v. Kashi Prasad and other, 2016 (131) RD 346)**

S. 28 –Proceeding for Correction of map- Nature of-Map Correction proceeding is summary in nature, if any one is aggrieved, has remedy of filing a suit before the competent Court

In the instant case, an application under Section 28 of the Act has been moved by the petitioners for correction/cancellation of map before the opposite party no.2. Accordingly, a case no.237 under Section 28 of the Act has been registered before the Collector, Sultanpur in which Chief Tracer has submitted a report dated 02.02.2005 and taking into consideration the said fact, the order dated 09.06.2005 has been passed. Aggrieved by the said order, an application for recall has been moved, rejected by order dated 05.09.2005 passed by the opposite party no.2. Thereafter, petitioners filed Revision No.2617 under Section 219 of Land Revenue Act, allowed by order dated 27.04.2007 and matter was remanded back to decide afresh. And when the matter came up for consideration before the opposite party no.2, from the perusal of the record, the position which emerges out is that petitioners have raised any grievances on merit of the case. After taking into consideration the submission made by learned counsel for the parties and material on record, by order dated 25.08.2008 has been passed by the opposite party no.2.

Meaning thereby opposite party no.2 has considered the grievances of the petitioners against the report dated 02.02.2005 submitted by Chief Tracer. So the submission made on behalf of the petitioners that no opportunities had been given to the petitioners to file their objections against the said report is contrary to the fact on record. In addition to the said facts, the order dated 25.08.2008 was challenged by the petitioners by filing revision under Section 219 of the Act before the opposite party no.1. The revisional authority while considering the matter, summoned the Chief Tracer and got the report dated 02.02.2005, verified and came to the conclusion that there is no illegality or infirmity in the report dated 02.02.2005 submitted by the Chief Tracer and passed an order dated 06.11.2009.

Moreover, it is settled law that proceedings under Section 28 of the Act are within the realm of a summary proceedings and if anyone is aggrieved by the order passed therein or the order passed in revision thereto, he has a remedy of filing a suit before the competent Court. Thus, the parties litigation under section 28 of the Act, even after availing the remedy of revision, have an alternative remedy to get their rights adjudicated by filing suit." (See Chet Ram and others vs. State of U.P. Through Secretary Revenue U.P. At Lucknow and others 2012 (115) RD 815). **(Rajjab Ali and others. v. Addl. Commissioner, Faizabad, 2016 (131) RD 613)**

S. 218- Revision- Requirement of- Revisional Court required only to see

the legality of touchstone of provisions existing in Sec. 218 of Act

It has further been contended by the learned Counsel for the petitioners that the Revisional Court has not discussed any issue, material and the evidence and has passed the order which is cryptic in nature, hence, at least the revisional Court has failed to exercise its jurisdiction vested under section 218 of the U.P. Land Revenue Act. So far as the aforesaid submission of the learned Counsel for the petitioners is concerned, the scope of the revisional jurisdiction is well established. The Revisional Court is only required to see the legality on the touchstone of the provisions contained in the then existing section 218 of the U.P. Land Revenue Act. **(Tulsi Ram and others v. Addl. Commissioner (Judicial), Lucknow and others, 2016 (131) RD 361**

U.P. Municipalities Act

S. 48 (2)- Attractibility of the provision

The State Government is empowered to remove an elected President of a municipality in exercise of powers conferred by Section 48 (2) of the Act.

A perusal of the aforesaid provision goes to show that State Government is empowered to issue a show cause notice to the elected President of a municipality to explain why he should not be removed from the office in a case where it has reason to believe that any of the provisions of clause (a) or (b) are attracted. In other words, the reason to believe is referable to clause (a) or sub clauses (i) to (xvii) of clause (b). In other words, if the State Government has reason to believe that any of the stipulation mentioned therein is attracted, it can call upon the elected President to show cause why he should not be removed from the office. **(Babita Kasaudhan v. State of U.P. and others, 2016 (116) ALR 114)**

U.P. Panchayat Raj Act

S. 106- Applicability of –Section 106 is applicable to suits, instituted against Gaon Sabha, or its officials or member for acts done in official capacity under the Acts

In this matter, Counsel for the respondents submits that section 106 of U.P. Panchayat Raj Act, 1947 is confined to suits instituted against the Gaon Sabha or its members and officials for acts done in their official capacity under the Act. In the present case, suit has been filed by the respondents for declaring them as bhumidhar with transferable right or the land in dispute against the petitioner. Thus rigour of section 106 is not applicable in this suit filed for declaration as bhumidhar, with transferable riths in Law in question in suit. The plea of application of it is available to Gram Sabha alone. **(Ram Bahadur v.**

Commissioner, Faizabad Division and others, 2016 (131) RD 335)

U.P. Public Money (Recovery of Dues) Act

S. 3 –Applicability of- Recovery of Loan without permission of state is without jurisdiction

Court had occasion, in the case of Micky Palta and others v. State of Uttarakhand and others, 2015 (1) UD 324to deal with the provisions of U.P. Public Moneys (Recovery of Dues) Act, 1972. While placing reliance on the judgment of Hon'ble Apex Court in the case of Iqbal Naseer Usmani v. Central Bank of India and others, (2006) 2 SCC 241, it was held in the case of Micky Palta (supra) that outstanding amount of Term Loan (Commercial Load) cannot be recovered under section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972 (for short, Act of 1972) and only such amount can be recovered as arrears of land revenue, which falls within the four-corners of section 3 of the Act of 1972.

In the present case too, UPFC has no made any request to the state Government seeking permission to recover the amount as arrears of land revenue nor the State Government has examined the matter not the state Government has issued any recovery certificate to the Collector to recover the amount as arrears of land revenue and recovery certificate was directly issued by the Corporation to the Collector for recovery of the outstanding amount as arrears of land revenue. Therefore, impugned citations are without jurisdiction. **(Vinod Kumar Agarwal v. U.P. Financial Corporation and others, 2016 (131) RD 238)**

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act

Ss. 16 (a)(b) and 21 (1) (a) –Bonafide need under the provision- Difference between- There is no difference in the decree of "need" to be established by the landlord in the proceedings U/s 16(1)(b) or Sec. 21 (1) (a)- Only benefit before the landlord in a matter U/s 16(1) (b) is that the tenant would not be there to contest his need and comparative hardship of the tenant would not be seen

The word "bona fide need" as found in Section 16(1)(b) and Section 21(1)(a) carries the same meaning. The object and purpose of Section 16 may be different from that of Section 21 but the expression "bona fide" need has to be given the same meaning. In both the cases, the landlord has to establish his bona fide requirement to get the premises released. There is no difference in the degree of "need" to be established by the landlord in the proceedings under

Section 16(1)(b) or Section 21(1)(a). Only benefit before the landlord in a matter under Secton 16(1)(b) is that the tenant would not be there to contest his need and the comparative hardship of the tenant would not be seen in such a case. This view finds support from a decision of this Court in Dr. Sita Ram Gandhi v. IV Additional District Judge, Meerut and Another 1983(1) ARC 782. Relevant paragraph 10 is as under:-

> *"10. It may be correct that in Section 16(1)(b) as well as in Section 21(1)(a) the legislature has used the same expression, i.e., "bona fide requirement". The settled rule of interpretation of statutes is that an expression used in the same statutes at two places should be given the same meaning unless the context requires otherwise. Though the object and purpose of Sec. 16 is different than that of Sec. 21, but in the background or in the context of these provisions, this expression has to be given the same meaning. The expression require significance that mere desire on the part of the landlord is not enough. There should be an element of need and the landlord must show that he requires the building in question for the purpose for which he has applied. The use of the expression 'bona fide' is indicative of the intention of the legislature that the requirement should be common or with good faith, honestly, truely or actually. The contention of the petitioner's learned counsel that the proceedings of sections 16 and 21 being different, the meaning to be assigned to this expression used in the two sections should also be different does not appeal to me. The same word may mean one thing in one context and another in different but hear the context of Sections 16 and 21 is necessarily the same i.e., the requirement of the land to get his premises released. Mere assertion on the part of the landlord that he requires additional accommodation in occupation of the tenant is not sufficient. It is for the court to determine the truth of the assertion and also whether in is bona fide. The test, as said by the Supreme Court in Mattulal v. Radhe Lal is objective and not subjective."*

Now, in the light of the above principle, it is to be seen as to whether the petitioner is in a better position than that of another tenant namely Gopal Kumar Gupta, in case, it is accepted that he has been inducted without allotment order. This question has to be examined in view of the discussion made above which reflects that the petitioner neither could challenge the need of the landlord nor could win on the question of comparative hardship. **(Suresh Prasad v. A.D.J. And 2 Ors., 2016 (2) ARC 38)**

S. 21 (1) (a)- Release application by daughter- Maintainability of- Daughter who is living with landlord or is dependent upon him can maintain the release application for her need

The petitioners are owners and landlady of the shop in question which exists at the ground floor of the House No.53-A/1, Meerapur, Allahabad. The release application was filed under Section 21(1)(a) by Nanku Lal Kushwaha in

the year 1994 with the assertion that he and his daughters who were living with him required the shop in question to start a business.

During the pendency of the release, the applicant-landlord died and his two daughters filed affidavits before the Prescribed Authority that they needed the shop in question. In one of the affidavit filed by Smt. Kusum Kushwaha @ Guddi, elder daughter of the landlord, she stated that she wanted to start a business to meet out her daily expenses and to look after his parents. She had no other source of income. In a joint affidavit of two daughters namely Smt. Kusum Kushwaha and Smt. Manju filed on 28.5.2002, it was stated that both the daughters were living in the house in question since the lifetime of their father. They wanted to start their business in the shop in question. The release application was decided by the Prescribed Authority on 30.4.2008 and the need of both the daughters of the applicant-landlord was found to be genuine.

The daughters also had to sell a portion of their house under financial constraint. While considering the need of elder daughter and the widow, the wife of the landlord, it was held that they had no other source of income, only a sum of Rs.16,00/- could be earned by them towards rental income. The objection of the tenant that the daughters do not come within a family was rejected on the ground that there was no dispute about the fact that the elder daughter was deserted by her husband and was living with her parents.

The finding of the Prescribed Authority that the elder daughter of the landlord was deserted by her husband and was living with the widow i.e. wife of the landlord in the house in question and she had no other source of income except the rental income was not upset by the Appellate Court.

There cannot be two opinion about the fact that a daughter who is living with the landlord or is dependent upon him can maintain the release application for her need. The need of daughter could not have been rejected on the ground that the father, the applicant-landlord gave one shop on rent prior to filing of the release in-stead of using it for his business. **(Kusum Kushwaha (Smt.) & Another v. Shri Rakesh Kumar Kohli & Another, 2016 (1) ARC 817)**

S. 21(1)(a)- Crucial date for deciding bona fide requirement- Determination of

In this case court has held that crucial date for deciding bona fide requirement of the landlord is the date on which his release application is moved (See G.C. Kapoor v. Nand Kumar Bhasin and others, AIR 2002 SC 200 :2001 (2) ARC 603) **(Jameel Ahmad and ors. v. Additional District Judge/Special Judge (Sc/St) Act & Ors, 2016 (1) ARC 821)**

S. 21 (1) (a) and (b) Application for release of accommodation –Bona-fide need- Landlord partition father of landlord and two brothers died- To

establish his own business, he moved present application –Sustainability of- No one can compel a landlord to participate in family business

On 19.2.1992 a release application has been moved on behalf of the landlord/ respondent no.3. In para16 of the said application it has been stated that tenant Jameel Ahmad near his residence has got another building in which there are eight shops, out of said eight shops six shops are on rent and two are still vacant. In para-17 of the release application it has been pleaded on behalf of the landlord that in addition to accommodation as mentioned in para16 of the said application there are three other shops owned by tenant situate at Chowk Bazar , Bahraich and from one of the said shop, tenant is doing business of selling bangles. In written statement filed on behalf of the tenant , the reply given to the averment as made in para-16 and 17 to the release application is " Asatya hai , Aaswikar hai". And in para-30 of the additional plea it has been pleaded that assertion made in para 17 of the release , are incorrect and the tenant has got two shops which are under the tenancy for last fifty years, there is no third shop as mentioned in para-17 of the release application.

Further, neither by way of pleadings nor by way of any evidence oral or documentary there is no contradiction in the pleadings of para 16 of the release application in which it has been categorically pleaded that tenant Jameel Ahmad near his resident has got another building in which there are eight shops out of which six shops are rented and two are vacant. In this regard the court below has given a findings of fact that taking into consideration the said fact the need of the landlord is bona fide and genuine one . As there is also no denial in this regard in writ petition so as per the said fact as well as the fact that application for release has been moved in the year 1992 and since than no effort has been made by the tenant for searching out the alternative accommodation so, in view of law laid down by Hon'ble Apex Court in the case Badri Narayan Chunni Lal Bhutada Vs. Govind Ram Ram Gopal Mundada, AIR 2003 SC 2713, the tenant has no right to plead hardship. The balance of 'comparative hardship' tits in favour of the landlord. (seen also Sidh Nath Shukla Vs. Judge, Small Causes (Prescribed Authority) Lucknow and others, 2007 (25) 1475)

Moreover, from the perusal of the material on record, the position which emerge out that landlord's family has got only two shops from which business for selling the cloth are done by his brothers and he is assisting them and when he got married in the year 1989 in order to earn his livelihood an application for release has been moved in the year 1992, so keeping in view the said fact as well as the law laid down by Hon'ble Apex Court in the case of Sushila Vs. A.D.J. , AIR 2003 SC 780 and Rishi Kumar Govil Vs. Maqsoodan and others, 2007 (4) SCC 465 and by this Court in the case of Punit Kohli (Supra) that no one can compelled a landlord to participate in the family business, argument in

question advance on behalf of the petitioners/ tenant has got no force, rejected.

So far as the arguments advanced on behalf of petitioners/ tenants that during the pendency of litigation father of landlord/ opposite party no.2 Sri Shiv Shanker Lal and two brothers, , Subhash Chandra @ Lallu and Shashi Kumar @ Raju have died, so he has got ample place to do business in order to earn his livelihood from the lodge initially looked by his father and from the shop of his brothers, has also got no force because crucial date for deciding bona fide requirement of the landlord is the date on which his release application is moved.

For the foregoing reasons , I do not find any illegality or infirmity in the judgments which are under challenge in the present writ petition. **(Jameel Ahmad and others v. Additional District Judge/Special Judge SC/ST Act and others, 2016 (115) ALR 771)**

S. 21 (1) (a) and S. 21 (1) (b) –Scope of

Section 21 (1) (a) and (b) of the U.P. Act No. 13 of 1972 read as under:

"(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes for any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust; (b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction"

Perusal of Section 21 (1) (a) of the Act would demonstrate that application can be moved by the landlord seeking release of the building on the ground that building is bona fide required either in its existing form or after demolition

and new construction by the landlord for occupation by himself

or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust.

Section 21 (1) (b) of the Act would demonstrate that release of the building can be sought by the landlord on the ground that the building is in dilapidated condition requiring demolition and new construction. **(Sushila and others v. District Judge and others, 2016 (115) ALR 748)**

S. 21 (1) (a) and S. 21 (1) (b) –Difference between –Explained

In other words, a building may not be in dilapidated condition and may be fit for human habilitation even then under section 21 (1) (a), landlord may seek release of the building on the ground that to fulfil his present need, he

shall reconstruct the building after demolition of existing building, as per his requirement while if application is moved under Section 21 (1) (b), landlord is not required to show bona fide need, the only factum, which is required to be proved is that building is not fit for human habitation and is in dilapidated condition, therefore, requires demolition and reconstruction. Landlord is always at liberty to seek release either under Section 21 (1) (a) or under Section 21 (1) (b) or on both the grounds alternatively. **(Sushila and others v. District Judge and others, 2016 (115) ALR 748)**

S. 34(1) (c)- Application for issuance of commission- Validity of

This petition under Article 226 of the Constitution of India challenges the validity of the order dated 22.01.2016 passed by Additional District Judge, Rae Bareli whereby the application moved by the petitioner for issuing a commission to gather certain facts has been rejected.

The appeal preferred by the petitioner under Section 22 of U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 against the judgement and order dated 30.09.2011 passed by the Prescribed Authority is still pending.

During pendency of appeal, an application was preferred by the petitioner stating therein that it is necessary to ascertain as to whether the premises in question is being used for residential or commercial purpose and for the said purpose the commission be issued.

Learned counsel for the petitioner has relied upon the provision of Section 34 which empowers the Prescribed Authority or the Appellate Authority to inspect a building or issue commission for examination of witnesses or documents or local investigation.

No doubt the said power is vested in the said authorities, however, it is the discretion of the authority concerned to take recourse to the provision of Section 34 (1) (c) of the Act. The appellate authority in the impugned order has clearly given a finding that the assertions for which the petitioner intends to get commission issued can be proved by the leading evidence before the court below. Contention of learned counsel for petitioner is that the petitioner has been using the premises in question as a shop whereas the case put forth by the respondent nos. 2 and 3 is that in fact, the premises in question is residential in nature and the petitioner has kept certain articles from the shop which he runs from elsewhere.

In my considered opinion, the aforesaid fact can be proved or established by leading evidence by the petitioner. In fact, issuing commission cannot be a substitute for leading evidence. **(Mohammad Akram Khan v. Appellate Authority/Addl.District Judge Raebareli & Ors., 2016, (2) ARC 33)**

U.P.Z.A. and L.R. Act

Nature of –Special Act hence prevails over the general Law

The law relating to right, title and interest over the agricultural land is contained in Act 1950, which is a complete Code by itself.

The said Act being special Act, its provisions would prevail over the general law. The jurisdiction of civil court is ousted if the relief can be granted by the special court conferred with jurisdiction to grant such reliefs. Section 331 which specifically ousts the jurisdiction of other courts in respect of all suits, applications etc., enumerated in Schedule II, the main emphasis is on the words 'cause of action" and "any relief". **(Sanjay Sharma and others v. Kashi Prasad and other, 2016 (131) RD 346)**

S. 117- Interpretation of –Discussed

Sub section (1) of Section 117 empowers the State Government to issue a notification at any time after the estate has vested in the State under Section 4(1). Sub section (1) of Section 117 provides as follows:-

"117. Vesting of certain lands, etc. In Gaon Sabhas and other Local Authorities. - (1) At any time after the publication of the notification referred to in Section 4, the State Government may [by general or special order to be published in the manner prescribed], declare that as from a date to be specified in this behalf, all or any of the following things, namely –

(i) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove;

(ii) forests;

(iii) trees, other than trees in a holding on the boundary of a holding or in a grove or abadi;

(iv) fisheries;

(v) hats, bazars and melas, except hats, bazars and melas held on lands to which the provisions of Clauses (a) to (c) of sub-section (1) of Section 18 apply or on sites and areas referred to in Section 9; and

(vi) tanks, ponds, private ferries, water channels, pathways and abadi site,-

which had vested in the State under this Act, shall vest in a Gaon Sabha or any other local authority established for the whole or part of the village in which the said things are situate or partly in one such local authority (including a Gaon Sabha) and partly in another:

Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be [specified in such order]."

Sub section (6) of Section 117 is in the following terms:

"(6)The State Government may at any time, by general or special order to be published in the manner prescribed, amend or cancel any declaration, notification or order made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority and resume such thing and whenever the State Government so resumes any such things, the Gaon Sabha or other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any, effected by it in or over that things:

Provided that the State Government may after such resumption make a fresh declaration under sub-section (1) or sub-section (2) vesting the thing resumed in the same or any other local authority including a Gaon Sabha, and the provisions of sub-sections (3), (4) and (5), as the case may be, shall mutatis mutandis, apply to such declaration."

The effect of Section 117(1) of the Act is that after the estate has vested in the State Government under Section 4, the State Government is empowered to direct that the land, among other things, which had vested in the State, shall vest in the Gram Sabha or any other local authority established in respect to the village in question. Under sub-section (6), however, the State Government is empowered to amend or cancel any declaration or notification made by it and to order resumption. When the State Government issues an order of resumption, the Gram Sabha or local authority, as the case may be, is entitled to receive compensation on account only of the development, if any, effected by it in or over the land or thing. Under the proviso to sub-section (6), the State Government, upon resumption, is empowered to make a fresh declaration vesting the land resumed in the same or any other local authority including the Gram Sabha. The provisions of sub-sections (1) and (6) make it abundantly clear that the vesting of land in the Gram Sabha or the local authority does not confer an absolute title which at all material times continues to vest in the State Government. Indeed that is the basis on which the State under sub-section (6) of Section 117 is empowered to cancel or amend a notification of vesting which has been issued under sub-section (1). Upon the issuance of such a notification, the Gram Sabha or local authority in which the land has originally vested, is entitled to receive compensation in respect of the development carried out by it thereon.

The true nature of the vesting in the State Government under sub-section (1) of Section 4 as contrasted with the vesting under sub-sections (1) and (6) of Section 117 in the Gram Sabha or local authority has been adjudicated upon in the judgment of the Supreme Court in Maharaj Singh. **(Rajendra Tyagi and another v. State of U.P. through Principal Secretary, Nagar Vikas, Bapu Bhawan, Lucknow and others , 2016 (131) RD 243)**

S. 131 B-Transfer of property Act, S. 43- Suit for specific performance of agreement to sell- Land not transferable in Law cannot be ordered to be transferred by decree of Courts- Hence, courts below rightly refused to decree suit for specific performance

The plaintiff appellant has preferred this second appeal after losing the suit for specific performance of the agreement to sell dated 05.06.1996 in the courts below.

The courts below in refusing specific performance have decreed the suit for the alternate relief of refund of earnest money.

The courts below found that the land in dispute was the Bhumidhari land with non-transferable rights of the defendants respondents, therefore, it was not liable to be transferred. Thus, it refused the decree of specific performance while exercising discretion under Section 20 of the Act.

The land which cannot be transferred in law cannot be ordered to be transferred by the decree of the court. The courts below have therefore rightly refused to decree the suit for specific performance. The refusal is based upon sound judicial principle as no land cannot be transferred against the law.

In the present case, there was only an agreement to sell and not actual transfer of the property. Therefore, Section 43 of the Act does not come into play.

In view of the above, the plaintiff appellant was not even entitle to the decree of refund of earnest money. Therefore, omission to award interest on the amount ordered to be refunded is not material and fatal. **(Charan Singh v. Dinesh Kumar and others, 2016 (2) AWC 1776)**

Ss. 161 and 333- U.P. Land Revenue Act 219- Whether revision would lie or suo moto power under Section 219 of Land Revenues Act or it would lie u/s 333 of the U.P.Z.A. and L.R. Act?

There is substance in the submission of the learned Additional Chief Standing counsel but the question would be as to whether revision would lie or suo motu power can be exercised by the learned Member, Board of Revenue sitting at Lucknow while invoking powers under section 219 of the Act, 1901 or it would lie under section 333 of the Act, 1950 at Allahabad in view of the conferment of the jurisdiction as finds mention in Board Resolution dated 9.10.1990, which, according to the respondent has not yet been diluted and this jurisdiction is literally followed at Lucknow as well as at Allahabad. Admittedly, here the proceeding of exchange under section 161 of the Act of 1950 has been questioned, therefore, the Board of Revenue, Allahabad will have jurisdiction to adjudicate upon under section 333 of the Act, 1950. Otherwise also the order passed under section 161 of the Act, 150 is appealable and the appeal would lie before the Commissioner of the Division or any other authority prescribed in the Schedule, therefore, the impugned order passed

by the learned Member, Board of Revenue sitting at Lucknow, while exercising power under section 219 of the Act, 1901 is without jurisdiction. It is settled that any order without jurisdiction is nullity. Reference may be made to the decisions of the Apex Court in Managing Director, Army Welfare Housing Organization vs. Sumangal Services Pvt. Ltd. (2004)9 SCC 619, Sarup Singh and Anr. vs. Union of India and Anr. (2011) 11 SCC 198 and a Division Bench decision of this Court in the case of Committee of Management Shri Jawahar Inter College and Anr. vs. State of U.P. and Ors. in Special Appeal No. 164 of 2012 decided on 25.1.2012.

In the result, the writ petition succeeds and is allowed. The impugned order dated 3.5.2006 passed by the learned Member, Board of Revenue, Lucknow in suo motu Revision No. 813 of 2005-06 in respect of the petitioner is hereby quashed. However, passing of this order will not preclude the State Government to avail such other remedies as available to it under law. **(Santosha Craft (Pvt.) Ltd. v. Board of Revenue, U.P. at Lucknow and others, 2016 (3) AWC 2735)**

S. 198 (4) –Constitution of India, Art. 226- Writ Petition against order dismissing application U/s 198(4) of above Act –Maintainability of

In this matter, learned Single Judge was, with respect, in error in coming to the conclusion that the remedy of a revision is available in respect of an order which has been passed by the Assistant Collector under Section 122B (4F). By the plain terms of the statutory provision made in sub-section (4A), such a remedy has been made available only in respect of an order under sub-sections (3) or (4). The remedy of a revision is a creature of the statute. The revisional authority cannot expand its own jurisdiction where a statutory provision has not provided such a recourse.

The second schedule provides inter alia sections, a description of proceedings, courts of original jurisdiction and courts of first and second appeal. No appeal is provided in respect of an order passed under Section 122B, including against an order under Section 122B (4F). Consequently, it is clear beyond the shadow of a doubt that a remedy of a revision would not be available under Section 333 against an order which has been passed under sub-section (4F) of Section 122B. **(Sushila and Another v. State of U.P. and others, 2016 (34) LCD 1124)**

S. 331- Scope of- Explained

The suit of plaintiff-appellant has been based on claim of his ownership and bhumidhari rights over disputed agricultural land, for which the plea of bar of suit under Section 331 of U.P.Z.A. & L.R. Act was taken by defendants in their written-statement.Section- 331 of U.P. Zamindari Abolition & Land Reforms

Act, 1950 reads as under:

> "331. Cognizance of suits, etc under this Act.- (1) Except as provided by or under this Act no court other than a court mentioned in Column 4 of Schedule II shall, notwithstanding an~hing contained in the Civil Procedure Code, 1908, (5 of 1908) take cognizance of any suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application:
>
> Provided that where a declaration has been made under Section 143 in respect of any holding or part thereof, the provisions of Schedule II in so far as they relate to suit, application or proceedings under Chapter VIII shall not apply to such holding or part thereof;
>
> Explanation- If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted."

This section provides that no court other than court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in C.P.C., take cognizance of any suit, application or proceedings, mentioned in Column 3 thereof, or of a suit, application or proceedings based on cause of action in respect of which any relief could be obtained by means of any such suit or application. In Schedule II of this Act serial number-34 of Column-3 deals with "Suit for declaration of rights'; and in front of it in column-4 the name of court of original jurisdiction is given as "Assistant Collector, 1st Class'. **(Ram Ratan (Dead) Through L.R. v. Bhagwandeen and others, 2016 (131) RD 616)**

S. 331- Suit for permanent injunction- Grant of –Status of plaintiff appellant found to be only that trespasser and as unauthorized occupant – Hence, he had not entitled to get injunction against true owner of disputed property

In "Mahadeo Savlaram Shelke And Ors. v. Puna Municipal Corporation, JT 1995 (2) SC 504" Hon'ble Supreme Court held as under:

> " It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession."

Division bench of Hon'ble Allahabad High Court, which held in ruling "Ashu Sonkar v. Vth Additional District Judge, 1999 (4) AWC 3107" as under:
"There is no doubt that a person having no right to remain on the property, cannot be dispossessed by the owner of the property except the recourse to law. It is one thing to say a person cannot be dispossessed even if he has no right to remain on the property except through recourse to law. It is another thing to say that a trespasser can maintain an injunction against the rightful owner. Even if a

person can claim that he cannot be evicted except through law. But still then he cannot maintain an injunction as a trespasser against the rightful owner."
On the basis of above discussion, it is explicitly clear that though it is a general rule that no trespasser should be evicted except in accordance with process of law, but there is no doubt that this legal position is also certain that no injunction can be granted against the true owner at the instance of persons in unlawful possession. Since the status of appellant- plaintiff in present case is only that of a trespasser and as an unauthorized occupant, therefore he is not entitled to get injunction against true owner of disputed property. **(Ram Naresh v. Bachchi Singh and others, 29016 (2) AWC 1816)**

Section 331 –Scope of –Discussed

Section 331 of the Act which specifically ousts the jurisdiction of Civil Court in respect of suits etc., enumerated in Schedule II makes the phrase 'cause of action' as pivotal point for determining the jurisdiction of civil or revenue court. It is the real 'cause of action' which determines the jurisdiction of the court to entertain particular action, notwithstanding, the language used in the plaint or the relief claimed. The strength on which the Plaintiff comes to the court does not depend upon the defence or relief claimed which could determine the forum for the entertainment of claim and grant of relief. It is the pith and substance which is to be seen and not the language used which may even have been so used to oust the jurisdiction of a particular court. The expression 'any relief' used in Section 331 is of too wide import and would not only mean the relief claimed but would also include any relief arising out of the cause of action which led the Plaintiff to invoke the jurisdiction of a court of law. The word 'relief' is not part of cause of action nor the same is related to the defence set up in the case. The relief is a remedy which the court grants from the facts asserted and proved in an action. **(Sanjay Sharma and others v. Kashi Prasad and other, 2016 (131) RD 346)**

Words and Phrases

Word "Occupant" –Meaning of

Merely a holder or occupant does not meet the requirements of law for exercising such a right. Section 2(12) of the Code, as reproduced hereinabove, makes it clear that to be a "Land holder" or "holder of land" means to be lawfully in possession of land, whether such possession is actual or not and as per Section 2(23) "occupant" means a holder in actual possession of unalienated land. **(Ibrahim Khan v. Additional Collector (Administration), Lucknow and others, 2016 (34) LCD 1073)**

Word "Cause of Action"- Meaning of

Cause of Action' is bundle of facts which is necessary for the plaintiff to prove in the suit before he can succeed. **(Bibhuti Narain Singh v. Food Corporation of India and others, 2016 (34) LCD 1109)**

Word "Work Charged Establishment"-Meaning of

'Work Charged Establishment' means an establishment of which the expenses, including wages and allowances of the staff are chargeable to 'works'. **(Babu @Babu Ram v. State of U.P. and others, 2016 (34) LCD 1132))**

Word "Corruption"- Meaning of-.

Precise meaning of corruption is illegal, immoral or unauthorized act done in due course of employment. Broadly speaking, it may be termed to be an inducement, which is divisive and makes a significant contribution to social inequality and conflict. **[Shyam Babu v. State of U.P. and another 2016 (94) ACC 821(Allahabad High Court].**

Legal Quiz

Q.1 Whether the judgment and decree is valid in the eye of law? In what way this defect will effect the appeal?

Ans. The judgment is valid in the eyes of law and this defect will not effect the appeal on merits unless it is shown that no such judgment was ever delivered by the Court. The judgment appears to be authenticated by the decree drawn on its basis which is signed by the same judge. See- Surendra Singh v. State of U.P., AIR 1954 SC 194, Vinod Kumar Singh v. Banaras Hindu University, AIR 1988 SC 372

Q.2 Where a link officer performing the work of another court like signing order sheets, exemption application, making recommendations in MAC refund voucher etc. will be entitled for concurrent charge allowance?

Ans. The concurrent charge allowance has been granted to judicial officer on the recommendations of Shetty Commission which are as follows- 19.155-

"We recommend that charge allowance be paid to the judicial officer when he is placed in charge of another court continuously beyond the

period of ten working days and if he performs appreciable judicial work of that court."

The Controlling Authority i.e. District Judge is competent to grant such allowance if he is satisfied that, 'appreciable judicial work' has been performed by such judicial officer. For further clarification of G.O. you may approach to Government or appropriate authority.

Q. 3 If there is any set standard for getting concurrent charge allowance?

Ans. No Such Standard has been set in G.O. Dt. 27.01.2006.

Q.4 Whether the bail application filed before court of session under the provision of SC/ST (PA) Act should be disposed by special Court SC/ST (PA) Act 1989 Specially nominated by Hon'ble court U/s 14 of the Act and in view of Sec. 20 of the Act which overrides the provisions of other Act or by the District & Session Judge of the District?

Whether District & Session Judge of a particular District is bound to hear and disposed of the bail applications under different offences mentioned in SC/ ST (PA) Act, 1989 irrespective of the fact that special Court SC/ ST (PA) Act has been nominated and is functioning that District?

Ans. S. 14 of the SC/ST (PA) Act, 1989 provides that the State Government for the purpose of providing speedy trial shall with the concurrence of the Chief Justice of High Court by notification in the official gazette, specify for each district a court of session to be a special court to try the offences under this Act. So, S. 14 of the said Act says in clear terms that creation of special court is for the purpose of providing speedy trial and it is only for the trial of offences under the SC/ST(PA) Act, 1989, that a particular court of sessions in each district is sought to be specified as a special court. So, the Act contemplates only the trial to be conducted by the special court. In this context kindly refer to the law laid down by Apex Court in Gangula Ashol v. State of A.P., AIR 2000 SC 740. Regarding your query pertaining to the disposal of Bail Applications regarding offences under SC/ST(PA) Act 1989, please see State v. Mahalingu & Ors; 2001 Cr.LJ 237 (Kar.HC)

Q. 5 There is a G.O. that a officer in charge of another court work in that capacity for more than 10 days is entitled for 10% of his basic pay for working as such.

My question is, I was incharge of a court for more than 5 months. Court was having pendency of file both civil and Criminal, can I get

10% of basic pay for being incharge/link officer?

Ans As per G.O No. 6058/DO-4-05-45(12)/91 TC, Dated 27.1.2006 and G.O. No. 2123/DO-4-2010-45/91 TC-6, Dated 16.10.2010, a judicial officer is entitled to 'concurrent charge allowance'. The relevant portion is as follow-

"अतिरिक्त प्रभार भत्ता

न्यायिक अधिकारियों को किसी दूसरे न्यायिक अध्किारी का प्रभार यदि दस कार्य दिवसों से अधिक अवधि के लिये दिया जाता है तथा न्यायिक अधिकारी इस अवधि में अतिरक्त पद के न्यायिक कार्य का निष्पादन करते हैं तो उसे अतिरिक्त प्रभार के पद के वेतनमान के न्यूनतम के 10 प्रतिषत के बराबर अतिरिक्त प्रभार भत्ता अनुमन्य होगा।"

G.O No. 2811/DO-4-2008 dated 10.10.2009 also prescribes procedure of its payment which is as follows-

"इस सम्बन्ध में शासन को यह परामर्ष प्राप्त हुआ है कि न्यायिक अधिकारियों को प्रदत्त अतिरिक्त प्रभार भत्ता एक आकस्मिक सुविधा है जो निर्धारित मानकों के अंतर्गत अतिरिक्त कार्य करने पर ही अनुमन्य है। अतः उक्त सुविधा अनुमन्य कराने हेतु सम्बन्धित न्यायिक अधिकारी के जो नियंत्रक अधिकारी हैं, उन्हीं के द्वारा निर्धारित मानकों के पूरा होने की पृष्टि करते हुये प्राधिकार पत्र निर्गत किया जायेगा।"

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