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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 13.05.2016 the last working day of the Supreme Court before summer vacations four new Judges of the Supreme Court took oath including Dr. Justice D.Y. Chandrachud, Chief Justice of Allahabad High Court and Mr. Justice Ashok Bhushan, Chief Justice, Kerala High Court who is from the Allahabad High Court and was appointed as Chief Justice of Kerala High Court about 2 years before. The other two Judges are Mr. Justice Ajay Manikrao Khanwilkar, Chief Justice, High Court of Madhya Pradesh and Mr. L. Nageshwar Rao who has been an Advocate of Supreme Court. Now there are only two vacancies in the Supreme Court.

President rule in Uttarakhand has been revoked after floor test in the assembly on 10.5.2016 and Mr. Rawat has returned as Chief Minister. The result of the voting was kept in sealed cover and handed over to the Supreme Court where it was opened on the next day. Earlier Congress Government headed by Chief Minister Mr. Harish Rawat was removed and president rule was imposed on the ground that it no more enjoyed majority. The matter was brought first before the Uttarakhand High Court and thereafter before the Supreme Court. Following the Constitution Bench judgment of S. R. Bommai 1994 Supreme Court insisted that the majority must be shown on the floor of the Assembly and not anywhere else. Nine MLAs of the Ruling Party who formed a separate group were disqualified on the ground that they were less than 1/3rd of the total M.L.As. of the party hence their defection was illegal. The Speaker disqualified them. The disqualification order was neither stayed by the High Court of Uttarakahnd nor by the Supreme Court. Accordingly, those 9 MLAs did not participate in the voting on 10.05.2016. Similar situation had developed in U.P. in 1998 and the Allahabad High

Court had declared the appointment of Mr. Jagdambika Pal as Chief Minister by the Governor to be illegal. Under direction of the Supreme Court (reported in *Jagdambika Pal v. Union of India AIR 1998 SC 998)* floor test was held in the Assembly on 26.2.1998 in which the previous Chief Minister Sri Kalyan Singh proved his majority and was immediately restored, as C.M.

At present, about 1/3rd of the Country is facing severe drought due to less rains during last 2 years. The Supreme Court is also monitoring the situation. It gave a 53 page judgment on 11.5.2016 noticing that the Center and affected States were showing lack of will in combating drought and saving lives which was described as national disaster.

On 11.5.2016 Supreme Court also quashed the regulation of Telecom Regulatory Authority of India (TRAI) regarding call drops.

In 2010 and 2012 Medical Council of India and Dental Council of India issued 4 notifications introducing All India Combined National Eligibility cum Entrance Test (NEET). The Supreme Court in *Christian Medical College Vellore v. Union of India, 2014 (2) SCC 305* quashed the notifications. However on 11.4.2016 through order passed by a Constitution Bench reported in *Medical Council of India v. Christian Medical College Vellore AIR 2016 SC 1774* the judgment was recalled on review petition and matters were directed to be heard again. The effect of the order is that from the current academic year admission to all medical and dental colleges will have to be made on the basis of NEET and no college or group of colleges, private or government, will be entitled to hold entrance test. The first entrance examination was held on 1.5.2016. Those who could not appear in the said examination can appear in the next examination to be held in July. Uttar Pradesh formally cancelled Combined Pre-medical Test (CPMT) 2016 on 12.05.2016. The test was to be held on 17.5.2016 in which

over one lakh candidates were to appear for 3200 seats. The Central Government and various State Governments particularly of Maharashtra under the pressure of students and medical colleges have once again applied to the Supreme Court as reported in the news paper of 13.5.2016, for postponing the NEET by one more year and permitting different colleges or group of colleges to hold their own entrance tests.

On 13.5.2016 Supreme Court dismissed the case challenging the validity of criminal defamation law contained in Sections 499 and 500 I.P.C.

There is widespread criticism of the judgment. In the editorial of Times of India dated 16.5.2016 (Lucknow Edition) it has been described as disappointing.

In early May, 2016, son of a MLC belonging to the Ruling Party killed a person for overtaking his car in Bihar. Showing remarkable sense of responsibility the Government managed to arrest the accused quickly. If high handedness of higher ups particularly those who belong to the ruling party is checked with stern hand it sends a very strong message to the investigating agencies and instill confidence in the public.

Vijay Mallya who is indebted to the different banks to the tune of several thousands of crors of rupees managed to leave the Country in early April, 2016. British Government has refused the request of the Indian Government to deport him back to India, however, Britain offered to consider extradition of Vijay Mallya. However this takes a long time as the procedure is quite cumbersome.

The following latest leading authorities of the Supreme Court have been digested in this issue:

1. *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. AIR 2016 SC 86* (3 judges) (written statement cannot be permitted to be filed after 90 days from the date of service of summons just as reply under Consumer Protection Act cannot be permitted

to be filed beyond 45 days from the date of service of notice. *Kailash v. Nanku AIR 2005 SC 2441*, taking contrary view held *per incuriam*.)

2. *Bussa Overseas and Properties (P) Ltd. v. Union of India, AIR 2016 SC 938* (Appeal against rejection of review application is not maintainable without challenging the basic judgement.)
3. *Shreya Vidyarthi v. Ashok Vidyarthi AIR 2016 SC 139* (A Hindu widow even though cannot be coparcener still she can act as such in the capacity of guardian of her minor son, who is to be Karta.)
4. *Adi Saiva Sivachariyargal Nala Sangam v. Government of Tamil Nadu 2016 SC 209* (Appointment of temple priest cannot be denied on the basis of cast, birth or other reasons not constitutionally acceptable) (case from Tamil Nadu)
5. *Prem Nath Bali v. Registrar High Court of Delhi, AIR 2016 SC 101* (In case of delay of 9 years in completing disciplinary proceedings, the suspension period shall be calculated for determining pension if delay was not solely due to the employee.)
6. *Shakti Kumar Gupta v. State of J & K, AIR 2016 SC 853* (Judicial Officer cannot be given average entry in the ACR merely on the ground that he has not submitted his Self Assessment Report.)
7. *Lal Shah Baba Dargah Trust v. Magnum Developers AIR 2016 SC 381* (After amendment of 2013 in Sections 83, 85 of Wakf Act and until constitution of 3 Member Wakf Tribunal One Member Wakf Tribunal (Civil Judge) continues to have jurisdiction to decide matters.

8. *Vishal N. Kalsaria v. Bank of India AIR 2016 SC 530* (SARFAESI Act 2000 does not override the provisions of Rent Control Act. Tenant of the property given in security cannot be evicted except through proceedings under the Rent Control Act.)

Justice S.U. Khan
Chairman, JTRI

SUBJECT INDEX

(Supreme Court)

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SUBJECT INDEX

(High Court)

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NOTE:

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

LIST OF CASES COVERED IN THIS ISSUE
(SUPREME COURT)

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LIST OF CASES COVERED IN THIS ISSUE
(HIGH COURT)

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PART – 1 (SUPREME COURT)

Administrative Law

Natural Justice—Without expressing opinion on merits, matter remanded to High Court to consider whether principles of natural justice were followed while passing the order challenged before High Court—Effect of

Upon hearing the learned counsel for the parties, without expressing any opinion on the merits of the case, Court think it just and proper to remand the matter to the High Court so as to consider whether the principles of natural justice had been duly followed while passing the order which was challenged before the High Court.

Therefore, impugned judgment is set aside and the appeal is disposed of as allowed with no order as to costs. **[Surat (Hazira) Kamdar Karmchari Union vs. State of Gujarat, 2016 (2) SCALE 100]**

Arbitration Act

Sec. 3, 29 & 41—CPC—Sec. 34—Power of the Arbitrator to award pendente lite interest when contract contains bar for grant of interest in a case covered by the Arbitration Act, 1940—It would depend upon the nature of the ouster clause in each case—In case there is express stipulation which debars pendente lite interest, it cannot be granted by Arbitrator—Award of pendente lite interest inter alia must depend upon the overall intention of the agreement and what is expressly excluded.

There are certain provisions which are statutorily implied in arbitration agreement unless excluded in the agreement. Section 3 of the Act of 1940 deals with the provisions which are implied in the arbitration Page 5 5 agreement.

The provisions of section 3 make it clear that unless a different intention is expressed in the arbitration agreement, the agreement would include the provisions contained in the First Schedule so far as they are applicable to the reference. Provisions in the First Schedule contain 8 paragraphs. It provides for reference to a sole Arbitrator and in case there are even numbers of Arbitrators, appointment of umpire is also provided. An Arbitrator is required to pass award within 4 months from the date of entering on the reference. In case Arbitrator fails to pass an award within the specified time the umpire shall make the

award within 2 months. Para 6 of First Schedule provides that the Arbitrator or umpire shall examine the matters in difference and the award shall be final and binding. Arbitrator or umpire has the power for examining the witnesses and production of relevant documents. Para 8 of Schedule I provides for costs of reference and awards shall be in the discretion of the Arbitrator.

The court can exercise the power specified in Second Schedule of the Act. However, Arbitrator is not a court. Arbitrator is the outcome of agreement. He decides the disputes as per the agreement entered into between the parties. Arbitration is an alternative forum for resolution of disputes but an Arbitrator ipso facto does not enjoy or possess all the powers conferred on the courts of law. 7. Section 29 of the Act confers on the court power to award interest from the date of decree. Section 34 of the C.P.C. confers on the court power to award interest prior to the institution of the suit and during pendency of the suit and post decree.

In Court's opinion, it would depend upon the nature of the ouster clause in each case. In case there is express stipulation which debars pendente lite interest, obviously, it cannot be granted by Arbitrator. The award of pendente lite interest inter alia must depend upon the overall intention of the agreement and what is expressly excluded.

It is apparent from various decisions referred to above that in G.C. Roy Constitution Bench of this Court has laid down where agreement expressly provides that no interest pendente lite shall be payable on amount due. The arbitrator has no power to award interest.

Grant of pendente lite interest may depend upon several factors such as phraseology used in the agreement, clauses conferring power relating to arbitration, nature of claim and dispute referred to Arbitrator and on what items power to award interest has been taken away and for which period. 24. Thus, Court's answer to the reference is that if contract expressly bars award of interest pendente lite, the same cannot be awarded by the Arbitrator. Court also make it clear that the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendente lite by the Arbitral Tribunal, as ouster of power of Arbitrator has to be considered on various relevant aspects referred to in the decisions of this Court, it would be for the Division Bench to consider the case on merits. **[Union of India vs. M/s. Ambica Construction, 2016 (3) SCALE 328]**

Sec. 34—Mines and Minerals (Regulation and Development) Act, 1957—Sec. 15—Arbitration award—Construction of the terms of a contract is primarily for an arbitrator to decide—Court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair minded or reasonable person could do.

These Interlocutory Applications arise out of Civil Appeal No. 6158 of 2013 which was disposed of by this Court on 24.4.2015. While allowing said appeal preferred by National Highways Authority of India, the appellant herein, it was directed by this Court as under:--

> "In our view, the Arbitral Tribunal went beyond the scope of the contract and it clearly exceeded its jurisdiction. We, therefore, set aside the award insofar as it allows Claim No. 8. Consequently, the appeal stands allowed. At the interim stage, this Court had directed the Appellant to deposit a sum of Rs. 70,65,039/- which upon deposit was withdrawn by the Respondent on furnishing a bank guarantee. The appellant is entitled to encash that bank guarantee to recover the sum that was deposited. No order as to costs."

Soon thereafter Interlocutory Application No. 3 of 2015 was filed on behalf of the respondent, which was disposed of by this Court by its order dated 8.5.2015, which order was to the following effect:--

Mr. Amit George, leaned counsel appearing for the applicant-respondent shall pay to the petitioner, National Highways Authority of India and, therefore, the bank guarantee in question need not be encashed. He undertakes that the respondent shall make the payment to the applicant within four weeks from today. The said amount shall be paid by way of a bank draft drawn on a nationalized bank. If the amount is not guarantee shall be encashed forthwith by the petitioner. **[National Highways Authority of India vs. M/s. NCC-KNR (JV), 2016 (1) SCALE, 309]**

Bail

Bail under Prevention of Money Laundering Act, 2002, ("PMLA").

Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of the PMLA imposes following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule of the PMLA: (i) That the prosecutor must be given an opportunity to oppose the application for bail; and (ii) That the Court

must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

The conditions specified under Section 45 of the PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also Section 71 of the PMLA. Section 65 requires that the provisions of Cr.P.C. shall apply in so far as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of the PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Cr.P.C. would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 of Cr.P.C. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the Authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant. **[Gautam Kundu Versus Manoj Kumar, Assistant Director, Eastern Region, Directorate Of Enforcement (PREVENTION Of Money Laundering Act) Govt. Of India, AIR 2016 SC 106]**

Civil Procedure Code

Sec. 11—Limitation Act, 1963—Article 65—Partition suit—Res judicata—Principle of—Adverse possession, plea of – Ouster is a weak defence in suit for partition—As between co-owners, there could be no adverse possession unless there has been a denial of title and an ouster to the knowledge of the other.

This Court has observed that Res judicata literally means a "thing adjudicated" or "an issue that has been definitively settled by judicial decision". The principle operates as a bar to try the same issue once over. It aims to prevent multiplicity of proceedings and accords finality to an issue, which directly and substantially had arisen in the former suit between the same parties or their privies and was decided and has become final, so that the parties are not vexed twice over; vexatious litigation is put an end to and valuable time of the court is saved.

The suit filed by the plaintiff in 1962, based on the settlement deed

executed by her husband in her favour and the sufferance of the dismissal of the suit, will not, in any way, be a bar for making a claim for her share, if any, of the family property, if otherwise permissible under law. As succinctly addressed by the first appellate court, the 1962 suit for the entire property was based on a settlement deed and it was a suit for possession. Whereas, the 1988 suit for partition was for plaintiff's one-half share in the property based on her birth right. Cause of action is entirely different.

Thus, the High Court in our opinion is not right on the point of res judicata.

The other main defense in the suit is ouster and limitation. Ouster is a weak defense 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.

The above being the emerging true factual and correct legal position, with a view to putting an end to five decades old disputes between a sister and brother, to avoid any further litigation and to get the families to reconcile and restore peace, Court put a suggestion for a reasonable settlement. Thanks to the sincere cooperation extended by Sri Viswanathan, learned Senior Counsel for the appellant, Sri V. K. Shukla, learned Counsel for the respondent and the cooperation extended by the parties themselves, it is heartening to note that a solution has evolved. Accordingly, it is ordered that the appellants shall be entitled to 35% and the respondent 65%. Let the suit property be accordingly partitioned. If 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 (D) by LRS vs. Chandikeswaralingam, 2016 (3) SCALE 5]**

Section 34, Order 19 Rule 3 CPC

Cost for filing false affidavit. If wrong statement is made in the affidavit, High Court is justified in imposing exemplary cost of Rs. 10 lacs. **[*Sciemed Overseas Inc. v. BOC India Limited AIR 2016 SC 345]***

Section 47 C.P.C. and Evidence Act Section 56

Court can take into account the subsequent events in execution of compromise decree. If element of public interest is vitally involved then decree may be refused to be executed. **[*Sayyed Ratanbhai Sayeed v.Shirdi Nagar***

***Panchayat, AIR 2016 SC 1042*]**

Section 89 C.P.C.

Court must make efforts for settlement of dispute as held in *AIR 2005 SC 3353, 2010 (8) SCC 28 (Afcons Infrastructure Ltd. v. C.V. Construction)* and *AIR 2013 SC 2176.* ***[Suresh Narayan Kadam v. Central Bank of India, AIR 2016 SC 714]***

Section 92 C.P.C.

A trustee cannot be removed only on the ground that he failed to take steps to ban a book which was critical of the principles of the trust. Leave to sue granted in such situation may be revoked. **[*Shri Aurobindo Ashram Trust v. R. Ramanathan AIR 2016 SC 237]***

Section 96 C.P.C. and Motor Vehicle Act Section 173

High Court while hearing under Section 173 Motor Vehicle Act 1988 shall decide the appeal in accordance with order 41 rule 31 C.P.C. It is obliged to decide all issues either of fact or of law and while doing so it shall appreciate (re-asses) the entire evidence. Points for determination must also be framed and reasons must also be given for the decision thereupon. As the appeal was not decided in this manner hence matter was remanded to the High Court. **[*U.P.S.R.T.C. v. Km. Mamta AIR 2016 SC 948]***

Sections 96 & 34 C.P.C. and Contract Act Sections 55, 73

Interference with finding of facts by first appellate court without considering evidence by simply relying on terms of contract is improper.

Suit for payment of extra work by the contractor, award of interest is in the discretion of the court. As the suit remained pending for more than 20 years, hence, interest awarded @ 12% from the date of suit till realization by the courts below reduced to 6% p.a. by the Supreme Court.

If changes are made in the nature of work and additional work is also required to be done, it is not necessary that every time fresh negotiation must be held and terms of the contract must be reframed. **[*Venkatesh Construction Co. v. Karnataka Vidyuth Karkhana AIR 2016 SC 553]***

Section 100—Second Appeal—Nature and scope of powers of High Court

The following legal questions would arise in this case for Hon'ble Supreme Court's consideration:

a. Whether the High Court has erred in upsetting the findings of facts

by reversing the judgment and decree of the first appellate court?

b. Whether the plea taken by deceased respondent No.1/defendant NO.1 being in possession as a lessee could claim the alternate plea of adverse possession taken by respondent No. 1 or vice-versa?

Insofar as the issue no. 1 is concerned, Court is of the opinion that the High Court has erred in reversing the judgment and order passed by the first appellate court. The High Court should have noticed that the plaintiffs/appellants are the owners of the suit land by way of registered sale deed. The non-application of mind on the part of the High Court on the aforesaid vital aspect of the case is erroneous in law as it is not based on the correct appreciation of facts and evidence on record.

As far as issue no. 2 is concerned, respondent No. 1 has no right to claim ownership over the suit property on the grond of adverse possession by taking a plea of sham transaction. This plea of the respondent is not only prohibited by the Benami transactions (Prohibition) Act, 1988, but makes the appellants absolute owner.

In addition to the abovementioned reason, the contention advanced by the learned counsel appearing on behalf of the respondents that the appellants failed to get the mutation of entries of the suit land incorporated in record shows that there was no intention on their part to act upon the contents of the two sale deeds, cannot be accepted as mere mutation of entries does not confer title upon the deceased respondent no. 1 in the immovable property.

In the case of Guru Amarjit Singh vs. Rattan Chand & Ors., (1993) 4 SCC 349, this Court held that the entries in Jamabandi are not proof of title in respect of an immoveable property. In the case of Jattu Ram vs. Hakam Singh & Ors., (1993) 4 SCC 403, this Court observed that entries made by Patwari in official record are only for the purpose of records and do not by itself prove the correctness of the same nor can statutory presumption be drawn on the same, particularly, in the absence of corroborative evidence. The respondent cannot claim to have acquired title over the suit property by pleading adverse possession only in the absence of the name of the appellants in the revenue records. In the case of Thakur Kishan Singh (Dead vs. Arvind Kumar, (1994) 6 SCC 591, and P.T. Munichikkanna Reddy & Ors. Vs. Revamma & Ors., (2007) 6 SCC 59, this Court held that in cases where the possession was initially permissive, the burden lies heavily on that person alleging adverse possession

to prove that the possession has become adverse. Mere possession for long time does not convert permissive possession into adverse possession.

Having regard to the facts and circumstances of the case on hand, Court is of the view that the impugned judgment and order passed by the High Court is erroneous in law and suffers from infirmity and is required to be interfered with by this Court. The same is liable to be set aside and accordingly set aside. **[Prem Nath Khanna vs. Narinder Nath Kapoor (Dead) Through L.RS, 2016 (3) SCALE 76]**

Sections 100-103 –

Perversity' has been the subject matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of The Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse.

Be that as it may, the question whether there is a structural alteration in a tenanted premises is not a fact limited to the personal knowledge of the owner. It can be proved by any admissible and reliable evidence. That burden has been successfully discharged by the plaintiff by examining PWs-1 and 2. The defendants could not shake that evidence. In fact, that fact is proved partially from the evidence of the defendants themselves, as an admitted fact. Hence, only the trial court came to the definite finding on structural alteration. That finding has been endorsed by the first appellate court on re-appreciation of the evidence, and therefore, the High Court in second appeal was not justified in upsetting the finding which is a pure question of fact. We have no hesitation to note that both the questions of law framed by the High Court are not substantial questions of law. Even if the finding of fact is wrong, that by itself will not constitute a question of law. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity.

We do not propose to discuss other judgments, though there is plethora of settled case law on this issue. Suffice to say that the approach made by the High Court has been wholly wrong, if not, perverse. It should not have interfered with concurrent findings of the trial court and first appellate court on a pure question of fact. Their inference on facts is certainly reasonable. The

strained effort made by the High Court in second appeal to arrive at a different finding is wholly unwarranted apart from being impermissible under law. Therefore, we have no hesitation to allow the appeal and set aside the impugned judgment of the High Court and restore that of the trial court as confirmed by the appellate court. [**Damodar Lal v. Sohan Devi and Others, (2016) 3 SCC 78]**

Order 8 Rule 1 C.P.C., Consumer Protection Act Section 13(2)(A)-

Under Consumer Protection Act an upper cap of 45 days has been imposed for filing written statement. Consumer forum cannot, under any circumstances, permit filing of the reply/ written statement beyond 45 days. Same principle will apply to the filing of written statement in a suit and in view of order 8 rule 1 C.P.C the upper limit is of 90 days, hence under no circumstances civil court can grant time to file written statement beyond 90 days. A contrary view of 2 judges authority reported in *Kailash v. Nanhku, AIR 2005 SC 2441* is *per incuriam* as it wrongly distinguished an earlier 3 judges authority reported in *J.J. Merchant v. Shrinath Chaturvedi AIR 2002 SC 2931* (under Consumer Protection Act). **[*New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. AIR 2016 SC 86* (3 judges)]**

Order 22 –

Interpretation and application of - Rules of procedure under Or. 22 CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties - On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned (Para 10)

Civil Procedure Code, 1908 - Generally - Procedure is meant only to facilitate the administration of justice and not to defeat the same allowing the appeal, the Supreme Court.

Provisions of Order 22 CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rules of procedure under Order 22 CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the

same. The dismissal of the second
appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained. [**Banwari Lal v. Balbir Singh, (2016) 1 SCC 607]**

Order 22 Rule 2- Partial Abatement of suit and appeal in case of the death of a plaintiff

In the instant case, the plaintiffs joined together and filed the suit for rectification of the revenue record by incorporating their names as the owners and possessors in respect of the suit land on the ground inter alia that after the death of their predecessor-in-title, who was admittedly the Pattadar and Khatadar, the plaintiffs succeeded the estate as sharers being the sons of Khatadar. Indisputably, therefore, all the plaintiffs had equal shares in the suit property left by their predecessors. Hence, in the event of death of any of the plaintiffs, the estate is fully and substantially represented by the other sharers as owners of the suit property. Hon'ble Supreme Court hold that by reason of non-substitution of the legal representative(s) of the deceased plaintiffs, who died during the pendency of the appeal in the High Court, entire appeal shall not stand abated. Remaining sharers, having definite shares in the estate of the deceased, shall be entitled to proceed with the appeal without the appeal having been abated. Therefore, no reason is found to agree with the submission made by the learned counsel appearing for the appellants, praying for complete abatement of appeal. [**State of A.P. v. Pratap Karan, (2016) 2 SCC 82]**

Order 39 Rules 1 and 2 C.P.C. and section 126 Contract Act-

A wholesaler of fruits had furnished unconditional bank guarantee in favour of supplier. Amount of the fruits supplied was not paid by the wholesaler hence supplier invoked the bank guarantee. The wholesaler instituted suit and sought temporary injunction against invoking of bank guarantee. The temporary injunction was granted by the Court Below. Supreme Court set aside the same. It was held in para 13 as follows:-

> *"13. In deciding the present controversy, we will therefore have to adopt the principles laid down by this Court in U.P. Cooperative Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. (supra), and in Vinitec Electronics Private Ltd. v. HCL Infosystems Ltd. (supra). Having given our thoughtful consideration to the law laid down by this Court, in respect of grant/refusal of an injunction of an unconditional bank guarantee, and keeping in mind the terms and conditions, more particularly of the contractual conditions extracted and narrated above, we are satisfied that the courts below were not justified in injuncting the invocation of the three bank guarantees, executed by the State Bank of*

Mysore, at the instance of M/s RMSFC. We accordingly hereby direct respondent Nos.2 and 3 - the State Bank of Mysore to honour the same forthwith."

[*M/s Adani Agri Fresh Ltd. v. Mahaboob Sharif AIR 2016 SC 92]*

Order 39 rules 1 and 2 C.P.C.

Effect of stay order is that the order which is stayed does not remain in existence. Member of a political party defies the whip and contests election and wins the same. If order of disqualification is stayed, the effect of stay is that until stay order is continuing, disqualification remains in abeyance hence candidate cannot be asked to vacate the post to which he was elected. **[*Edara Haribabu v. Tulluri Venkata Narasimham AIR 2016 SC 597]***

Order 39, Rr. 1 and Or. 22; Section 52 Transfer of Property Act, 1882-- Temporary Injunction cannot not be passed against non-party

A suit for partition bearing Title Suit No. 43 of 1956 later renumbered as Title Suit No. 121 of 1962, was instituted by the respondents in respect of the land adjacent to the land of G - G was not a party to the said suit at its inception but was later impleaded as one of the defendants - Said suit instituted before Subordinate Judge by respondents against the others and G was held to have abated in its entirety against all defendants (in 1973), and that order attained finality-Subsequently, much later (in 2006), Subordinate Judge passed order granting temporary injunction under Or. 39 Rr. 1 and 2 "by consent" restraining parties to the suit from alienating or transferring suit property and further directed Officer-in-Charge of police station concerned to ensure compliance with the order. By another order of Subordinate Judge (passed also in 2006) property in question of G added as part of suit scheduled property by way of amendment to plaint by the time when LRs of late G had already acquired intermediary rights under S. 6 of
W.B. Estates Acquisition Act, 1953 - Appellant Housing Board purchased land in question from heirs of late G (in 2008) and thereafter leased it to appellant Bengal Ambuja Housing Development Ltd. But neither heirs of G, nor Housing Board nor Bengal Ambuja made party to original suit at any point of time nor sale deed in favour of Housing Board ever challenged. Held, order of temporary injunction not applicable to land in question sold to appellant Housing Board as temporary injunction can be granted only against parties to the suit. Question of passing temporary injunction against appellant by consent does not arise when appellant was not a party to the suit. Respondents also had no right to get land in question included as part of suit scheduled properties.

Hence orders of Subordinate Judge in regard to those maters set aside.

Further, in the instant case, the order of temporary injunction dated 03.07.2006 was purportedly granted by consent is also not sustainable in law. The question of consent being given by either the appellant Housing Board or the predecessors in interest who are its vendors did not arise as they were not parties to the said suit. It is a well settled principle of law that either temporary or permanent injunction can be granted only against the parties to a suit. Further the purported consent order in terms of Order XXXIX of the Code of Civil Procedure is only binding as against the parties to the suit. In such a case, the order of the Subordinate Judge to grant police protection against the appellant Housing Board which is enjoying the property is erroneous in law and is liable to be set aside. [**W.B. Housing Board vs. Pramila Sanfui, (2016)1 SCC 743]**

Order 41 Rule 27 and section 115 C.P.C.

If lower appellate court (DJ/ ADJ) has taken on record additional evidence, it is not proper for the High Court to interfere with the said order in exercise of its revisional jurisdiction particularly when appeal before DJ/ADJ is pending.

However to do complete justice Supreme Court directed the appellate court (DJ/ADJ) to decide application for additional evidence afresh. **[*Andisamy Chettiar v. Subburaj Chettiar AIR 2016 SC 79]***

Order 47 rules 1 C.P.C.

Apparent error in the judgment reported in *2015 AIR SCW 75* found, hence, certain paragraphs corrected. **[*Chairman and M.D., Central Bank of India v. Central Bank of India SC/ST Employees Welfare Association AIR 2016 SC 326]***

Order 47 Rues 1 and 7 C.P.C.

Appeal against rejection of review application is not maintainable unless the basic judgment is challenged. **[*Bussa Overseas and Properties (P) Ltd. v. Union of India, AIR 2016 938]***

Constitution of India

Article 25, 26—Freedom of Religion under and enforcement thereof under Article 32 of Indian Constitution-

Religion incorporates the particular belief(s) that a group of people subscribe to. Hinduism, as a religion, incorporates all forms of belief without mandating the selection or elimination of any one single belief. It is a religion that has no single founder; no single scripture and no single set of teachings. It

has been described as Sanatan Dharma, namely, eternal faith, as it is the collective wisdom and inspiration of the centuries that Hinduism seeks to preach and propagate. It is keeping in mind the above precepts that we will proceed further.

The freedom of religion under Articles 25 and 26 of the Constitution is not only confined to beliefs but extends to religious practices also would hardly require reiteration. Right of belief and practice is guaranteed by Article 25 subject to public order, morality and health and other provisions of Part- III of the Constitution. Sub-Article (2) is an exception and makes the right guaranteed by Sub-article (1) subject to any existing law or to such law as may be enacted to,

inter alia, provide for social welfare and reforms or throwing or proposing to throw open Hindu religious institutions of a public character to all classes and sections of Hindus. Article 26(b) on the other hand guarantees to every religious denomination or section full freedom to manage its own affairs insofar as matters of religion are concerned, subject, once again, to public order, morality and health and as held by this Court subject to such laws as may be made under Article 25(2)(b). The rights guaranteed by Articles 25 and 26, therefore, are circumscribed and are to be enjoyed within constitutionally permissible parameters. Often occasions will arise when it may become necessary to determine whether a belief or a practice claimed and asserted is a fundamental part of the religious practice of a group or denomination making such a claim before embarking upon the required adjudication. [**Adi Saiva Sivachariyargal Nala Sangam v. State of T.N., (2016) 2 SCC 725]**

Article 32-

Writ petition before Supreme Court is maintainable if apprehension of harm is well founded. The petitioner need not wait till actual prejudice, adverse effect and consequences. **[*Adi Saiva Sivachariyargal Nala Sangam v. Government of Tamil Nadu 2016 AIR (SC) 209]***

Article 32- Public Interest Litigation- Government Advertisements—Constitution—Article 12, 38, 39 & 142—Guidelines suggested by the Court appointed Committee—Publication of photographs of functionaries of State and political leaders along with the advertisement—Review petition—Court review its judgment in 2015(6) SCALE 302 to the extent indicated in Para 2.3.

Upon due consideration, Court review his judgment dated 13th May,

2015 passed in Writ Petition (Civil) No.13 of 2003, Writ Petition (Civil) No.197 of 2004 Page 2 2 and Writ Petition (Civil) No.302 of 2012 to the extent indicated below:

(i) The exception carved out in paragraph 23 of the aforesaid judgment dated 13th May, 2015 permitting the publication of the photographs of the President, Prime Minister and Chief Justice of the country, subject to the said authorities themselves deciding the question, is now extended to the Governors and the Chief Ministers of the States.

(ii) In lieu of the photograph of the Prime Minister, the photograph of the Departmental (Cabinet) Minister/Minister In-charge of the concerned Ministry may be published, if so desired.

(iii) In the States, similarly, the photograph of the Departmental (Cabinet) Minister/Minister In-charge in lieu of the photograph of the Chief Minister may be published, if so desired.

(iv) All other observations/directions in the aforesaid judgment dated 13th May, 2015 Page 3 3 shall continue to remain in force subject to the above modification.

The review petitions are disposed of in the above terms. **[State of Karnataka vs. Common Cause and Ors., 2016 (3) SCALE 346]**

Article 136—Special Leave Petitions—Kinds of cases which should be entertained under Article 136 of the Constitution—Use of words 'in the discretion' in Article 136—Ambit and scope of this discretionary remedy.

In Union Carbide Corporation & Ors. vs. Union of India & Ors. 1991(4) SCC 584, this Court in para 58 held as under:

> "This Court had occasion to point out that Article 136 is worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing of appeals by granting special leave against any kind of judgment or order made by a Court or Tribunal in any cause of matter and the powers can be exercised in spite of the limitations under the specific provisions for appeal contained in the Constitution or other laws. The powers given by

Article 136 are, however, in the nature of special or residuary powers which are exercisable outside the purview of the ordinary laws in cases where the needs of justice demand interference by the Supreme Court. [See Durga Shankar Mehta vs. Thakur Raghuraj Singh & Others, (1955) 1 SCR 267]"

Upon perusal of the law laid down by this Court in the aforesaid judgments, in Court's opinion, no effort should be made to restrict the powers of this Court under Article 136 because while exercising its powers under Article 136 of the Constitution of India, this Court can, after considering facts of the case to be decided, very well use its discretion. In the interest of justice, in Court's view, it would be better to use the said power with circumspection, rather than to limit the power forever.

In the circumstances, we do not see any reason to answer the issue which has already been answered in the aforesaid judgments. **[Mathai @ Joby vs. George, 2016 (2) SCALE 102]**

Article 366—Taxation-Imposition of Service Tax on Indivisible work contract and question of tax exemption

The Constitution (46th Amendment) Act was passed in 1982 by which Parliament amended Article 366 by adding clause (29-A), which provided that a tax on the sale or purchase of goods includes a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The constitutional amendment so passed was the subject-matter of a challenge in Builders' Ass. of India, (1989) 2 SCC 645. The challenge was ultimately repelled and the Court stated that "after the 46th amendment, it has become possible for the states to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts as stated above."

Service tax was introduced by the Finance Act, 1994 and various services were set out in Section 65 thereof as being amenable to tax. Various amendments were made in the sections of the Finance Act by which "works contracts" which were indivisible and composite were split so that only the labour and service element of such contracts would be taxed under the heading "service tax". By the finance Act, 2007, for the first time, Section 65 (105) (zzzza) Set out to tax the works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

The issue involved in this appeal was: whether service tax can be levied on indivisible works contracts prior to the introduction, on 1-6-2007, of the Finance Act, 2007. Answering the negative and allowing the appeals of the assesses and dismissing the appeals of the Revenue, the Supreme Court.

Held-

A works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and the law as such, and has to be taxed separately as such. [**Commissioner, Central Excise and Customs vs. Larsen & Toubro Ltd., (2016) 1 SCC 172]**

Contract Act

Sections 126 and 13

The Guarantee deed executed by the Directors of company does not cover previous debts of the company as in the deed no such mention is made. As the creditor / appellant bank itself provided the guarantee deed hence on the basis of doctrine of contra proferentem it will have to be read against it in case of any doubt. **[*Central Bank of India v. Virudhunagar Steel Rolling Mills Ltd. AIR 2016 SC 191]***

Contract and Specific Relief

Contract and Specific Relief- Section 20, Specific Relief Act, 1963

Section 20 of the Specific Relief Act, 1963 gives discretion to the court, and provides that the court is not bound to grant relief of specific performance merely because it is lawful to do so. It further provides that the discretion is not to be exercised arbitrarily but guided by judicial principles. (Para 14)

Explanation 1 to Section 20(2) provides that mere inadequacy of consideration shall not be deemed to be an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Explanation 2 provides that the question whether the performance of a contract when involved hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent in the contract, be determined with reference to the circumstances accepting at the time of contract. Section 20(3) provides that the court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance. (Para 15)

In the present case, as possession was not given to the respondent-plaintiff at

the time of execution of the agreement, nor was the area of land agreed to be

sold
clear, as such, it cannot be said that the respondent-plaintiff had done substantial
acts or suffered losses due to expenditure in constructions, etc., in consequence of a contract capable of specific performance. The direction given by the High Court in the impugned order shows that the measurements of land actually agreed to be sold, are not final. (Para 16)

Thus, it will be equitable, just and proper to direct the appellant-defendants to pay back the amount of Rs 60,000 accepted by the original defendant with interest @ 18% p.a. to the respondent-plaintiff from 4-2-1992 till date, within a period of three months from today, failing which this appeal shall stand dismissed. [**Hemanta Mondal and others vs. Ganesh Chandra Naskar, (2016) 1 SCC 567]**

Criminal Procedure Code

Section 154-- F.I.R.- Second – permissibility

From a bare perusal of second FIR, it is abundantly clear that both the appellants have furnished wrong information to the police as to their names, father's name and address during the course of investigation made on the first FIR. This Court is of the view that the offences alleged to have committed by them are mentioned in second FIR, which offences are distinct offences committed by both the appellants and the same have no connection with the offences for which the first FIR was registered against them.

It is well settled principle of law that there can be no second FIR in the event of any further information being received by the investigating agency in respect of offence or the same occurrence or incident giving rise to one or more offences for which chargesheet has already been filed by the investigating agency. The recourse available with the investigating agency in the said situation is to conduct further investigation normally with the leave of the court as provided under sub-Section (8) to Section 173 of Cr.P.C.

It follows that if the gravamen of the charges in the two FIRs — the first and the second — is in truth and substance the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 CrPC will be irregular and the court cannot take cognizance of the same.

However, this principle of law is not applicable to the fact situation in the instant case as the substance of the allegations in the said two FIRs is different. [**Awadesh Kumar Jha @ Akhilesh Kumar Jha & Anr. Versus The State Of Bihar, AIR 2016 SC 373]**

Section 156(3) Cr P C – investigation – role of magistrate – direction to investigate by other agency – only by constitutional courts.

Section 173 Cr.P.C. empowers the Police Officer conducting investigation to file a report on completion of the investigation with the Magistrate empowered to take cognizance of the offence. Section 173(8) Cr.P.C. empowers the office-in-charge to conduct further investigation even after filing of a report under Section 173(2) Cr.P.C. if he obtains further evidence, oral or documentary. Thus, the power of the Police Officer under Section 173(8) Cr.P.C. is unrestricted. Needless to say, the Magistrate has no power to interfere but it would be appropriate on the part of the investigating officer to inform the Court.

The constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the

investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "'id'ee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lowerstrata. He should not harbor the feeling that he is an "orphan under law". **[Dharam Pal Versus State of Haryana & Ors., AIR 2016 SC 618]**

Police Custody Remand

The instant case, relates to killing of nine persons and injuring large number of villagers of Village Netai of District Paschim Medinipore in West Bengal,on 07.01.2011. First Information Report was lodged on the same day at Police Station Lalgarh in respect of offences punishable under Sections 148, 149, 326, 307, 302 of Indian Penal Code (IPC), and also in respect of offences punishable under Section 25/27 of Arms Act. The investigation of the case was initially done by regular police, but later transferred to Criminal Investigation Department (CID) of the State. Later on the investigation was transferred to Central Bureau of Investigation (for short "the CBI"), the appellant before us. During investigation 12 accused were arrested. On completion of investigation, the CBI submitted charge sheet dated 4.4.2011 against 21 accused, including the arrested ones and the absconders. It was mentioned in the charge sheet that further investigation of the case was kept open for the purposes of collection of further evidence and the arrest of the absconders. It was also mentioned that further collected evidence during investigation would be forwarded by filing supplementary charge sheet. In respect of charg sheeted accused charges were framed, trial further proceeded and ten Prosecution Witnesses were examined. However, their cross-examination was deferred at the instance of arrested accused persons, other than the juveniles. Proclaimed offenders Rathin Dandapat, Md. Khaliluddin, Dalim Pandey, Joydeb Giri Tapan Dey, Chandi Karan, and Anuj Pandey were arrested later on. The CBI sought remand in police custody of these accused but all the applications were also refused. Aggrieved by those orders Revisional Applicationwere filed before the High Court. All the Criminal Revisions were disposed of by the High Court against which the criminal appeals were filed.

In view of the above facts, in the present case, held that , the High Court is not justified in upholding refusal of remand in police custody by the Magistrate. The refusal of police remand in the present case is against the settled principle of law The principle of law is settled that police remand can be sought under Section 167(2) CrPC in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. This Court has further clarified that expression 'accused if in custody' in Section 309(2) CrPC does not include the accused who is arrested on further investigation before supplementary charge sheet is filed. **[Central Bureau of Investigation Versus Rathin Dandapat And Others 2015(8) Supreme 56]**

Section 173 Cr.P.C. – Further investigation- meaning of

From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "further" is additional, more, or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be. [**Awadesh Kumar Jha @ Akhilesh Kumar Jha & Anr., AIR 2016 SC 373]**

Section 190—Cognizance and process thereafter

The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. to set in motion the process of criminal law against a person is a serious matter.

Under Section 190(1)(b) CrPC , the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence,. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be

rejected.

The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered alongwith the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed t that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is ot to act as a post office in taking cognizance of each and every compliant filed before him and issue process as a matter to course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered alongwith the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Section 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment. [**Mehmood Ul Rehman Versus Khaziri Mohammad Tunda and others, (2016) 1 SCC (Cri) 124, (2015) 12 SCC 420]**

Section 197 Cr.P.C.

Relying on *Kumar Raghvendra Singh and others v. Ganesh Chandra Jew (2004) 8 SCC 40 ; 2004 SCC(Cri) 2104* AND *Om Prakash and others v. State of Jharkhand Through The Secretary, Department of Home, Ranchi and another (2012) 12 SCC 72 ; (2013) 3 SCC(Cri) 472* held that where the accused exceeded in exercising his power during investigation of a criminal case and assaulted the complainant in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged

conduct has an essential connection with the discharge of the official duty. Under Section 197 of CrPC, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary. The issue of 'police excess' during investigation and requirement of sanction for prosecution D. T. Virupakshappa Versus C. Subash (2016) 1 SCC (Cri) 82; (2015) 12 SCC 231.

The question, whether sanction is necessary or not, may arise on any stage of the proceedings, and in a case, where where the accused exceeded in exercising his power during investigation of a criminal case and assaulted the complainant in order to extract some information, it may arise at the stage of inception. [**D. T. Virupakshappa Versus C. Subash (2016) 1 SCC (Cri) 82 ; (2015) 12 SCC 231]**

Sections 220 and 223 Cr.P.C.

From the reading of Sections 220 and 223, it is clear that a discretion is vested with the Court to order a joint trial. In fact, in **Chandra Bhal v. State of U.P., (1971) 3 SCC 983,** this Court stated:

> "Turning to the provisions of the Code, Section 223 embodies the general mandatory rule providing for a separate charge for every distinct offence and for separate trial for every such charge. The broad object underlying the general rule seems to be to give to the accused a notice of the precise accusation and to save him from being embarrassed in his defence by the confusion which is likely to result from lumping together in a single charge distinct offences and from combining several charges at one trial. There are, however, exceptions to this general rule and they are found in Sections 234, 235, 236 and 239. These exceptions embrace cases in which one trial for more than one offence is not considered likely to embarrass or prejudice the accused in his defence. The matter of joinder of charges is, however, in the general discretion of the court and the principle consideration controlling the judicial exercise of this discretion should be to avoid embarrassment to the defence by joinder of charges. On the appellant's argument the only provision requiring consideration is Section 235(1) which lays down that if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person then he may be charged with and tried at one trial for every such offence. This exception like the other exceptions merely permits a joint trial of more offences than one. It neither renders a joint trial imperative nor does it bar or

prohibit separate trials. Sub-section (2) of Section 403 of the Code also provides that a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235(1). No legal objection to the appellant's separate trial is sustainable and his counsel has advisedly not seriously pressed any before us." [at para 5]

We find that the Special Judge, vide the order dated 2.9.2013, has given cogent reasons for not exercising his discretion to order a joint trial. He stated that the evidence in the main case has almost reached the end and as many as 146 witnesses in the main case and 71 witnesses in the second supplementary chargesheet have already been examined, clubbing the two cases together would result in the wastage of the effort already gone into and would lead to a failure of justice. The learned Judge concluded as follows:-

In the end I may add that it is not obligatory on the Court to hold a joint trial and provisions of these sections are only enabling provisions. An accused cannot insist with ulterior purpose or otherwise that he be tried as co-accused with other accused, that too in a different case. It is only a discretionary power and Court may allow it in a particular case if the interest of justice so demands to prevent miscarriage of justice. In the instant case, neither the facts and allegations are common, nor evidence is common nor the accused were acting with a commonality of purpose and, as such, there is no ground for holding a joint trial. I may also add that holding a joint trial at this stage may lead to miscarriage of justice.

In my humble view, a Court may not deem it desirable to conduct a joint trial, even if conditions of these Sections are satisfied, though not satisfied in the instant case, that is:

a) when joint trial would prolong the trial;

b) cause unnecessary wastage of judicial time; and

c) confuse or cause prejudice to the accused, who had taken part only in some minor offence. **[Essar Teleholdings Ltd. v. Central Bureau Of Investigation 2015 (7) Supreme 178 ; (2016) 1 SCC (Cri) 1: (2015) SCC 562]**

Section 321 Cr P C – withdrawal of prosecution – Sole domain of public prosecutor -Recourse of section 91 Cr P C not permissible- Accused person have no role in such proceedings.

The filing of the application for seeking withdrawal from prosecution and application not to press the application earlier filed are both

within the domain of Public Prosecutor. He has to be satisfied. He has to definitely act independently and as has been held by the Constitution Bench in Sheonandan Paswan (supra), for he is not a post office. In the present case, as the facts would graphically show, the Public Prosecutor had not moved the application under Section 321 Cr.P.C. but only filed. He could have orally prayed before the court that he did not intend to press the application. We are inclined to think, the court could not have compelled him to assist it for obtaining consent. The court has a role when the Public Prosecutor moves the application seeking the consent for withdrawing from the prosecution. At that stage, the court is required to see whether there has been independent application of mind by the Public Prosecutor and whether other ingredients are satisfied to grant the consent. Prior to the application being taken up being moved by the Public Prosecutor, the court has no role. If the Public Prosecutor intends to withdraw or not press the application, he is entitled to do so. The court cannot say that the Public Prosecutor has no legal authority to file the application for not pressing the earlier application. It needs no special emphasis to state that the accused persons cannot be allowed to contest such an application. We fail to fathom, how the accused persons can contest the application and also file documents and take recourse to Section 91 Cr.P.C. The kind of liberty granted to the accused persons is absolutely not in consonance with the Code of Criminal Procedure. If anyone is aggrieved in such a situation, it is the victim, for the case instituted against the accused persons on his FIR is sought to be withdrawn. The accused persons have no role and, therefore, the High Court could not have quashed the orders permitting the prosecution to withdraw the application and granting such liberty to the accused persons. The principle stating that the Public Prosecutor should apply his mind and take an independent decision about filing an application under Section 321 Cr.P.C. cannot be faulted but stretching the said principle to say that he is to convince the court that he has filed an application for not pressing the earlier application would not be appropriate. [**M/s V.L.S. Finance Ltd v. S.P. Gupta and Anr., AIR 2016 SC 721]**

Section 340 Cr.P.C.-

Section 340 of CrPC, prior to amendment in 1973, was Section 479-A in the 1898 Code and it was mandatory under the pre-amended provision to record a finding after the preliminary inquiry regarding the commission of offence; whereas in the 1973 Code, the expression 'shall' has been substituted by 'may' meaning thereby that under 1973 Code, it is not mandatory that the court should record a finding. What is now required is

only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court, and that too, opinion on an offence 'which appears to have been committed', as to whether the same should be duly inquired into. We are unable to appreciate the submission made by the learned Senior Counsel that the impugned order is liable to be quashed on the only ground that there is no finding recorded by the court on the commission of the offence. Reliance placed on Har Gobind v. State of Haryana is of no assistance to the appellant since it was a case falling on the interpretation of the pre-amended provision of the CrPC. A three- Judge Bench of this Court in Pritish v. State of Maharashtra[2] has even gone to the extent of holding that the proceedings under Section 340 of CrPC can be successfully invoked even without a preliminary inquiry since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

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.

It is significant to note that the appellant's opinion that the cartridges appeared to have been fired from different firearms was based on the court's insistence to give the opinion without examining the firearm. In other words, it was not even his voluntary, let alone deliberate deposition, before the court. Therefore, it is unjust, if not unfair, to attribute any motive to the appellant that there was a somersault from his original stand in the written opinion. As a matter of fact, even in the written opinion, appellant has clearly stated that a definite opinion in such a situation could be formed only with the examination of the suspected firearm, which we have already extracted in the beginning. Thus and therefore, there is no somersault or shift in the stand taken by the appellant in the oral examination before court. [**Prem Sagar Manocha v. State (NCT of Delhi), AIR 2016 SC 290]**

Criminal Trial

Test Identification Parade

In the present case the Appellant was subjected to sexual intercourse during broad day light. The fact that she was so subjected at the time and in the manner stated by her, stands proved. Three witnesses had immediately come on the scene of occurrence and found that she was raped. The immediate reporting and the consequential medical examination further

support her testimony. By very nature of the offence, the close proximity with the offender would have certainly afforded sufficient time to imprint upon her mind the identity of the offender. In Malkhansingh v. State of M.P.[2] in a similar situation where identification by prosecutrix for the first time in court was a matter in issue, this Court had observed: "She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features In fact on account of her traumatic and tragic experience, the faces of the appellants must have got imprinted in her memory, and here was no chance of her making a mistake about their identity."

Furthermore, the appellant had gone to the extent of stating in her first reporting that she would be in a position to identify the offender and had given particulars regarding his identity. The clothes worn by the offender were identified by her when called upon to do so. In the circumstances there was nothing wrong or exceptional in identification by her of the accused in court. We find her testimony completely trustworthy and reliable. Consequently we hold that the case against Respondent No.1 stands proved. Since the trial court had found the age of the appellant to be 10-13 years of age, we take the age to be on the maximum scale i.e. 13 years. In our considered view, the High Court was not justified in dismissing the revision. No other view was possible and the case therefore warrants interference by this Court. [**Ms. S Versus Sunil Kumar & Anr., (2015) 3 SCC (Cri) 649 ; (2015) 8 SCC 489]**

Dying Declaration More Than One

We have perused the entire record including the dying declarations. In our view dying declaration Ext. 96 as recorded by the Executive Magistrate is the most crucial document. Said document itself records the appropriate satisfaction and certification by the medical professional namely PW7 Dr. Vijay Kalne before and after recording of the dying declaration. PW7 Dr. Vijay Kalne clearly stated in his deposition that he had examined Sadhana and found her pulse and Blood Pressure normal, that she was well oriented and that she was mentally fit. He further stated that he was all the time present while the statement recorded. In the circumstances the dying decalration Ext. 96 is absolutely reliable. On the point that Pradip had set Sadhana ablaze, there is no inconsistency in any of the dying declarations and they in unison point the finger at him. Even with respect to the role of Pravin the declarations Exts. 96 and 98 are quite consistent. There may be some exaggeration on part of PW 1 Suryakanata and PW 5 Narmadabai, but the supplementary statement of Sadhana dated 7.11.1995 put

the matter completely beyond any doubt.

The dying declaration Ext.96, in our view is definitely trustworthy. It also stands corroborated on material aspects by other declaration Ext.98. If some exaggeration on part of PW1 Suryakanta and PW5 Narmadabai is eschewed, their oral testimonies also lend full support. Whether Sadhana was able to speak coherently is a matter which stands dealt with by PW7 Dr. Vijay Kalne, and we have no hesitation in placing reliance on dying declaration Ext.96. The High Court was in error in discarding said dying declaration. The view which weighed with the High Court was not even a possible view. We, therefore hold that the charges under Sections 302 and 354 as against Pradip and Pravin respectively stand fully proved. We affirm the acquittal of Pradip with regard to charge under Section 498A of the IPC. [**State Of Maharashtra Etc Vs. Pravin Mahadeo Gadekar Etc., (2015) 3 SCC (Cri) 653 ; (2015) 8 SCC 494]**

Procedure before issuing Death Warrant

Sufficient notice is to be given to the convict before issuance of death warrant by the Sessions Court so that it would enable him to consult his advocates and to be represented in the proceedings. That being the purpose, it has to be viewed in the present exposition of facts. In this case, after the warrant was issued, though it has been served on the petitioner on 13.07.2015, yet he had filed the curative petition on 22.05.2015 and, therefore, he cannot take the plea that he had not availed the legal remedies. The curative petition, as has been mentioned earlier, has been dismissed on 21.07.2015. In our view, the purpose behind the said mandate has been complied with in this case. We may explain slightly elaborately. We are inclined to hold so as the petitioner had availed series of opportunities to assail the conviction and as accepted he was offered ten days when the review petition was heard. [**Yakub Abdul Razak Memon vs. The State of Maharashtra, through CBI, Bombay (2015) 3 SCC(Cri) 673 ; (2015) 9 SCC 552 (Criminal Appeal No. 1728 Of 2007)]**

Sole Witness

As regards his version about the incident, the manner in which it statedly occurred, the involvement of the respondents--whether all or some of them, we have nothing on record which could possibly allow us to test the veracity of the version of the sole witness. To us, it is doubtful whether PW2 Mewa Ram could be called a natural and truthful witness and could be completely relied upon. The movements of Akash are also not established to show that he was actually there as suggested by the witness. Since PW2 Mewa Ram is the sole witness and the entire case depends on his testimony, we have looked for even minutest detail which could possibly lend

corroboration. We have however not been able to locate any such material. In order to evoke confidence and place intrinsic reliance on the testimony of this sole witness, we tried to find some corroboration on material particulars, which unfortunately is lacking. The assessment of the entire material has left many doubts and questions unanswered. Two facts, that the baithak was of ownership of the respondents and that the body of Akash was found there, though very crucial, cannot by themselves be sufficient to fix the liability. The baithak was not part of the house, was across the road and apparently accessible to others. And importantly, presence of respondents--whether some or all of them, has not been fully established. [**State of U.P. v. Satveer & Ors., (2015) 3 SCC(Cri) 712 ; (2015) 9 SCC 44 (Criminal Appeal Nos.623-24/2008)]**

Unnatural Conduct of Witness

Harkesh Kumar, the real maternal uncle of the deceased failed to support the prosecution case and was declared hostile. He was alleged to have been present as an eyewitness during the incident, as per the FIR. It is unnatural for him not to have come to the rescue of his nephew even when he had identified him as the victim. Similarly The statement of Narain Dass, the real maternal uncle of the deceased, shows that he had witnessed throwing of dead body of deceased from the car in which all five accused were present. He also stated that after chasing the accused when he failed to get hold of them, he went back home. He did not meet the police from 6:00 a.m. to 9:00 a.m. that day. Being real maternal uncle of the deceased, he did not even bother to check whether the deceased was dead or alive. Also, the fact that he did not meet the police for 3 hours is a strange fact considering that his nephew had died.

Kashmir Chand stated that on 8.10.2002 at about 8:00 p.m. he had seen the five accused persons conspiring with one another about finishing Ashok Kumar, because he was not agreeing to remove his fruit Rehri from the front of the meat shop of Bittu and Nitu. He also stated that he saw the accused beating and sitting upon the deceased at about 2:30 a.m. at night. Even if the motive is clearly established, the fact that Kashmir chand was admittedly the friend of the deceased, he ought to have warned the deceased about such plans of the accused. Rather he had gone to see Ram Leela and came back after 15-20 minutes to his house, had his meals and later left the house at around 2:00 a.m. Neither he was named in the FIR nor did he care to warn the deceased or his family members of the conspiracy that he had overheard. The above mentioned circumstances made the conduct of witness highly unnatural and their presence doubtful at the place of incident. [**State**

of Punjab v. Bittu & Anr. Etc., AIR 2016 SC 146]

Non Recovery of Weapon – Not always fatal

The contention is not tenable that the alleged weapon 'countrymade pistol' was never recovered by the investigating officer and in the absence of any clear connection between the weapon used for crime and ballistic report and resultant injury, the prosecution cannot be said to have established the guilt of the appellant. In the light of unimpeachable oral evidence which is amply corroborated by the medical evidence, non-recovery of 'countrymade pistol' does not materially affect the case of the prosecution. In a case of this nature, any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice. [**Nankaunoo v. State of U.P., AIR 2016 SC 589]**

PLEA OF ALIBI

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.

Now, we come to the defence plea of appellant Darshan Singh which was accepted by the trial court but rejected by the High Court. There is no cavil over the fact that the Accused Darshan Singh was posted as Lab Assistant with the Senior Secondary School, Janerian. He has taken false plea of alibi. It is proved on the record that in the proceedings under Section 107/151 of Cr.PC before Executive Magistrate, Faridkot, he was to be present in said case on 17.02.1995. His presence and role is narrated in detail by the injured eye witnesses. In view of his role in the incident narrated by the eye witnesses, it is hard to believe that after moving application on 16.02.1995 for casual leave for 17.02.1995, Darshan Singh attended the school next day in the first half and sought half day leave thereafter. The attendance register was not seized immediately after the incident. His plea of alibi is vacillating. [**Darshan Singh v. State of Punjab, AIR 2016 SC 253]**

Circumstantial Evidence

Following circumstances are found to have been proved on record: -

i) Admittedly, the deceased was wife of the accused and they had strained relations.

ii) The accused was suffering from venereal disease which he suspected to have sexually transmitted through his wife.

iii) On 5.8.2001 the accused had gone to his in-laws' house and took his wife with him.

iv) The deceased and the accused were last seen in the mid night (intervening night of 5.8.2001 and 6.8.2001) going together from cinema hall after night show, towards village Ayinavilli.

v) The accused was last seen returning alone from village Ayinavilli, after midnight at about 12.30 a.m., i.e. 0030 hrs. on 6.8.2001.

vi) The dead body of the deceased was recovered next morning on 6.8.2001 from village Ayinavilli.

vii) The deceased had died homicidal death and cause of her death was asphyxia due to strangulation.

viii) It is also established that the accused absconded from the village after the incident.

The above chain of circumstances is complete and leads only to the conclusion that it was the accused and he alone, who committed murder of the deceased. It could not be said that the chain of circumstances is not complete merely for the reason that drunkenness of the accused is not established, and that the accused cannot be said to have got sexually transmitted disease through his wife, is the view based on irrelevant considerations and could not have been taken in the present case after re-appreciating the evidence on record. It is proved on the record by

Dr. Venkata Reddy that the accused was suffering from balanoposthitis, and PW-1 Jithuka Nagooru and PW-2 Jithuka Veeramma have proved the fact that the accused suspected that it might have been transmitted to him through his wife. What is more important is that in his statement under Section 313 of Code of Criminal Procedure, when above evidence was put to the accused, he has accepted said fact. What he denied is that he did not go to take his wife to her parents' house. He further denied that he did not take her to night show of any movie, nor committed her murder. In the above circumstances, in the present case only view possible was the conviction of the accused. [**State of A.P. Versus Patchimala Vigneswarudu @ Vigganna @ Ganapathi , AIR 2016 SC 258]**

Witness Named After Two Years of Incident

The accused Rajesh Singh was nowhere named in the FIR or the Police statement and his alleged role was testified only at the trial stage, after about more than 2 years of the incident. In each of the witnesses' statements, the name of the respondent Rajesh Singh does not appear until testimony before the Court. The four related witnesses in their cross-examination

stated that they had named Rajesh Singh as one of the accused in the FIR and the police statement. However, no explanation can be gathered as to how one name could be missed when all the other five accused were named categorically. Moreover, if the testimony of the other three unrelated witnesses is perused, none of the witnesses named the respondent Rajesh Singh directly and they did not even identify accused Rajesh Singh in the Court at the time of trial while they specifically recognized the other accused present in the Court. Thus, there is no infirmity in holding that the respondent/ accused Rajesh Singh is entitled to benefit of doubt as the prosecution has not been able to bring home the charge against him. [**Bimla Devi v. Rajesh Singh & Anr., AIR 2016 SC 158]**

Dowry Prohibition Act

Sections 2 & 3- Dowry- gifts exchanged between parties- Not amount to dowry

It is apparent that the monetary gifts given, were in the nature of customary gifts exchanged during different ceremonies. But what is of extreme significance is the fact, that even the family of Dattaraj, the husband of Savita, had given four tonnes of sugarcane seeds and a bag of jowar to her family, when the family of Savita visited her matrimonial house, on the occasion of the birth of a female child. It is acknowledged by Tukkubai – PW-1, that the aforesaid gifts were taken by the family members of Savita to their own village, by hiring a "tum-tum" (a horse-drawn cart). This return gift by the family of Dattaraj was also in conformity with the customary tradition for such occasions. It seems that the two families celebrated all festivities in the spirit of their customary obligations. Both families engaged in offering gifts to each other, in accord with the prevailing practice and tradition.

So far as dowry demand of a sewing-machine is concern, the position was clarified by Tukkubai during her cross-examination. She stated, that Savita knew tailoring. And that, the sewing-machine was given to her for tailoring clothes. This was really a gift to Savita, and therefore, cannot be considered as a part of the demand made by Dattaraj, for himself or for his family members. This allegation, in our considered view, is inconsequential, with respect to the provisions under which the accused were charged. [**State of Karnataka v. Dattaraj & others, AIR 2016 SC 882]**

Section 6 – Entrustment of property must

Appellants No.2 and 3 are the parents, appellant No.4 is widowed sister and appellants No.5 and 6 are the sisters of appellant No.1. Marriage

of first appellant and Syamala Rani was performed at Vizianagaram on 04.05.2007 and after marriage, Syamala Rani was residing at Bangalore with her husband-appellant No.1. Syamala Rani died on 06.09.2008 under suspicious circumstances and a case was registered in FIR No.1492 of 2008 under Sections 304B, 498A IPC read with Sections 3 and 4 of the Dowry Prohibition Act at H.A.L. Police Station, Bangalore City.

Second respondent- father of Syamala Rani filed a private complaint against the appellants under Section 6 of the Dowry Prohibition Act alleging that he had paid dowry amount and other articles which were presented as dowry to the appellants on their demand and the same were not returned. The Magistrate took cognizance of the offence under Section 6 of the Dowry Prohibition Act in C.C. No.532 of 2009.

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, Syamala Rani and first appellant 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 appellants 2 to 6 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 appellants 2 to 6 and there is no sufficient ground for proceeding against the appellants 2 to 6. Be it noted that appellants 2 to 6 are also facing criminal prosecution for the offence under Sections 498A, 304B IPC and under Sections 3 and 4 of the Dowry Prohibition Act. Even though the criminal proceeding under Section 6 of the Dowry Prohibition Act is independent of the criminal prosecution under Sections 3 and 4 of Dowry Prohibition Act. [**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.) 439]**

Education Act

U.P. Intermediate Education Act, 1921, Section 15.

No section of the Act or any Rule or Regulation framed there under prohibits a candidate from appearing in two examinations in the same year conducted by different boards i.e. U.P. Board of High School and Intermediate and Sanskrit Board. Examination cannot therefore be cancelled on this ground. **[*Kuldeep Kumar Pathak v. State of U.P. AIR 2016 SC 251]***

Evidence Act

Appreciation of evidence in rape cases

In the instant case, the prosecutrix was an adult and mature lady of around 40 years at the time of incident. It is admitted by the prosecutrix in her testimony before the trial court that she was in relationship with the appellant for the last two years prior to the incident and the appellant used to stay overnight at her residence. After a perusal of copy of FIR and evidence on record the case set up by the prosecutrix seems to be highly unrealistic and unbelievable. The evidence as a whole including FIR, testimony of prosecutrix and MLC report prepared by medical practitioner clearly indicate that the story of prosecutrix regarding sexual intercourse on false pretext of marrying her is concocted and not believable. [**Tilak Raj v. The State of Himachal Pradesh, AIR 2016 SC 406]**

Medical Evidence In Rape Cases

State Of Madhya Pradesh Versus Keshar Singh, (2015) 3 SCC(Cri) 719; (2015) 9 SCC 91 (Criminal Appeal No. 2244 Of 2009)

We have reproduced the conclusion in extenso as we are disposed to think that the High Court has fallen into error in its appreciation of the order passed by the learned Chief Judicial Magistrate. It has to be construed in the light of the eventual direction. The order, in fact, as we perceive, presents that the learned Chief Judicial Magistrate was really inclined to direct further investigation but because he had chosen another agency, he has used the word "reinvestigation". Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used. In (Vinay Tyagi v. Irshad Ali[(2013) 5 SCC 762]) it has been held:

> "The power of the Magistrate to direct "further investigation" is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the

Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code."

In the said case, the question arose, whether the Magistrate can direct for reinvestigation. The Court, while dealing with the said issue, has ruled that:-

"At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection."

And again:-

"Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation."

We respectfully concur with the said view. As we have already indicated, the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lancinated and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the concerned Superintendent of Police.

After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case.

In view of the aforesaid analysis and conclusion, the order passed by the High Court is set aside except where it has held that the learned Magistrate could not have allowed another agency to investigate. We have clarified the position in the preceding paragraph.

The appeal stands disposed of accordingly. [**Chandra Babu @ Moses v. State Through Inspector Of Police & Ors. (2015) 3 SCC(Cri) 851 ; (2015) 8 SCC 774]**

Section 113B - Role of presumption under section 304 B IPC

The key words under Section 113B of the Evidence Act, 1872 are "shall presume" leaving no option with a court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her. In the case on hand, accused persons failed to prove beyond reasonable doubt that the deceased died a natural death. When Kavita allegedly committed suicide, her husband, though he was not present in the house, was present in his office at M.D. University, Rohtak at the relevant time but he did not make any sincere effort to take her to the hospital which was very near to the place of the incident. Similarly, husband got the deceased
examined by DW-2 in order to create an impression that she was struggling with chronic depression but the truth floated upon the surface when the deceased reveals that the accused persons were maltreating her and she had started picking up the ideas of suicide. Lastly, husband falsely informed the court that having learnt about the death of his wife Kavita, he left for Delhi to inform her family members. In fact, the accused never went to Delhi and the complainant received a telephonic message from an unknown person regarding the death of his daughter. So far as Maya Devi- appellant No. 1 herein is concerned, there is no denying the fact that she was working as a teacher in a government school and she was not present at the relevant time at the place of incident but it is very much clear from the evidence on record that both the accused persons had a dominating role in the entire episode and she had always accompanied her son- (husband of deceased) herein to the house of the complainant for the dowry demands. The presumption under Section 113B of the Act is mandatory may be contrasted with Section 113A

of the Act which was introduced contemporaneously. Section 113A of the Act, dealing with abetment of suicide, uses the expression "may presume". This being the position, a two-stage process is required to be followed in respect of an offence punishable under Section 304-B IPC: it is necessary to first ascertain whether the ingredients of the Section have been made out against the accused; if the ingredients are made out, then the accused is deemed to have caused the death of the woman but is entitled to rebut the statutory presumption of having caused a dowry death. From the evidence on record, we are of the opinion that in the present case Kavita died an unnatural death by committing suicide as she was subjected to cruelty/harassment by her husband and in-laws in connection with the demand for dowry which started from the time of her marriage and continued till she committed suicide. Thus, the provisions of Sections 304B and 498A of the IPC will be fully attracted. [**Maya Devi & Anr. v.s State of Haryana, AIR 2015 SAC 125]**

Family Laws

Hindu Law-

If after the death of Karta family lived peacefully and continued in such state for about 7 years after purchase of the house in dispute and during all this period there were no differences among the family members then these facts are good evidence of existence of Joint Hindu family.

A Hindu widow is not coparcener in the Hindu Undivided Family of the husband, hence, she cannot be Karta of HUF.

However, Karta is different from manager. If there is no male member in HUF or the only male member is minor then his mother can act as Karta by virtue of being minor's legal guardian. **[*Shreya Vidyarthi v. Ashok Vidyarthi AIR 2016 SC 139: LIC of India v. Insure Policy Plus Services Pvt. Ltd. AIR 2016 SC 182]***

Tamil Nadu Hindu Religious and Charitable Endowment Act 1959. Section 55 as amended in 2006, Constitution of India Articles 14, 16(5), 25 and 26.

Appointment of Temple priest cannot be denied on the basis of cast, birth or other reasons not constitutionally acceptable. **[*Adi Saiva Sivachariyargal Nala Sangam v. Government of Tamil Nadu 2016 SC 209]***

Hindu Law— Child Custody—Judicial Magistrate directed the appellants to hand over custody of the child born to the first respondent—Order confirmed by High Court—This Court granted stay of the order of High Court—Issue of custody still pending before the Family Court—Interim order confirmed till final outcome of the proceedings before Family Court—Parties to abide by such order of Family Court, subject to its finality.

The appellants approached the High Court of Judicature at Mumbai, aggrieved by an order passed by the Judicial Magistrate, 1st Class, Court No. 2, Nasik dated 07.12.2010 directing them to hand over the custody of the child borne to the first respondent. That order was affirmed by the High Court by the impugned order dated 25.08.2011.

By order dated 21.02.2012, the order of the High Court was stayed by this Court.

Court find that the issue of custody has been pending before the Family Court. Therefore, we make it clear that the interim order passed by the Court shall continue till final orders are passed by the Family Court and the parties shall abide by the final outcome/order passed by the Family Court, subject to its finality. **[Jivana Devi Yogendra Nath Adhar vs. Vimal Kumar Dayaram Makane (Roy), 2016 (2) SCALE 464]**

Hindu Adoption and Maintenance Act

Sec. 16—Adoption—Validity of

The adoption deed dated 07.06.1977 is registered deed. Under Section 16 of the Hindu Adoptions and Maintenance Act, 1956 (for short, "the Act") there is presumption in law as what is recorded in the said deed.

The High Court while construing the said adoption deed has taken the view that the persons who had given the defendant-appellant in adoption to Nanuwa had not signed the adoption deed as executants thereof and had appended their signature thereto as attesting witnesses. The said finding of fact does not appear to be correct on a perusal of the copy of the adoption deed which is on record. Court has noticed from a perusal of the adoption deed that apart from the natural guardians of the defendant-appellant who had signed the deed. Even otherwise, the view taken by the High Court with regard to the deed

in question and the provisions of Sec. 16 of the Act appears to be contrary to what has been said by this Court.

Over and above the said facts what Court also find is that after the adoption deed was executed, the defendant-appellant had instituted a suit namely, Civil Suit No. 257 of 1997 against Nanuwa for a declaration that he is the owner of the suit property. The said declaration was sought for the purpose of mutation. Nanuwa appeared in the said suit and did not contest the claim of the defendant-appellant. In fact, Nanuwa had filed a written statement admitting the factum of adoption.

All the aforesaid facts, in our considered view, can lead only to one conclusion, namely, that the learned Trial Court and the First Appellate Court were perfectly justified in dismissing the suit of the respondent-plaintiff. The High Court in second appeal ought not to have disturbed the said findings and conclusions. **[Bijender vs. Ramesh Chand, 2016 (3) SCALE 284]**

Muslim Law – Gift

If father gifts *MUSHA* property (undivided share in property) to his minor son by a registered gift deed and the property is in occupation of tenant, the gift is perfectly valid. Gift cannot be faulted on the ground that possession was not delivered to the donee. In case of tenanted property possession stands delivered if title deed is handed over to the donee and tenant is requested to attorn in favour of donee or by mutation of the name of the donee.

Gift of undivided share, if, capable of division is not void but only irregular under Muslim Law. Para 160 of Mulla's Mohamdan Law referred to. **[*Khurshida Begam v. Komammad Farooq, AIR 2016 SC 694]***

Indian Penal Code

Section 34-

Where one accused fired at deceased at his head, and other fired on an other injured onher neck, stomach and leg. The contenion that as Sanjay fired only at Sheela, he could not have been convicted for causing death of deceased under Section 302 IPC read with Section 34 IPC, would have no force. The common intention of the appellants is to be gathered from the manner in hich the crime has been committed. Both the accused came together armed with firearms in the wee hours of the fateful day. Both the accused indiscriminately fired from their countrymade istols at deceased and other injured respectively. The conduct of the accused and the

manner in which the crime has been committed is sufficient to attract Section 34 IPC as both the accused acted in furtherance of common intention. [**Sanjay v. State of Uttar Pradesh, AIR 2016 SC 282]**

Section 302 -

In the instant case, it is apparent that the death occurred sixty two days after the occurrence due to septicaemia and it was indirectly due to the injuries sustained by the deceased. The proximate cause of death on 13.10.1998 was septicaemia which of course was due to the injuries caused in the incident on 11.08.1998. As noted earlier, as per the evidence of Dr. Laxman Das (PW-9), Roop Singh was discharged from the hospital in good condition and he survived for sixty two days. In such facts and circumstances, prosecution should have elicited from Dr. Laxman Das (PW-9) that the head injury sustained by the deceased was sufficient in the ordinary course of nature to cause death. No such opinion was elicited either from Dr. Laxman Das (PW-9) or from Dr. Gulecha (PW-3). Having regard to the fact that Roop Singh survived for sixty two days and that his condition was stable when he was discharged from the hospital, the court cannot draw an inference that the intended injury caused was sufficient in the ordinary course of nature to cause death so as to attract clause (3) of Section 300 IPC. In the instant case, the appellants used firearms countrymade pistol and fired at Roop Singh at his head and the accused had the intention of causing such bodily injury as is likely to cause death. As the bullet injury was on the head, vital organ, second appellant intended of causing such bodily injury and therefore conviction of the appellant is altered from Section 302 IPC to Section 304 Part I IPC. [**Sanjay v. State of Uttar Pradesh, AIR 2016 SC 282]**

Section 304 –B- "soon before her death" - means - interval not be much between the cruelty or harassment and the death in question - must be existence of a proximate and live link

To attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. In fact, learned senior counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we

shall advert to while considering the evidence led in by the prosecution. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. [**Maya Devi & Anr. v. State of Haryana, AIR 2015 SC 125]**

Section 364A -

A conspectus of the above leaves no manner of doubt that the expression "any other person" appearing in Section 364A right from the time of its initial incorporation in the Code was meant to apply the provisions not only to situations where the Government was asked to pay ransom or to do any other act but even to situations where any other person which would include a private person also was asked to pay ransom. The subsequent amendment in the year 1994 also did not remove the expression "any other person" in Section 364A while adding the expression "foreign State or international inter Government organisation" to the provision as it originally existed.

There is nothing in the provision to suggest that the same is attracted only in ransom situations arising in acts of terrorism directed against the Government or any foreign state or international inter- governmental organization. The language employed in the provision is, in our view, wide enough to cover even cases where the demand for ransom is made not as a part of any terrorist act but also for monetary gain from a private individual.

The reasons are not far to seek. Section 364A has three distinct components viz. (i) the person concerned kidnaps or abducts or keeps the victim in detention after kidnapping or abduction; (ii) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (iii) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the person concerned or someone else to do something or to forbear from doing something or to pay ransom. These ingredients are, in our opinion,

distinctly different from the offence of extortion under Section 383 of the IPC. The deficiency in the existing legal framework was noticed by the Law Commission and a separate provision in the form of Section 364A proposed for incorporation to cover the ransom situations embodying the ingredients mentioned above. The argument that kidnapping or abduction for ransom was effectively covered under the existing provisions of the IPC must, therefore, fail.

This would mean that the term 'person' appearing in Section 364A would include a company or association or body of persons whether incorporated or not, apart from natural persons. The tenor of the provision, the context and the statutory definition of the expression 'person' all militate against any attempt to restrict the meaning of the term 'person' to the 'government' or 'foreign State' or 'international inter-governmental organisations' only. [**Vikram Singh @ Vicky & Anr. Vs. Union Of India & Ors., 2015 (8) Supreme 257]**

Section 409 -

A jack tree of about 40 years of age was cut and kept in the compound of 10 Cents of land owned by the Kerala State Handicapped persons welfare corporation Thiruvananthapuram at Pojoppura. Shri Antony Cardoza, Managing Director of the Corporation got it removed and cut into convenient pieces on 24.06.1996 and took it to his residence at Alapuzha on 25.06.1996 through A Vasudevan Nair. Shri Prabhakaran Nair, L.D. Accountant met the expenses of Rs.690/- by way of labour charge for this purpose which was never claimed reimbursement from the corporation. Thus Shri Antony Cardoza being the servant of the Corporation as M.D. with wrongful intention committed threft of jack tree wood worth about Rs.10,000/- which was cut down and kept in the land of the corporation at Poojappura and Sh. Prakahakaran Nair, L.D. Accountant intentionally facilitated Sh. Antony Cardoza in the commission of the offence punishable under Section 381 and 109 IPC and Section 13(2) read with Section 13(1)(c) of PC Act, 1988.

Court is of the view that the ingredients of the offence under Section 409 IPC are clearly attracted in the present case. As Managing Director of the Corporation, the appellant was having dominion over the property in question in his capacity of public servant. The removal of timber from the plot in question to the house of the appellant at a considerable distance and non-accounting thereof in the books of the Corporation are very clinching and relevant circumstances. We therefore uphold the order of conviction as recorded by the Courts below. [**Antony Cardoza Versus State Of Kerala,**

(2015) 3 SCC (Cri) 596 ; (2014) 16 SCC787]

Section 415 -where the relation made on false promise of marriage

After careful reading of evidence on record, it must show that there is evidence against the appellant from which it can be conclusively inferred by the Court that there was any fraudulent or dishonest inducement of the prosecutrix by the appellant to constitute an offence under Section 415 of IPC. For conviction of the Appellant for above said offence, it is important that all the necessary ingredients constituting an offence under the said Section must be proved beyond reasonable doubt. In a case, the accused cannot be convicted for the offence of cheating punishable under Section 417 of IPC as the prosecution has failed to prove all ingredients of the said offence beyond reasonable doubt. [**Tilak Raj v. The State Of Himachal Pradesh, AIR 2016 SC 406]**

Section 419 & 420– Cheating as criminal liability and civil wrong

In the light of the well-settled principles, it is to be seen whether the allegations in the complaint filed against ARCI and its officers for the alleged failure to develop extruded ceramic honeycomb as per specifications disclose offences punishable under Sections 419 and 420 IPC. It is to be seen that whether the averments in the complaint make out a case to constitute an offence of cheating. The essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach

of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction.

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may." [**International Advanced Research Centre For Powder Metallurgy And New Materials (ARCI) & Ors. v. Nimra Cerglass Technics (P) Ltd. & Anr., 2015 (7) Supreme 154**]

Section 498-A -

Mukul Gupta was married to Sonia Gupta on 11.06.1997. Ram Saran Varshney and Saroj Varshney are the father-in-law and mother-in-law respectively of Sonia Gupta. Appellant nos. 4, 5 and 6 are the sisters-in-law of Sonia Gupta. Sonia Gupta registered a first information eport bearing Case Crime No. 326 of 2002 at Police Station Shiv Kutti, Allahabad, under Sections 498A and 506 of the Indian Penal Code, read with Sections 3/4 of the Dowry Prohibition Act. A charge sheet filed under sections 498-A/506 IPC and ¾ Dowry Protection Act. Cognizance was taken on 12.5.2008, and the accused Ramsaran Varsheney, Smt. Saroj Varshney, Mukul Gupta, Smt. Bhawna Varshney, Smt. Renu Gupta, Smt. Tunika Jaiswal were summoned to face trial.

It was the pointed contention of the learned counsel for the appellants, that Bhavana Vershney, Renu Gupta and Tulika Jaiswal, are all sisters-in-law of Sonia Gupta. In that view of the matter, they are the sisters of Mukul Gupta. We were informed, that a Bhavana Vershney, Renu Gupta and Tulika Jaiswal are all married and living independently. They are not residing with any of Mukul Gupta, Ram Saran Varshney and Saroj Varshney. Since they are married, and living independently in different places, they had no concern with the relationship of Sonia Gupta with Mukul Gupta, Ram Saran Varshney and Saroj Varshney. Further more, our attention was also invited to the fact, that no clear allegations have been levelled by Sonia Gupta against any of Bhavana Vershney, Renu Gupta and Tulika Jaiswal. Even during the course of hearing, Sonia Gupta, who entered appearance in person, did not

contest the aforesaid factual position. Her only submission, during the course of hearing was, that her hree sisters-in-law had visited the matrimonial house, on the occasion of 'Grah Parvesh', and the 'Naming Ceremony' of her daughter. We are of the view, that the visit of the three sisters-in-law of Sonia Gupta, on the above two occasions were for celebration, and cannot be treated as occasions where they harassed Sonia Gupta. In any case, in the absence of any material on the record of this case, relating to harassment on the above two occasions, we are satisfied, that the proceeding initiated against Bhavana Vershney, Renu Gupta and Tulika Jaiswal, consequent upon the registration of the first information report by Sonia Gupta on 10.04.2002, was not justified. The same deserves to be quashed. [**Ram Saran Varshney and others v. State of Uttar Pradesh and another, AIR 2016 SC 744]**

Insurance Act

Section 39-

(i) Nominee of insurance policy (including Life Insurance) receives the insurance amount on behalf of the legal heirs of the deceased. Nomination in the policy does not mean that nominee becomes entitled in his / her own right to the amount of insurance.

Sarbati Devi v. Usha Devi AIR 1984 SC 346 relied upon. Property purchased from such amount is joint Hindu Family property. **[*Shreya Vidyarthi v. Ashok Vidyarthi AIR 2016 SC 139]***

(ii) Section 38 (prior to 2015 amendment). If procedure prescribed under Section 38 is complied with then life insurance policy validly stands transferred. LIC cannot question the right to transfer and cannot refuse to register the assignment of LIC policy in favour of any one including respondent.

2003 to 2005 circulars of LIC permitting refusal to register the assignment of LIC policy are *ultra vires* and illegal.

Discretion 'not to register' provided through 2015 amendment of Section 38 is not retrospective. It is neither declaratory nor clarificatory piece of legislation.

Interpretation of Statutes

Effect of amendment in Section 6 Hindu Succession Act, 1956-

According to the respondent-plaintiff, the suit properties were acquired by her late father Y by inheritance and after his death in 1988, she acquired a share in the properties along with her brothers. On that basis she filed a suit in

1992 for partition and possession of her share.

The suit was contested by the brothers mainly on the plea that their plaintiff sister/daughter could claim share only in the self-acquired property of her deceased father and not in the entire property. During pendency of the suit, the plaintiff amended the plaint so as to claim share as per Amendment Act 39 of2005. The trial court partly decreed the suit to the extent of her share in certain properties on the basis of notional partition on the death of her father under the unamended Section 6 proviso of the Hindu Succession Act, 1956 and in some of the other items of property no share was given. The respondent-plaintiff preferred first appeal before the High Court with the grievance that the plaintiff became a coparcener under Amendment Act 39 of 2005 and was entitled to inherit the coparcenary property equal to her brothers. The High Court accepted the contention of the plaintiff. The appellant-defendants questioned in the present appeal before the Supreme Court the judgment and order of the High Court with the contention that the amended provisions of Section 6 of the Hindu Succession Act, 1956 have no application in the present case.

Disposing of the appeal and SLPs in the terms below, the Supreme Court.

Held:

The text of the amendment itself clearly provides that the right conferred on a "daughter of a coparcener" is "on and from the commencement of the Hindu Succession (Amendment) Act, 2005". Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective. In the preent case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect. The contention of the respondents that the amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the amendment applicable on and from its commencement and only if death of the coparcener in question is after
the amendment. Thus, no other interpretation is possible in view of the express language of the statute. (Paras 17 and 18)

The proviso to Section 6(1), and sub-section (5) of Section 6 as amended clearly intend to exclude the transactions referred to therein which

may have taken place prior to 20-12-2004 on which date the Bill was introduced. The proviso keeping dispositions or alienations or partitions prior to 20-12-2004 unaffected cannot lead to the inference that the daughter could be a coparcener prior to the commencement of Act 39 of 2005. The proviso to Section 6(1) only means that the transactions not covered thereby will not affect the extent of coparcenary
property which may be available when the main provision is applicable. Similarly, the Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20-12-2004. The said Explanation cannot permit reopening of partitions which were valid when effected. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per
unamended provision, having regard to nature of such partition which is by operation of law. Notional partition, by its very nature, is not covered either under the proviso to Section 6(1) or under sub-section (5) of Section 6 or under the Explanation thereto. [**Prakash and others v. Phulavati and others, (2016) 2 SCC 36]**

Land Acquisition Act

Sec. 4 & 18—Compensation—Actual market value—Determination by Collector—Appeal to Reference Court—Appeal to High Court which was dismissed—claimant aggrieved by this order has filed appeal before Supreme Court

The respondent- State had issued a Notification, under Section 4 of the Land Acquisition Act, 1894 (for short "the Act"), to acquire land admeasuring 865 kanals and 2 marlas situated in Village Manesar, Tehsil and District Gurgaon for the public purpose of development of the area as industrial and setting up of vaccination complex, dated 19.02.1988.

The Land Acquisition Collector (for short, "the LAC"), determined the market value of the land at Rs. 60,000/- per acre for Chahi Land and Rs. 40,000/- per acre for the remaining categories of land, by an award dated 26.09.1988.

The claimants, not being satisfied with the compensation so awarded by the LAC, sought for a reference under Section 18 of the Act to the Reference Court for determination of the actual market value of the land acquired.

Accordingly, the LAC had referred the case of the claimants to the District Judge, Gurgaon.

The Reference Court, after considering the entire oral and documentary evidence on record an relying on the sale transactions, has fixed the market value of the acquired lands at a uniform rate of Rs. 81,000/- per acre, by order dated 18.08.1994.

Aggrieved by the said order, the claimants had filed an appeal before the High Court seeking enhancement of the compensation. The High Court has dismissed the appeal filed by the claimants and upheld the award passed by the Reference Court.

Aggrieved by the order so passed by the High Court, the claimants are before us in these appeals.

In Court's considered view, keeping in view the facts and circumstances of the case, we deem it appropriate to enhance the compensation from Rs. 81,000/- per acre to Rs. 90,000/- per acre, along with all statutory benefits on the enhanced amount, in accordance with law.

In the result, the civil appeal is disposed of in the aforesaid terms, Ordered accordingly. **[Surinder v. State of Haryana, 2016 (2) SCALE 574]**

Section 23-

Comparable sale instance cannot be rejected merely on the ground that land owner had made a false statement that the compared land was having frontage on the road. **[*K.S. Sanjeev (Dead)by Lrs. Etc. Etc. v. State of Kerala AIR 2016 SC 605]***

Motor Vehicles Act

Sections 39 and 41

Registration is required after the sale is completed and it is obligation of the owner of the vehicle to get the vehicle registered. **[*Commissioner of Commercial Taxes v. K.T.C. Automobile, AIR 2016 SC 805]***

Section 166(2)-- Territorial Jurisdiction of Claims Tribunal- Consideration of

The question for consideration thus is whether the Tribunal at Kolkata

had the jurisdiction to decide the claim application under Section 166 of the Act when the accident took place outside Kolkata jurisdiction and the claimant also resided outside Kolkata jurisdiction, but the respondent being a juristic person carried on business at Kolkata. Further question is whether in the absence of failure of justice, the High Court could set aside the award of the Tribunal on the ground of lack of territorial jurisdiction.

The Court is of the view that in the face of the judgment in Mantoo Sarkar, (2009)2 SCC 244, the High Court was not justified in setting aside the award of the Tribunal in the absence of any failure of justice even if there was merit in the plea of lack of territorial jurisdiction. Moreover, the fact remained that the Insurance Company which was the main contesting respondent had its business at Kolkata.

The provision in question, in the present case, is a benevolent provision for the victims of accidents of negligent driving. The provision for territorial jurisdiction has to be interpreted consistent with the object of facilitating remedies for the victims of accidents. Hypertechnical approach in such matters can hardly be appreciated. There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting party in such cases, has its business. In such cases, there is no prejudice to any party. There is no failure of justice. Moreover, in view of categorical decision of this Court of Mantoo Sarkar, contrary view taken by the High Court cannot be sustained. The High Court failed to notice the provision of Section 21 CPC. [**Malati Sardar v. National Insurance Company Limited, (2016) 3 SCC 43]**

Narcotic Drugs and Psychotropic Substances Act

Section 50-

It is to be pointed out that the prosecution misdirected itself by unnecessarily focusing on Section 50 of the NDPS Act, when the fact is that the recovery has been made not from the person of the appellant but from the fitter-rehra which was allegedly driven by the appellant and, thus, Section 50 of the NDPS Act had no application at all. The prosecution ought to have endeavoured to prove whether the appellant had some nexus with the seized fitter-rehra. Though the police has seized the fitter- rehra, the prosecution has not adduced any evidence either by examining the neighbours or others to bring home the point that the appellant was the owner or possessor of the vehicle. PW6 admitted in his cross-examination that signature or thumb impression of the appellant was not obtained on the recovery memo. In our opinion, courts below erred in attributing to the appellant the onus to prove that wherefrom fitter-rehra had come, especially

when ownership/ possession of fitter- rehra has not been proved by the prosecution.

It is a well-settled principle of the criminal jurisprudence that more stringent the unishment, the more heavy is the burden upon the prosecution to prove the offence. When the independent witnesses PW1 and DW2 have not supported the prosecution case and the recovery of the contraband has not been satisfactorily proved, the conviction of the appellant under Section 15 of the NDPS Act cannot be sustained.

Section 15 provides for punishment for contravention in relation to poppy straw. The maximum punishment provided in the section is imprisonment of twenty years and fine of two lakh rupees and minimum sentence of imprisonment of ten years and a fine of one lakh rupee. Since in the cases of NDPS Act the punishment is severe, therefore strict proof is required for proving the search, seizure and the recovery. [**Makhan Singh Vs. State of Haryana (2016) 1 SCC (Cri) 82 ; (2015) 12 SCC 231]**

Investigation by the officer involved in recovery – not always fatal

The investigation in the matter was conducted by SI Satbir Singh who himself was the complainant. Distinguishing the decision State by Inspector of Police, Narcotic Intelligence Bureau, Madhurai, Tamil Nadu v. Rajangam [2010 (15) SCC 369] and Megha Singh v. State of Haryana[1996(11) SCC 709 ; AIR 1995 SC 2339], it is held that in Megha Singh, the search was not conducted in the presence of a Gazetted Officer, as is required in a case under the Act. In the instant case the search of the appellant was conducted in the presence of and under the instructions of Gazetted Officer. The extracts of depositions of other prosecution witnesses show that it was not S.I. Satbir Singh alone who was involved in the investigation. In our view the principle laid down in Megha Singh and followed in State vs. Rajangam does not get attracted in the present matter. Relevant to note that this was not even a ground projected in support of the case of the appellant and does not find any reference in the judgment under appeal. We therefore reject the submission. [**Surender @ Kala Versus State of Haryana, AIR 2016 SC 508]**

Negotiable Instrument Act

Relation between the liability and the cheque issues – Post dated cheque issued in security – Liability not discharged in agreed time - Cheque may be presented– On dishonour – Complaint maintainable

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 difficulty arises only because the promissory note uses the words "security" qua the cheques. This would ordinarily and in the context in which the cheques were given imply that once the amount of rupees ten lakhs was paid, the cheques shall have to be returned. There would be no reason for their retention by the complainant or for their presentation. In case, however, the amount was not paid within the period stipulated, the cheques were liable to be presented forotherwise there was no logic or reason for their having been issued and handed over in the first instance. If non-payment of the agreed debt/liability within the time specified also did not entitle the holder to present the cheques for payment, the issue and delivery of any such cheques would be meaningless and futile if not absurd. It is important to note that it was not a case here no debt or liability was determined or acknowledged to be payable. If cheques were issued in relation to a continuing contract or business where no claim is made on the date of the issue nor any determinate amount payable to the holder, one could perhaps argue that the cheques cannot be presented or prosecution launched on a unilateral claim of any debt or liability. The present is, however, a case where the existence of the debt/liability was never in dispute. It was on the contrary acknowledged and a promise was made to liquidate the same within one month. Failure on the part of the debtor to do so could lead to only one result, viz. presentation of the cheques for payment and in the event of dishonour, launch of prosecution as has indeed happened in the case at hand. [**Don Ayengia Vs. The State of Assam & Anr., AIR 206 SC 740] [Criminal Appeal Nos. 82-83 of 2016]**

Practice & Procedure

Maintainability of Review Application in High Court after Dismissal of

SLP—High Court dismissed the review application on ground of maintainability—Reference pending before Supreme Court in Khoday Distilleries Ltd. & Ors. Vs. Mahadeshwara S.S.K. Ltd in SLP(C) No. 490 of 2012 [2012(10) SCALE 499] with regard to maintainability of review application/petition after dismissal of SLP—The grounds in application for condonation of delay in filing review petition before High Court not satisfactory—Whether High Court should have refrained itself from passing any order on the maintainability—Held, Yes.

Against the judgment in First Appeal No. 79 of 1996 on the file of High Court of Patna, the petitioner herein filed special leave petition (Civil) No. 22478/2013 which was dismissed on 01.08.2013. Thereafter, an application for review has been filed on 21.11.2014 before the High Court as Civil Review No. 386 of 2014. An application for condonation of delay as I.A. No. 8656 of 2014 was also filed.

The High Court, however, despite taking note of the fact of delay, dismissed the review petition on maintainability. In view of the reference pending before this Court in Khoday Distilleries Ltd. & Ors. Vs. Mahadeshwara S.S.K. Ltd. in SLP (C) No. 490 of 2012 with regard to the maintainability of review petition after dismissal of the special leave petition, the High Court should have refrained itself from passing any order on the maintainability of the review petition, in case, the reference was brought to the notice of the High Court. Be that as it may, in view of the averments in the application for condonation of delay which are far from satisfactory, it was a case perfectly fit for dismissal on the ground of delay. Therefore, the application for review before the High Court stands dismissed on the ground of delay and the question of law is kept open.

The impugned order of the High Court stands modified to the above extent vacating the rest.

The special leave petition is disposed of as above. **[Surya Prasad @ Suraj Prasad vs. Ishwar Prasad, 2016 (2) SCALE 572]**

Prevention of Corruption Act

Definition of public servant – Section 49 P.C. Act read with section 46-A of Banking Regulation Act- Chairman / Managing Director of private Bank– Covered.

By virtue of Section 46A of the BR Act office bearers/employees of a Banking Company (including a Private Banking Company) were "public servants" for the purposes of Chapter IX of the I.P.C. with the enactment of the PC Act the offences under Section 161 to 165A included in Chapter IX of Code came to be deleted from the said Chapter IX and engrafted under Sections 7 to 12 of the PC Act. With the deletion of the aforesaid provisions from Chapter IX of the I.P.C. and inclusion of the same in the PC Act there ought to have been a corresponding insertion in Section 46A of the BR Act with regard to the deeming provision therein being continued in respect of officials of a Banking Company insofar as the offences under Sections 7 to 12 of the PC Act are concerned. However, the same was not done. The Court need not speculate the reasons therefor, though, perhaps one possible reason could be the wide expanse of the definition of "public servant" as made by Section 2(c) of the PC Act. Be that as it may, in a situation where the legislative intent behind the enactment of the PC Act was, inter alia, to expand the definition of "public servant", the omission to incorporate the relevant provisions of the PC Act in Section 46A of the BR Act after deletion of Sections 161 to 165A of the I.P.C. from Chapter IX can be construed to be a wholly unintended legislative omission which the Court can fill up by a process of interpretation. Though the rule of casus omissus i.e. "what has not been provided for in the statute cannot be supplied by the Courts" is a strict rule of interpretation there are certain well known exceptions thereto.

Be it noted that when Prevention of Corruption Act, 1988 came into force, Section 46 of Banking Regulation Act, 1949 was already in place, and since the scope of P.C. Act, 1988 was to widen the definition of "public servant". As such, merely for the reason that in 1994, while clarifying the word "chairman", legislature did not substitute words "for the purposes of Prevention of Corruption Act, 1988" for the expression "for the purposes of Chapter IX of the Indian Penal Code (45 of 1860)" in Section 46A of Banking Regulation Act, 1949, it cannot be said, that the legislature had intention to make Section 46A inapplicable for the purposes of P.C. Act, 1988, by which Sections 161 to 165A of IPC were omitted, and the offences stood replaced by Sections 7 to 13 of P.C. Act, 1988. **[Central Bureau of Investigation, Bank Securities & Fraud Cell v. Ramesh Gelli and Others, AIR 2016 SC 1142]**

Section 13- Essentials

For coming to the finding of guilt for the offence under Section 13(1)(d) of the Act, firstly, there must be a demand and secondly, there must

be acceptance in the sense that the accused received illegal gratification. Courts below recorded concurrent findings that there was evidence on record to substantiate the fact that there was a demand and the complainant paid the bribe amount to the appellant who has accepted the same. Courts below also recorded concurrent findings that there is no reason to discredit the testimony of the complainant (PW4) and Inspector of Police-A.K. Kapoor (PW7). Defence plea of the accused that the currency notes were put under the sofa without his knowledge was rightly rejected by the courts below. Conviction of the appellant under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act is unassailable.[**K.L. Bakolia Versus State Through Director, C.B.I. (2015) 3 SCC (Cri) 620 ; (2014) 8 SCC 395]**

Section 13(1)(d))(i)&(ii)- r/w Sec. 13(2)

The prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly un-safe to sustain the conviction of the appellant under Section 13(1)(d)(i)&(ii) read with Section 13(2) of the Act as well. [**P. Satyanarayana murthy versus the Dist. Inspector of police (2016) 1 SCC(Cri) 11 ; (2015) 10 SCC 152 (FB)]**

Sanction Under Section 19 of the Prevention of Corruption Act

In the present case what we find is that the delegatee K.K.Singh Chauhan executed the exchange-deed dated 23.12.1993 on behalf of the Chairman. There is nothing on record to suggest that it was executed at the instance of the appellant. By Office Order dated 22.12.1992, the appellant, as Chairman of the Trust, delegated all his powers to Shri K.K.Singh Chauhan, Chief Executive Officer, Town Improvement Trust under Section 25(1)(2) of the Act. All the powers, duties or functions were delegated to him except the powers conferred or imposed upon or vested in Chairman under Sections 16,19,29 and 56 of the Act. If the delegatee has not acted in terms of the delegated powers, we are of the view that the delegator cannot be held to be guilty for such execution of the exchange deed. Though for some other reasons, we are of the view that it was not a fit case for grant of sanction either under Section 19 of the P.C. Act for prosecuting the appellant under Sections 13(1)(d) read with 13(2) of the P.C. Act or under Section 197 Cr.P.C. for prosecuting the appellant under Section 120B IPC. If the State Government and the Central Government refused to grant sanction, the Special Judge rightly declined to take cognizance of the offences punishable under Section (1)(d) read with Section 13(2) of the P.C. Act and for want of prosecution of sanction under Section 19 of the P.C. Act and

Section 120B IPC for want of sanction under Section 197 Cr.P.C. [**Vinod Chandra Semwal Versus Special Police Establishment, Ujjain (2015) 3 SCC (Cri) 614 ; (2014) 8 SCC]**

Process for Death Warrant

Procedure for Issuing Death Warrant after Dismissal of Criminal Appeal from Supreme Court

In the present case, the judgment pronounced on 15.05.2015 confirming the death penalty and within six days of the dismissal of the criminal appeals filed by the convicts, the learned Sessions Judge issued the death warrants on 21.05.2015. This is clearly impermissible and unwarranted for various reasons, as discussed hereinafter:

(I) First and foremost reason is that the convicts have not exhausted their judicial and administrative remedies, which are still open to them even if their appeals in the highest Court have failed affirming the imposition of death penalty. Those appeals were filed via the route of Article 136 of the Constitution. However, law gives such persons another chance, namely, to seek review of the orders so passed, by means of filing of review petition. It is to provided under Article 137 of the Constitution. The limitation of 30 days is prescribed for filing such
review petitions. We have to emphasize at this stage that in case of convicts facing death penalty, the remedy of review has been given high procedural sanctity.

(II) That apart, right to file mercy petitions to the Governor of the State as well as to the President of India also remains in tact. These remedies are also of substance and not mere formalities. This remedy is again a constitutional remedy as Executive Head is empowered to pardon the death sentence (this power lies with the President under Article 72 and with the Governor of the State under Article 161 of the Constitution). Thus, power to pardon is a part of the constitutional scheme which has been reposed by the people through the Constitution in the Head of the State, and enjoys high status. In exercise of their powers, the President or the Governor, as the case may be, may examine the evidence afresh and this exercise of power is clearly independent of the judiciary. It is clarified by this Court that while exercising such a power, the Executive is not sitting as a Court of Appeal. Rather power to grant remission of sentence is an act of grace, humanity in appropriate cases, i.e. distinct, absolute and unfettered in nature.

(III) Article 21 of the Constitution lays down that nobody shall be deprived of his life and liberty except according to the procedure established by law. After long judicial debate, it now stands settled that the procedure established by law has to be 'due procedure'. By judicial

interpretation, this Court has read the principle of reasonableness into the said procedure contemplated by Article 21, holding that it must be 'right and just and fair' and not arbitrary, fanciful or oppressive. Even as per the statute book, this procedure does not culminate with the dismissal of appeals of the convicts by the final Court. No doubt, when an accused is tried of an offence by a competent court of law and is imposed such death penalty and the said death penalty is upheld by the highest Court, the procedure that is established by law has been followed up to this stage. However, in the statutory framework, further procedural safeguards in the form of judicial review as well as mercy petitions are yet to be traversed. This would also be covered by the expression 'procedure established by law' occurring in Article 21. Therefore, till the time limitation period for filing the review petition and thereafter reasonable time for filing the mercy petition has not lapsed, issuing of death warrants would be violative of Article 21.

(IV) There is another facet of right to life enshrined in Article 21 of the Constitution which needs to be highlighted at this juncture, namely, 'human dignity'. Article 21 has its traces in the dignity of human being. It has been recognized as part of Article 21 of the Constitution. [**Shabnam v. Union of India & Ors., AIR 2015 SC 3648]**

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

Section 24(2)—Lapse of acquisition proceedings—Legal effect of the absence of any specific exclusion of the period covered by an interim order in Section 24(2) of the 2013 Act—Omission in Section 24(2) to specifically exclude the period covered by an interim order of this Court staying the acquisition proceeding—Effect of.

In the present Special Leave Petition apart from several other issues urged by the Petitioners to challenge the order of the High Court upholding the acquisition under the provisions of the Land Acquisition Act, 1894, a question has been raised with regard to the applicability of Sec. 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") and whether in view of the fact that the possession had not been taken over despite the award being passed five years prior to 1st January, 2014 the land acquisition proceedings have lapsed. It may be taken note of at this stage that the Petitioners had been the beneficiaries of the interim order of the High Court as well as this Court on account of which possession of the acquired land could not be taken over by the State. It has also to be noted that the order of the High Court had upheld the acquisition in question and the writ petition(s) was

dismissed.

A consideration of the aforesaid paragraphs would go to indicate that what had prevailed with the coordinate bench of this Court to take the view in question is that the omission in Sec. 24(2) to specifically exclude the period covered by an interim order of this Court staying the acquisition proceeding is a conscious omission of the legislature and the courts cannot fill up such an omission. The aforesaid decision of the coordinate bench of this Court in Sree Balaji Nagar Residential Association has been followed in large number of cases details of which have been laid before us. The decision of a three judge bench of this Court in Union of India and Ors. v/s. Shiv Raj and Ors. : (2014) 6 SCC 564 has also been laid before us.

Court has considered the views expressed in Sree Balaji Nagar Residential Association and Union of India and Ors. v/s. Shiv Raj and Ors. At the outset, Court clarify that upon reading the decision of the three judge bench of this Court in Union of India and Ors. v/s. Shiv Raj and Ors., Court does not find any view of the bench on the question arising, namely, whether the period during which the award had been remained stayed should be excluded for the purposes of consideration of the provisions of Sec. 24(2) of the 2013 Act. Insofar as the decision of the coordinate bench of this Court in Sree Balaji Nagar Residential Association is concerned, having read and considered paragraphs 11 and 12 thereof, as extracted above, its Court's considered view that the legal effect of the absence of any specific exclusion of the period covered by an interim order in Sec. 24(2) of the 2013 Act requires serious reconsideration having regard to the fact that it is an established principle of law that the act of the court cannot be understood to cause prejudice to any of the contesting parties in a litigation which is expressed in the maxim "actus curiae neminem gravabit". Court accordingly take the view that the aforesaid question should receive the attention and consideration of a larger bench of this Court. The following two questions of law, according to Court, would specifically require an authoritative pronouncement for an appropriate adjudication on the factual controversy arising in the present case and in a large number of connected cases:

(i) Whether the conscious omission referred to in paragraph 11 of the judgment in Sree Balaji Nagar Residential Association makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Sec. 24(2) of the 2013 Act?

(ii) Whether the principle of "actus curiae neminem gravabit", namely

act of the court should not prejudice any parties would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Sec. 24(2) of the 2013 Act?

The Registry of this Court is directed to place the papers before the Hon'ble the Chief Justice of India for appropriate orders. **[Yogesh Neema vs. State of M.P., 2016 (1) SCALE 517]**

Right to Information Act

Sec. 11—Information with regard to scan copies of answer sheet, tabulation sheet containing interview marks—Disclosure of such information does not suffer from error of law and it is fully justified—However, disclosure of names of examiners who have evaluated the answer sheet is not justified

So far as the information sought for by the respondents with regard to the supply of scanned copies of his answer-sheet of the written test, copy of the tabulation sheet and other information, Court is of the opinion that the view taken in the impugned judgment with regard to the disclosure of these information, do not suffer from error of law and the same is fully justified. However, the view of the Kerala High Court is that the information seekers are also entitled to get the disclosure of names of examiners who have evaluated the answer-sheet.

The view taken by the Kerala High Court holding that no fiduciary relationship exists between the University and the Commission and the examiners appointed by them cannot be sustained in law.

Court did not find any substance in the reasoning given by the Kerala High Court on the question of disclosure of names of the examiners.

In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the

competitive exams, but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners have faith that they will not be facing any unfortunate consequences for doing their job properly. If the Court allows disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. **[Kerala Public Service Commission vs. The State Information Commission, 2016 (2) SCALE 134]**

Service Laws

Penalty—Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976—Regulation No. 4(1)—Award of consolidated penalty of reduction in pay by five stages in the time scale for a period of 3 years—Justifiability

In this case, the next 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 20.03.2001. 48) 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 to have held any inquiry into the charges. When the charges stood proved on admission of the appellant, the Bank was justified in imposing punishment on the appellant as prescribed in the Rules. Court, therefore, find no 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.

Suffice it to say, once the appellant admitted the charges, appropriate punishment as prescribed in the Rules could be inflicted on him. It was for the Appointing Authority to have taken into account the seriousness of the charge and overall performance of the appellant while imposing punishment. It was done by the authorities concerned in this case as would be clear from mere perusal of the punishment order.

This appeal is filed against the final judgment and order dated

09.05.2007 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Appeal No. 171 of 2006 whereby the Division Bench of the High Court 1 Page 2 dismissed the appeal filed by the appellant preferred against the judgment and order dated 20.04.2006 of the Single Judge of the High Court in Writ Petition No. 3842 of 2002 by which the Single Judge dismissed the writ petition of the appellant wherein the challenge was to the order dated 20.03.2001 passed by the Chief Manager, Bank of India (respondent No.3 herein) imposing the punishment of reduction of his basic pay by five stages on the appellant. **[Surjeet Singh Bhamra vs. Bank of India, 2016 (2) SCALE 233]**

Service Matters

Dismissal from service whether simplicitor or stigmatic. Enquiry was initiated against the employee on the ground that his selection was illegal. However report of the vigilance department stated that the employee was misbehaving and his conduct was not good. The employee was not heard in the inquiry. Dismissal of the employee during probation period purporting to be simplicitor was in fact found to be stigmatic, accordingly it was set aside. **[*Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar AIR 2016 SC 467]***

If there is unusal delay in completing disciplinary proceedings (9 years) which is also attributable to the employer then period of suspension should be taken into consideration for determining the employee's pension even though on the conclusion of enquiry he was rightly compulsorily retired.**[*Prem Nath Bali v. Registrar High Court of Delhi, AIR 2016 SC 101]***

If an employee is wrongly retired 3 years before the date of retirement, thereafter, the said order is quashed then full back wages should be awarded as the employee could not work due to the fault of the employer. As employee was not at fault, hence, principle of 'no work no pay' does not apply. **[*Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Ltd., AIR 2016 SC 157]***

Article 309 -

Appointment on the post of Dy. Superintendent of Police in Chatteesgarh. If after commencement of selection process service rules are changed the selection process shall be completed on the basis of old rules.

In the Rules of 1997 as well as of 2005 age relaxation for women candidates was provided. However, in between Rules of 2000 were framed in which such relaxation was not there. It was merely because of omission.

Accordingly even during the period when 2000 Rules were in force such relaxation should have been granted to the women candidates. **[*Richa Mishra v. State of Chateesgarh, AIR 2016 SC 753]***

Member of Higher Judicial Service – premature retirement

Merely because judicial officer does not submit his Self Assessment Report, in the ACR he cannot be given average entry.

However, as credible complaints in respect of conduct of the judicial officer were received, hence, order of premature retirement was justified. **[*Shakti Kumar Gupta v. State of J & K, AIR 2016 SC 853]***

Rent Control Act

A.P. Rent Control Act

Concept of ownership in eviction suit by landlord against tenant is different from such concept in title suit. If a person can in his own legal right evict the tenant and use the premises for himself and keep that under his control then he is landlord and can be said to be owner.

In revision finding of facts cannot be interfered with as held by Constitution Bench reported in Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh AIR 2014 3708. **[*Boorugu Mahadev & Sons v. Sirigiri Narasing Rao AIR 2016 SC 433]***

Rent Control Act and SARFAESI Act

The provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2000 do not override the provisions of Rent Control Acts. If the owner / landlord of a tenanted building gives the said building in security then in proceedings under SARFAESI Act the tenant cannot be evicted. The only effect will be that the creditor becomes landlord and it can evict the tenant only if some ground under the Rent Control Act is available and it will have to proceed for eviction of tenant before the authority/ court as provided under the Rent Control Act. **[*Vishal N. Kalsaria v. Bank of India AIR 2016 SC 530]***

(Tamil Nadu Rent Control Act), Power of Attorney Act 1982

Suit or other proceedings for eviction of tenant may be instituted by some co-owners and it is not necessary to implead all co-owners in the said suit.

If power of attorney holder inducts the tenant still suit for eviction may be instituted by the owner landlord who executed the power of attorney.

All the acts done by the power of attorney holder are as effective as if done by the principal. An agent or attorney does not get any personal benefit

from such transaction.

In landlord-tenant matter concept of ownership is different from concept of ownership in title suit.

Finding of facts cannot be disturbed in revision under Section 115 C.P.C. (*AIR 2014 SC 3708*(CB) relied). **[*Tmt. Kasthuri Radhakrishan v. M. Chinniyan AIR 2016 SC 609]***

Sentencing

Factor for deciding Appropriate punishment

(a) Punishments must be proportionate to the nature and gravity of the offences for which the same are prescribed.

(b) Prescribing punishments is the function of the legislature and not the Courts'.

(c) The legislature is presumed to be supremely wise and aware of the needs of the people and the measures that are necessary to meet those needs. Courts show deference to the legislative will and wisdom and are slow in upsetting the enacted provisions dealing with the quantum of punishment prescribed for different offences.

(e) Courts, however, have the jurisdiction to interfere when the punishment prescribed is so outrageously disproportionate to the offence or so inhuman or brutal that the same cannot be accepted by any standard of decency.

(f) Absence of objective standards for determining the legality of the prescribed sentence makes the job of the Court reviewing the punishment difficult.

(g) Courts cannot interfere with the prescribed punishment only because the punishment is perceived to be excessive.

(h) In dealing with questions of proportionality of sentences, capital punishment is considered to be different in kind and degree from sentence of imprisonment. The result is that while there are several instances when capital punishment has been considered to be disproportionate to the offence committed, there are very few and rare cases of sentences of imprisonment being held disproportionate.

Applying the above to the case at hand, we find that the need to bring in Section 364A of the IPC arose initially because of the increasing incidence of kidnapping and abduction for ransom. This is evident from the recommendations made by the Law Commission to which we have made reference in the earlier part of this judgment. While those recommendations were pending with the government, the specter of terrorism started raising its head threatening not only the security and safety of the citizens but the very sovereignty and integrity of the country, calling for

adequate measures to curb what has the potential of destabilizing any country. With terrorism assuming international dimensions, the need to further amend the law arose, resulting in the amendment to Section 364A, in the year 1994. The gradual growth of the challenges posed by kidnapping and abductions for ransom, not only by ordinary criminals for monetary gain or as an organized activity for economic gains but by terrorist organizations is what necessitated the incorporation of Section 364A of the IPC and a stringent punishment for those indulging in such activities. Given the background in which the law was enacted and the concern shown by the Parliament for the safety and security of the citizens and the unity, sovereignty and integrity of the country, the punishment prescribed for those committing any act contrary to Section 364A cannot be dubbed as so outrageously disproportionate to the nature of the offence as to call for the same being declared unconstitutional. Judicial discretion available to the Courts to choose one of the two sentences prescribed for those falling foul of Section 364A will doubtless be exercised by the Courts along judicially recognized lines and death sentences awarded only in the rarest of rare cases. But just because the sentence of death is a possible punishment that may be awarded in appropriate cases cannot make it per se inhuman or barbaric. In the ordinary course and in cases which qualify to be called rarest of the rare, death may be awarded only where kidnapping or abduction has resulted in the death either of the victim or anyone else in the course of the commission of the offence. Fact situations where the act which the accused is charged with is proved to be an act of terrorism threatening the very essence of our federal, secular and democratic structure may possibly be the only other situations where Courts may consider awarding the extreme penalty. But, short of death in such extreme and rarest of rare cases, imprisonment for life for a proved case of kidnapping or abduction will not qualify for being described as barbaric or inhuman so as to infringe the right to life guaranteed under Article 21 of the Constitution. [**Vikram Singh @ Vicky & Anr. v. Union of India & Ors., 2015 (8) Supreme]**

Specific Relief Act

Specific Relief Act Sections 20 and 16 (C)

If the property is not transferable for a certain period, agreement to sell in respect of such property executed during such period is not enforceable. **[*Satish Kumar v. Karam Singh, AIR 2016 SC 737]***

Section 34, 36 and 38-- Order 6 Rule 17 C.P.C., 1908-- Doctrine of relation back of amendment

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 plaintiff. [**Vasant Balu Patil v. Mohan Hirachand Shah, (2016) 1 SCC 530]**

Trade Mark Act

Exclusive use of name of holy or religious book as Trade Mark for goods and services is not permissible. Something must be added either before or afterwards. Accordingly 'RAMAYAN' cannot be registered as trade mark unless some prefix or suffix is added either in words or symbol. **[*Lal Babu Priyadarshi v. Amritpal Singh AIR 2016 SC 461]***

Transfer of Property Act

Section 43-

Doctrine of feeding the grant by estoppel. If property is transferred during the period when transfer was prohibited and afterwards it became permissible then the transfer becomes valid. **[*N. Venkateshappa v. Munemma, AIR 2016 SC 889]***

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act

Sec. 21(1)(a)—Eviction petition—Bona fide requirement of shop premises for starting a business for son of landlord who was physically disabled—High Court accepting need of the landlord to be the bona fide need was not justified in granting 2 years' time to the tenant to vacate the suit shop—Whether in absence of any justifiable cause alleged by tenant, the High Court was justified in granting 2 years' time to respondent tenant—Held, No.

In Court's considered view , the High Court having rightly allowed the appellant's eviction petition by accepting the bona fide need of the appellant erred in granting two years' time to the respondent to vacate the suit shop. Learned counsel urged that granting of 2 years' time to the respondent to vacate the suit shop virtually nullified the effect of the impugned order because despite holding the appellant's need to be bona fide, the appellant is not in a position to use the suit shop for two years due to directions in the impugned order and hence the very purpose of filing the eviction petition and obtaining the eviction

order has been frustrated. He submitted that to obviate the hardship likely to be suffered by the respondent due to passing of the eviction order against him, the High Court could have taken care of such issue by granting the respondent some reasonable time which is usually of two or three months to vacate the suit shop but by no stretch of imagination the High Court could have granted 2 years' period and that too without there being any justifiable cause alleged by the respondent in the pleadings. Learned counsel, therefore, urged that having regard to the facts and circumstances, this Court, if consider it proper, may grant some reasonable time of 2 or 3 months to the respondent to vacate the suit shop.

The High Court, in view of the Supreme Court, should have appreciated the fact that the present litigation was the outcome of the second round of litigation after conclusion of the first round which began in 1986 and reached up to this Court and in this process this litigation consumed 20 years. In these circumstances the hardship is suffered more by the appellant as compared to the respondent.

The Act in question is a legislation which provides for regulation and control of letting and rent of the accommodation. It regulates and control eviction of tenants from accommodations and for other matters connected therewith as incidental thereto. It further provides for expeditious trial of eviction cases on ground of bona fide requirement of certain categories of landlords. The State legislature, in its wisdom further considered appropriate to give more benefit to the landlords who are serving or retired Indian soldier or their widows and accordingly amended Section 21 by Act No.17/1985. This amendment inter alia provides a statutory deeming presumption of the need set up by such landlord to be sufficient if he seeks the eviction for his personal requirement or for the benefit of any member of his family. The object behind this amendment is to relieve such landlord from the hardship so that he is able to get the building/accommodation vacated early for his personal use. In this case, we find that this benefit was denied to the appellant due to long pendency of the case.

Be that as it may, in the light of foregoing discussion and having regard to all facts and circumstances of the case and as offered by the appellant, we grant time to the respondent up to "31st August, 2016" to vacate the suit shop subject to the respondent depositing with the appellant the entire arrears of rent, (if there are arrears) up to date at the rate paid by the respondent within one month and further subject to respondent paying to the appellant the rent at the

same rate up to 31st August, 2016 as damages by way of use and occupation including cost amount awarded by this Court within one month and furnish undertaking before this Court within one month to vacate the suit shop within the time fixed by the Court. **[Ramesh Chandra Bhandari vs. Ram Singh Salal, 2016 (2) SCALE 67]**

U.P. Zamindari Abolition of Land Reforms Rules

Rule 285B & 285C—Employees State Insurance Act, 1948—Sec. 45C—Auction sale—Non-compliance of Rules 285B and 285C of the Rules—Effect of.

It is graphically clear that the competent authority has not followed the due procedure as per Rules. We have already indicated that the auction was held within one day after the notice was issued. In this regard, we may fruitfully refer to the Rules dealing with sale of immoveable property. Rule 285A to 285C deal with the procedure for putting the property in auction. On a perusal of the aforesaid Rules, it is demonstrable that the proclamation has to be issued in a particular Form 34 and it is incumbent on the Collector to give the estimated value of the property calculated with the Rules in Chapter XV of the Revenue Manual. It is submitted by Ms. Malhotra, learned senior counsel that there has been no estimation of the value and no notice was given to the respondent. As Court find, the Board of Revenue has clearly ruled that the auction procedure has not been followed. To satisfy Court, it has adverted to the same and Court find that the conclusion arrived at by the Board of Revenue is absolutely infallible. Court may hasten to add a word of caution for the authorities. When steps are taken for putting a property for auction for realization of land revenue, they are required to be strictly guided by the Rules as the whole conduct of the auction is governed and controlled by the Rules. The authority conducting the auction must acquaint itself with every facet of the Rules and proceed so that the matters are not procrastinated on such counts. Court says so as many a time the authorizes throw the rules out of the window and proceed at their own whim or caprice. Such an auction is legally unacceptable and also absolutely contrary to the fundamental principles of holding auction. The authority holding the auction should bear in mind that his action has serious effect and, therefore, no impropriety or violation can be allowed to usher in. **[Sardar Nirmal Singh (Dead) Thr. Lrs. Vs. Bhatia Safe Works, 2016 (3) SCALE 303]**

Wakf Act

Sections 83(4) and 85 as amended in 2013 and C.P.C. Section 9.

Before amendment of the Act in 2013, Wakf Tribunal consisted of one member who was to be Civil Judge. Through 2013 amendment 3 member Wakf Tribunal was required to be consisted by each State. Until actual constitution of 3 member Wakf Tribunal by any State jurisdiction of single Member Wakf Tribunal (Civil Judge) in that State remained intact. Decision of Bombay High Court holding that during such period only Civil Court had jurisdiction to decide the dispute reported in *AIR 2016 Bombay 6* overruled. **[*Lal Shah Baba Dargah Trust v. Magnum Developers AIR 2016 SC 381]***

Miscellaneous

(i) Right to trade in liquor is a fundamental right under Article 19(1)(g) of the Constitution of India, however, unlike other trades, on the right to trade in liquor more severe restrictions may be imposed in view of Article 19(6) and Article 47.

Cochin Abkari Act extended to State of Kerala in 1967. Foreign liquor Rules, Rule 13(3) as amended in 2011 and Abkari Policy of 2014-2015 of State of Kerala confining consumption of IMFL only to 5 star hotels is not violetive of Article 14 of the Constitution. Observation in State of Kerala v. Surender Das, AIR 2014 SC 2762 that 4 star hotels and 5 star hotels belong to the same category is obiter.

Scope of Judicial Review of State Policy is very limited. The Court can only see whether the policy is arbitrary, unfair or violative of fundamental rights. Court cannot judge the wisdom or merit of the policy. **[*Kerala Bar Hotels Association v. State of Kerala, AIR 2016 SC 163]***

(ii) Application to be decided as per law/ policy on the date of decision and not on the date of filing of application. (U.P. Minor Minerals Concession Rules 1963, Rule 3). **[*Sulekhan Singh v. State of U.P. AIR 2016 SC 228* and *Ramakant Dwivedi v. Rafiq Ahmad AIR 2016 SC 235***]

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PART – 2 (HIGH COURT)

Arbitration and Conciliation Act

S. 34- Setting aside arbitral award –Grounds for- are specific

Ground for setting aside the arbitral award are specific. Therefore, necessarily, an applicant who approaches the Civil Court under S. 34 will have to plead the

facts and grounds of challenge and prove the same. The burden of proof is on the person who makes the applications which is statutorily specified. An Arbitrator normally has to permit parties to adduce evidence where oral evidence is felt necessary. Arbitrary refusal to permit oral evidence will undoubtedly amount to misconduct.

In instant case arbitration clause was invoked by the respondents claiming dissolution of partnership firm. Claiming shares of business, distribution of assets of the firm between partners and award of a sum and interest thereon. In the application under S. 34, inter alia, the emphasis was that the arbitrator has misconducted by depriving the applicants to participate in the proceedings, evidence were not taken on record, the arbitrator had no right or jurisdiction to render the award. The application under S. 34 being summary proceedings, in view of the S. 19 of the Act 1996, Code of Civil Procedure and Evidence Act is not applicable, but the applicant would have to prove the existence of any ground specified therein. The applicant can be permitted to file evidence of his witnesses in proof. Farming of issues as contemplated under Rule 1 of Order 14 is not an integral part of proceedings under S. 34, the very fact that an application has been instituted under a particular provision declares the issue inter se parties. Thus Court cannot deny opportunity to applicant to lead evidence to prove allegations. **(Mahesh Kumar Agarwal & another v. Suresh Chand Agarwal & others, 2016 (2) ALJ 175)**

Civil Procedure Code

Section 10- Scope of- Suit u/s. 229-B of U.P.Z.A. and L.R. Act cannot be stayed u/s 10 of C.P.C. on the ground of pendency of civil suit, civil court is not competent to grant relief to partitioners in respect of agricultural land.

Section 10 C.P.C. provides that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed. The question as to whether Civil Court, where various civil suits are pending between the parties has jurisdiction to grant the relief for partition, which is prayed in these revenue suit. Section 331 of the U.P. Act No. 1 of 1951, specifically barred the jurisdiction of other Courts in respect of suits, which are provided under Schedule II of the Act. The partition suit has been provided Serial No. 16 of Schedule-II as such Civil Court is not competent to grant relief for partition in respect of agricultural land. Thus revenue suits are not liable to be stayed under Section 10 C.P.C. This Court in Krishna Bihari Mishra Vs. Additional District and Sessions Judge and others, 2013 (120) RD

311, after considering various case law of the subject, has held that suit under Section 229-B of the Act cannot be stayed under Section 10 C.P.C. on the ground of pendency of Civil Suit. Ratio of that case is fully applicable in this case also. The orders of trial court do not suffer from any illegality. The revisions were liable to be dismissed at admission stage. **(Ram Lakhan and others v. Board of Revenue, U.P. at Allahabad and others, 2016 (114) ALR 812)**

Section 11- Res judicata- Judgment of Civil Court in injunction suit is not res judicata between parties in revenue suit

On relying on decision of Supreme Court in Sajjadanashin Vs. Nazudala, (2003) 3 SCC 350, Gram Panchayat Vs. Ujajir Singh, (2000) 7 SCC 543, Williams Vs. Lourdu Sami, (2008) 5 SCC 647 and Haryana State Electricity Board Vs. Hanuman Rice Mill (2010) 9 SCC 154, this court held that judgment of civil Court in injunction suit is not res-judicata between the parties in revenue suit. **(Ram Lakhan and others v. Board of Revenue, U.P. at Allahabad and others, 2016 (114) ALR 812)**

Section 21- Objection as to jurisdiction –Attractability of

In order to consider Section 21 C.P.C. and the exposition of law discussed above, court find that it would be attracted only when the objection with regard to place of suing was not taken in the Trial Court and an attempt is made to raise this objection for the first time before the appellate or revisional Court. The satisfaction of various conditions under Section 21 (1) and (2) C.P.C. would be attracted only when the objection with regard to territorial jurisdiction is not taken at the first instance before Trial Court and not otherwise. As court has already said, in the present case, objection with regard to territorial jurisdiction was taken in the pleadings before the Court below but it has either been ignored by Court below or unnoticed for the reason that no issue was framed on this question and even parties or their counsel did not bring this omission to the notice of the Court below. In these circumstances it cannot be said that the objection raised with regard to jurisdiction of the Court at Kanpur cannot be pressed before this Court and it is barred by the conditions provided in Section 21 C.P.C. since they are not satisfied. **(Moti Lal Bhim Raj Charity Trust v. Prakash Chand Jhunjhunwala, 2016 (2) ALJ 238)**

Section 47- Objection on ground the decree against dead person- Objection rejected on ground that executing court cannot go behind the decree- Validity of- Executing court is required to go into the question which goes to the root of matter and strikes at the authority of the court to pass such decree.

While deciding the objections under Section 47 C.P.C., the executing court is

required to go into the question, which goes to the root of the matter and strikes at the authority of the court to pass such a decree. In case Shamsher Singh was not alive on the date the decree was passed, then there is no doubt in the mind of the court that such a decree would be a nullity in the eye of law. Consequently, it was essential for the courts below to have adverted to such question.

Considering the entire facts and circumstances of the case and the submissions made, the petition is allowed. The impugned order dated 13.8.2013 passed by the Addl. Civil Judge (S.D.) IInd, Court No. 10, Jaunpur and order dated 13.5.2015 passed by Additional District Judge, Court No. 4, Jaunpur are set aside. The matter is remitted back to the executing court for decision afresh on merits after giving opportunity of hearing to both the parties. **(Mamta Singh v. Ram Kripal Singh, 2016 (1) ARC 146)**

Section 47 and Order XXIII, Rule 3- Compromise decree- Execution of- Settlement decree passé must be executed and should not be interfered with, by modifying the decree or going behind the decree –A decree that has become final and binding cannot be reopened

The executing court cannot go behind the decree unless it is shown that it is passed by a court having inherent lack of jurisdiction which would make it a nullity as held by Hon'ble Supreme Court in the case of Bhawarlal Bhandari Vs. Universal Heavy Mechanical Lifting Enterprises, 1991(1) SCC 558, 562.

As per undisputed facts in the present case in respect to House No. C-215, situated at Mohall Civil Lines, K.D. Singh Babu Marg, Barabanki the suit for partition has been filed by Smt. Divya Shahi and Dr. Tej Pratap Shahi in which Kunwar Umesh Singh and Kunwar Ravindra Pratap Singh along with the co-sharer have been impleaded as defendants, later on a compromise has been entered between the parties to the suit which hav been signed and verified all the parties including Kunwar Umesh Singh and Kunwar Ravindra Pratap Singh on the basis of the said compromise and an order dated 21.04.2009 has been passed, thereafter, an application for execution of the compromise decree has been filed in which objection under Section 47 CPC has been filed by Kunwar Umesh Singh and Kunwar Ravindra Pratap Singh, allowed by order dated 21.04.2009 passed by court below in allowing the application under Section 47 CPC is an illegal exercise rather without jurisdiction as it is well settled law (as stated above) that the very object of Section 47, CPC is to prevent multiplicity of litigations and to decide the objections at the beginning stage of an Execution Proceeding.

The compromise decree in the instant matter is very clear and unambiguous, and that too the same has attained finality. It is well settled in law that an executing Court cannot traverse beyond the decree unless the

same is a nullity or without jurisdiction. In a proceeding under Section 47, CPC. an executing Court is only required to deal with the questions relating to discharge or satisfaction of the decree, so in view of the reasoning on the basis of which the court below has allowed the objection under Section 47 CPC is an exercise which is contrary to law rather beyond the scope of Section 47 CPC **(Kr. Anand Singh and others v. Kr. Umesh Singh and others, 2016 (115) ALR 48)**

Section 80- Plea of want of notice under- Not open to private individual.

It has been held in the case of Janak Raji Devi Vs. Chandrabati Devi, AIR 2002, Calcutta that no separate application or any express order of waiver are essential requisites for granting a waiver of notice under Section 80 C.P.C. Such waiver or leave can be presumed and can be implied and gathered by the orders passed by the court. It has also been held that no separate formal order in this regard is necessary.

In the light of the aforesaid judgment and what has been held therein, I do not find any merit in the submission of learned counsel for the petitioner that the trial court has rejected the objection of the petitioner on presumptions.

Court's considered opinion, the order of the trial court is in consonance with the judgment rendered in the case of Janak Raji Devi Supra.

The reliance by learned counsel for the respondents upon the judgment of this Court in the case of Smt. Rekha Vs. Smt. Veer Mati and another (Civil Misc. Writ Petition No. 1825 of 2012 decided on 13.04.2012), copy whereof has been filed as Annexure No. 1 to the counter affidavit, is also justified.

This judgment holds that the plea of want of notice is open only to the Government and the officers mentioned in Section 80 and it is not open to a private individual. The Court has categorically held that "a private individual cannot challenge the proceeding by taking the plea of want of notice under Section 80 C.P.C. **(Ram Lakhan and others v. Board of Revenue, U.P. at Allahabad and others, 2016 (114) ALR 812)**

Section 96- Suit for declaration of suit property to be a joint family property etc- Suit dismissed and suit of defendant no. 1 seeking eviction of plaintiff of present suit decreed- Legality of

Original Suit No. 696 of 1991 (hereinafter referred to as "First Suit") was instituted by three brothers, Laxmi Saran Agarwal, Vipin Saran Agarwal and Sudhir Saran Agarwal, sons of Sri Amar Nath Agarwal, against their fourth brother Guru Saran Agarwal, who was impleaded as defendant no. 1. In the aforesaid suit, father Amar Nath Agarwal and fifth brother Shiv Saran Agarwal, were also impleaded as defendants no. 2 and 3 but as formal defendants.

The suit was instituted vide Plaint dated 7.8.1991 in the Court of Civil Judge, Moradabad. The three plaintiffs (hereinafter referred to as "appellants") sought

a declaration that House No. B-680, Lajpat Nagar, Moradabad, registered and transferred by sale by U.P. Awas Evam Vikas Parishad (hereinafter referred to as "Housing Board") in the name of defendant no. 1 (hereinafter referred to as "Respondent-1") be declared a joint family property, that he is not the sole owner thereof but appellants and Respondent-1 all are joint owners of the said property, and appellants are in possession of the said house in that capacity. Appellants further sought a decree of permanent injunction, restraining respondents 1 and 2 from transferring aforesaid property, themselves or through their agent or servant, in any manner, and not to execute any deed in this regard. Further a decree of permanent injunction was prayed against Respondent-1 that he should not interfere through himself, agent or servant etc. in appellants' possession of house in dispute.

Hon'ble High Court is of the view that Court below rightly disbelieved the case set up by appellants that the money deposited with Housing Board for allotment of house in question was from the joint family nucleus. So far as the funds of Guru Saran Agarwal is concerned, it is admitted that he was already employed as an Overseer (now called "Junior Engineer") in U.P. Public Works Department and Rs. 3000/- along with application form were deposited by Bank Draft in March' 1992 with Housing Board by Respondent-1. Moreover, for the purpose of further acquisition of joint family property nucleus, nothing has been shown as to how funds were available to the alleged karta of HUF so as to deposit subsequent installments etc. Existence of HUF by itself does not mean that there existed a joint family nucleus or that property acquired by individual members from their own sources would constitute a joint family property.

Since in the present case, we are satisfied that appellants have miserably failed to prove that property in dispute was a joint family property having been acquired from joint family nucleus, court find no merit in these appeals, and answer both the questions against appellants. **(Laxmi Saran Agarwal & Others v. Guru Saran Agarwal & Others, 2016 (1) ARC 255)**

Sections 96, 2(2), O. 17, R. 3- Appeal Maintainability –Dismissal of suit for non-appearance of plaintiff and for want of evidence- Not amenable to appeal u/s 96

The suit of the plaintiff/ appellant was dismissed by the court of Civil Judge (S.D.), Varanasi on 24.7.2013 for the non-presence of the plaintiff/appellant and for want of evidence, after rejecting the application for adjournment

An appeal preferred against the above order by the plaintiff/appellant was dismissed by the appellate court vide judgment and order dated 18.10.2014 as not maintainable with observation to apply under Order 9, Rule 9, CPC for recall of the above order.

The dismissal of the suit of the trial court as per the order referred to above was not an adjudication of the rights of the parties involved in the suit which can be formally expressed. It was simply an order of dismissal of the suit without any adjudication of any lis or rights of the parties. Therefore, the order of the trial court dated 24.7.2013 does not conform to the definition of a decree as contained in Section 2(2), CPC In that situation, as it was not a decree, it was not amenable to appeal under Section 96, CPC. **(Transport Corporation of India, Varanasi v. Vijayanand Singh alias Vijaymal Singh and another, 2016 (1) ALJ 116)**

Section 100- Second Appeal- Requirement of- If no substantial question of Law arises in appeal hence second appeal would liable to be dismissed

In this case, the judgment of two Court below are based on finding of facts. No perversity or infirmity is found in the concurrent finding of fact recorded by the two Courts below. No question of law, much less a substantial question of law is involved in this case.

In view of the above, this Court finds that no substantial question of law arises in this appeal. Therefore, this second appeal is dismissed. **(Rafiq Ahemad Ansari v. Dr. Atmaram Mandhoria and others, 2016 (114) ALR 5)**

Section 107- Powers of Appellate Court- once an issue of jurisdiction had arisen before Lower Appellate court, the Lower Appellate Court had jurisdiction to deal with issue in the manner contemplated under the code

It is apparent that core issue of civil court to go into the question raised had been pressed, but the same was not answered. It would be relevant to refer to the provisions of 107 of the Code, which deals with the power of appellate court. Section 107 of the Code is reproduced:-

> "107. Powers of appellate court.- (1) Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power—

(a) to determine a case finally,
(b) to remand a case;
(c) to frame issues and refer them for trial;
(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on courts of original jurisdiction in respect of suits instituted therein. "

It is apparent that once a issue of jurisdiction had arisen before the lower

appellate court and was specifically pressed, the lower appellate court had jurisdiction to frame an issue in that regard and refer it for trial, and it also had the jurisdiction to deal with the issue in the manner contemplated under the Code. The lower appellate court, therefore, was not justified in refusing to entertain the issue, having noticed that such issue had arisen, only because a specific issue in this regard had not been framed by the trial court.

In view of the discussions and the findings returned above, this Court is of the opinion that for grant of relief of injunction in favour of plaintiff-respondent, in the facts of the present case, the issue of right held by the parties over the agricultural land in question had to be necessarily gone into and a declaration of right in suit property was essential, which could be granted only by a competent revenue court. Moreover, such a declaration could not have been granted unless the Union of India and State authorities were impleaded as a party, as the factum of resumption of suit property, was more or less admitted. **(Ashik Ali v. Harigen, 2016 (114) ALR 465)**

Section 115 (3) –Revision against rejection of application under order 10 CPC- Maintainability of –In absence of any irreparable injury by impugned order the revision against it would not be maintainable

It is within jurisdiction of trial court to allow or reject the application under order 1 rule 10 CPC. In present matter the trial court had exercised its jurisdiction after appreciating the facts and available circumstances. Impugned order passed by trial court is apparently not infirm or perverse Section 115 (3) CPC provides that in absence of any irreparable injury by impugned order, the revision against it would not be maintainable. There appears no factual or jurisdictional error in passing of the impugned judgment. Therefore, this revision is dismissed. **(Akib Zamal And 3 Others v. Hazi Raees Ahmad and Another, 2016 (1) ARC 189)**

Order II, Rule 2- Scope and ambit- Second suit for same reliefs when two suits are based order II rule 2 CPC does not apply under two suits are based on different causes of action

The provision of Order II, Rule 2 is based on the principle that no person should be vexed twice for the same cause of action. The rule provides that every suit shall include the whole of the claim and the reliefs, which the plaintiff is entitled to make in respect of the cause of action. If he fails to do so, afterwards, he will not be entitled to sue for the portion of the claim or the relief so omitted. However, if there are different causes of actions arising even out of the same transaction, the plaintiff is not obliged to bring suit with regard to all of them. Similarly, when the cause of action on the basis of which the earlier suit was brought, does not form foundation of the subsequent suit and in the

earlier suit the said relief would not have been claimed which have been claimed in the subsequent suit, the subsequent suit is not barred under the said provisions.

When two suits are based on different causes of action, the bar under Order II, Rule 2 CPC would not apply.

Order II, Rule 2 CPC enjoins upon the plaintiff to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff omits to sue or intentionally relinquishes any portion of this claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. **(Shaheed v. Sayeed and others, 2016 (114) ALR 513)**

Order 6 r. 17- Limitation –Once the amendment of plaint is allowed, it has to relate back to the date of filing suit

So far as the plea of limitation is concerned there can be not 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 (114) ALR 710)**

Order VII, R. 11- Scope and ambit- Court is competent to reject a plaint at any stage, if conditions under Rule 11 of order VIII CPC exist

The suit for specific performance of contract and in the alternative for the recovery of money was filed by the plaintiff (respondent herein) before the Court below, in which, the written statement was filed and issues have already been framed. Issue No. 4 was framed to the effect as to whether the suit was barred under Order VII, Rule 11, C.P.C. The said issue was decided by 1st Additional Civil Judge ((S.D), Dehradun on 20.8.2014 against the defendant, Hence, the present civil revision.

The Court is competent to reject a plaint at any stage of proceeding if it finds that conditions under Rule 11 exists. Even application by a party is not necessary in this context. Plaint can be rejected under Order VII, Rule 11, C.P.C. even after the issues have been framed. The real right to sue should be shown in the plaint. The fact that the issues have been framed in the suit cannot come in the way of consideration of application filed by the appellant under Order VII, Rule 11, C.P.C. rule does not permit the rejection of a plaint in part.

A plaint may be rejected at any stage. The Court may examine plaint before admitting it or at any time thereafter or even after the completion of trial but before judgment. In the instant case, the challenge to the plaint is neither on the ground that it does not disclose a cause of action not on the ground that the

relief claimed is under valued, but on the ground that the suit appears from the statement in the plaint to be barred by law. On a plain reading of the plaint, it is absolutely clear that the reliefs, as sought for by the plaintiff in the plaint, are cognizable by the Civil Court in terms of section, 9, CPC. The reliefs, as sought for, will ultimately be granted by the Court below or not is a different question. The plaintiff may succeed, the plaintiff may not succeed or the plaintiff may partly succeed, will depend upon the evidence to be led by the parties. Suffice will it be to say at, this stage, that this Court concurs with the finding of the Court below that the suit is not barred by Order VII, Rule 11, C.P.C. **(Chandra Deep Singhal v. Smt Mamta Bisht, 2016 (114) ALR 163)**

Order VIII, Rule 6- Counter claim –Non consideration of- Nonpayment of required court fee for counter claim, it could not be accepted as formal counter claim

A counter- claim is accepted as plaint with all the formalities of a plaint. Since defendant- Appellant had not paid required court fees for counter-claim, therefore, it could not be accepted as a formal counter-claim. There is not illegality or impropriety in it. **(Tarawati (Smt.) Ram Murti Lal Gangwar, 2016 (1) ARC 452)**

Order VIII, R. 10 –Non filing of written statement- Effect of- It is not imperative to provisions a judgment against the defaulting defendant

From the plaint reading of Rule 10 of Order 8 CPC, it is clear that in absence of the written statement of the defendant, the court may pronounce judgment against the defendant of may pass a different order as may appear to be it to be fit. It is not imperative to pronounce a judgment against the defaulting defendant and that the court at its discretion may pass a different order which may include an order dismissing the suit as well. **(Chameli Devi (Smt.) v. Smt. Anara Devi and others, 2016 (1) ARC 242)**

Order 9, R. 9, Order 17, R.3- Restoration of suit –Dismissal of suit for not appearance of plaintiff and for want of evidence is dismissal in default as certain plated by O. 9, R. 8 –Plaintiff can seek restoration of suit under O. 9, R. 9 on fulfillment of conditions as laid down therein

In the instant case, the suit was fixed for evidence of the plaintiff on the adjourned date. On the adjourned date the plaintiff failed to appear to adduce any evidence. The Court, therefore, proceeded in accordance with Rule 3 of Order 17, CPC to dispose of the suit in one of the modes prescribed under Order 9, CPC Since the defendant was present and plaintiff had failed to appear and adduce evidence the suit was dismissed in default. Therefore, the dismissal of the suit for want of evidence was essentially dismissal in default as contemplated by Rule 8 Order 9, CPC Accordingly, it was open for the

plaintiff to have applied under 9 Rule 9, CPC for setting aside the dismissal on the fulfillment of the conditions laid down therein. **(Transport Corporation of India, Varanasi v. Vijayanand Singh alias Vijaymal Singh and another, 2016 (1) ALJ 116)**

Order XII, Rule 5- Striking off defence- consideration for

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

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

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

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

It, therefore, follows that the amount due to be deposited by the tenant throughout the continuation of the suit has to be deposited in the Court where the suit is filed otherwise the Court may strike off the defence of the tenant since the deposits made by the tenant under Section 30 (1) of the Act after the first hearing of the suit cannot be taken into consideration." **(More Singh v. Chandrika Prasad, 2016 (130) RD 90)**

Order XIV, Rule 1- omission to frame an issue- effect of

It was specific case of defendants that Kalawati was not daughter and

they have led evidence to that effect. In these circumstance where parties were aware of the issue and led evidence , omission to frame an issue in particular terms does not vitiate the proceedings, albeit issue no. 1 regarding pedigree covers this point. Reference may be made to decision of Hon'ble Apex Court in the case of Syed akhatar v. Abdul Ahad (AIR 2003 SC 2985; in paras 10, 11 & 12, whereof it has been observed that appellate court considered the pleadings of the parties and recorded a finding on the issue of nuisance as such, non-framing of issue was not found to be fatal. In the cae of Nedunuri Kameshwaramma v. Sampati Saba Rao, AIR 193 SC 884 (Para 6), in para 6 of the judgment, court although, recorded a finding that no issue was framed but went on to hold that this non-framing of issue does not vitiate the judgment inasmuch as parties went to trial, knowing fully well rival case and led the evidence. **(Raj Kumar And Ors. V. Ashok Kumar Chaurasia and ors, 2016 (1) ARC 645)**

Order 15, Rule 5 (U.P. Amendment) – Striking off defence for failure to deposit admitted rent –Validity of

The premises No. 205/46, Minhajpur, Dr. Katju Road, Allahabad belongs to the frist respondent, a suit for eviction, arrears of rent and damages was instituted. During the pendency of the suit, an application under Order XV Rule 5 C.P.C. was filed with the allegation that the suit is of 1999 but no amount was deposited on the first date of hearing nor regular deposit was made, thereafter. The applicant contested stating that the entire amount was deposited on the first date of hearing. The trial court allowed the application, struck off the defence of the applicant. The revisional court affirmed the order passed by the trial court.

In the facts and circumstances of this case, the court below have not recorded a finding regarding the date of hearing of the suit and proceeded to strike off the defence taking into account the intermittent delay in depositing the subsequent sums by the applicant. It is not disputed by learned counsel for the respondent that the entire sum due has already been deposited. In these circumstances, court is of the view that the impugned orders cannot be sustained, accordingly, the petition is allowed. **(Kedar Nath Vs. Waqf Sheikh Abdullah Charitable Madursa And Others, 2016 (2) ALJ 179)**

Order XXI, Rule 32, r/w Sec. 51- Execution of decree of permanent injunction- made of decree for permanent injunction can be executed by attaching and selling the properties of Judgment –Debtor by invoking O. XXI, R. 32 CPC r/w Section 51 of CPC

Brief facts of the present case, inter alia, are that plaintiff/decree-holder had filed OS No. 05 of 1996, Rishiram v. Sohan Lal Kukreti and others, in the court of Civil Judge (Jr. Div.), Rishikesh, Dehradun seeking permanent

prohibitory injunction restraining the defendants in making any interference in the possession of the plaintiff over the suit property under heading 'A' and 'B'; suit was decreed by the learned Trial Court, vide judgment and decree dated 17.07.2004; judgment and decree dated 17.07.2004 was never challenged before the higher Forum, hence, was allowed to attain finality; plaintiff/decree-holder has moved an execution application being Execution Case No. 07 of 2009 saying defendant/judgment-debtor has forcefully taken possession over the Southern portion of the suit property, therefore, decree dated 17.07.2004 may be executed against the judgment-debtor; having appeared before the Executing Court, judgment-debtor has preferred objection saying that the basis of suit i.e. sale deed dated 19.07.1965 was void ab initio and non est in the eyes of law, therefore, decree passed in Suit No. 05 of 1996 was without jurisdiction, therefore, cannot be executed; objection so filed by the judgment-debtor/petitioner, herein, was dismissed by the Executing Court, vide order dated 10.02.2015; while rejecting the objection, learned Executing Court was further pleased to issue warrant of possession; feeling aggrieved, judgment-debtor has preferred civil revision being Civil Revision No. 33 of 2015, however, revision too came to be dismissed, vide judgment/order dated 03.09.2015; feeling aggrieved, judgment-debtor has knocked the doors of this Court by invoking Article 227 of the Constitution of India.

Language of Section 51 of the Code is unambiguous, plain and simple. As per the mandate of Section 51, Executing Court, subject to such conditions and limitations as may be prescribed, may execute the decree in one of the following manners :

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require. In other words, an Executing Court may execute the decree for prohibitory injunction by delivery of any property specifically decreed or; by attachment and sale or sale without attachment of the property of the judgment-debtor or; by arrest and detention of judgment-debtor in civil prison or; by appointing a receiver or; in such other manner as the nature of the relief granted may require.

Decree for permanent mandatory injunction can be put for execution by

invoking Order 21 Rule 32 CPC. If Order 21 Rule 32 is read with Section 51 of CPC, it can safely be held that decree for permanent mandatory injunction can be executed by attaching and selling the properties of the judgment-debtor; by arresting and detaining the judgment-debtor in civil prison or in other such manner as the nature of the relief granted may require. **(Raju Bhatt v. Rishiram @ Rishiraj, 2016 (114) ALR 138)**

Order XXII, R. 10- Impleadment of a party- Subsequent Purchaser a necessary and proper party- Sec, 52 of the Transfer of Property Act does not prohibit bona fide transfer of property- Only puts a rider that subsequent purchaser shall abide by the result of the suit and court has to be prima facie satisfied while exercising its discretion to allow application

In Amit Kumar Shaw (supra) the Supreme Court held that the Court has a discretion to make the subsequent purchaser as a party, if his interest in the subject matter of the suit is substantial and not just peripheral. A subsequent purchaser who acquires interest from the owner is vitally interested in the litigation, whether the transfer is of the entire interest, as in some cases owner having no more interest in the property may not properly defend the suit and he may collude with the contesting party. The Supreme Court has also considered the scope of Order XXII Rule 10 CPC and held that under the said provision there is no detailed enquiry contemplated at the stage of granting leave. The Court has only to be prima facie satisfied for exercising its discretion in granting leave. The question about existence and validity of the transfer can be considered at the final hearing of the proceedings. At the initial stage, the only requirement is prima facie satisfaction.

What emerge from the aforesaid decisions of the Supreme Court are: (i) a subsequent purchaser is a necessary and proper party; (ii) after sale, the owner can lose interest in litigation, thus it can adversely affect the right of the subsequent purchaser; (iii) Section 52 of the Transfer of Property Act does not prohibit the bonafide transfer of the property, it only puts a rider that the subsequent purchaser shall abide the result of the suit; and, (iv) the Court has to be prima facie satisfied while exercising its discretion to allow the application, and the other aspects can be considered at the time of hearing. **(Smt. Jamila Khatoon (d) Rep. By heirs and Legal representatives v. Ram Niwas Gupta, 2016 (114) ALR 352)**

Order XXIII, Rules 1-A- Applicability of provision

During the pendency of the suit, the plaintiff-respondents filed an application 112-Ka seeking to withdraw the suit under Order 23, Rule 1 CPC. The application was opposed by the defendants by filing application 114-Ga in which prayer was made that the defendants be transposed as plaintiffs and

plaintiffs as defendants.
The application filed by the plaintiffs paper no. 112-Ka was allowed by the trial court and the plaintiffs were permitted to withdraw the suit, without any condition. However, the application filed by the defendants was also allowed and they were permitted to be transposed as plaintiffs and the plaintiffs as defendants. Aggrieved by the said order, plaintiff no. 1 preferred Civil Revision No. 13 of 2015. The revision has been allowed in part by District Judge, Mirzapur, by impugned order dated 13.8.2015 and the order passed by the trial court dated 18.3.2015 has been set aside to the extent it permits transposition of the defendants as plaintiffs.
It is noticeable that order 23, Rule 1-A CPC would be attracted only when some of the defendants want to be transposed as plaintiff contending that a substantial question remains to be decided as against the other defendants. However, in a case, where all of the defendants seek to be transposed as plaintiff contending that some issue requires to be decided against the original plaintiff, the provisions of order 23, Rule 1-A CPC would not be attracted. **(Raghunath Prasad Tripathi v. Vindhy Hotel Pvt. Ltd. Shival Mahanth Mirzapur & 3 Ors., 2016 (1) ARC 121)**

Order XXXII, R 7 (2)- Scope of –Without leave of the court, companies against minor –Effect of- Compromise as well as decree passed on its basis would be void

The bare reading of Order 32 Rule 7(2) CPC shows that compromise is voidable against other parties and it is void against minor. It is not dispute that compromise dated 29.4.1959 was passed without leave of the Court as such the compromise as well as decree passed on its basis was void. **(Ganga Ram and others v. D.D.C. Barabanki and others, 2016 (13) RD 197)**

Order 39-Injunction suit- against true owner of disputed property- Right to get relief of injunction

Original Suit No. 1312 of 2009 was decreed by judgment dated 16.02.2015 passed by the Court of Additional Civil Judge (S.D.), Meerut; against which Civil Appeal No. 10 of 2015 was preferred. Said appeal was allowed by the judgment dated 13.08.2015 of the court of District Judge, Meerut. Against the judgment of the first appellate court this Second Appeal has been preferred by the plaintiff/defendant of the original suit.
In Premji Ratansey Shah v. Union of India, (1994) 5 SCC 547 the Apex Court had held-

> "5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected

the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner." Considering these facts and legal position contentions of appellant's counsel regarding right to get relief of injunction are found unacceptable.

On examination of the reasoning recorded by the learned first appellate court in first appeal, I am of the view that judgment in first civil appeal as above is well reasoned and is based on proper appreciation of entire evidences on record. In this matter only dispute between the parties was relating to ownership and possession of plaintiffs over disputed property. These are matters relating to fact. The ownership of plaintiff over disputed plots is admitted and proved fact, and the possession could only be decided on the basis of evidence, as it was decided in this matter by first appellate court. No perversity or infirmity is found in finding re corded by the first appellate court to warrant interference through this appeal. No question of law, much less a substantial question of law, was involved before this Court. None of the contentions of the learned counsel for the appellants/defendants can be sustained. **(Amit Chauhan v. Smt. Samlesh and another, 2016 (114) ALR 532)**

Order 39, R. 1 and 2- For granting of Ad. Interim Injunction- Before granting an ad interim injunction the Court has to address its intention to the existence or otherwise of three aspect

Before granting an Ad interim injunction, the Court in seisen of the litigation has to address its attention to the existence or otherwise of three aspects- (a) whether a prima facie case in favour of the applicant has been established; (b) whether the balance of convenience lies in favour of the applicant; and (c) whether irreparable loss or damage will visit the applicant in the event injunctory relief is declined. Court shall cogitate on the first factor first –is the law favourable to the applicant. **(Neon Laboratories Ltd. V. Medical Technologies Ltd. And others, 2016 (114) ALR 235)**

Order XLI, R. 1 (amended)- Requirement for filing the appeal- Memorandum of appeal should be accompanied by a copy of the judgment

It is clear from a perusal of Rule 1 extracted above that a memorandum of appeal should be accompanied by a copy of the judgment. The word 'judgment' has been inserted by Act No. 46 of 1999 w.e.f. 01.07.2002 by

replacing certain words occurring in the said Rule earlier.. The words that have replaced by the word judgment were: 'decree, appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded'.

From the above noted amendment it is clear that after 01.07.2002 the memorandum of appeal must not be necessarily accompanied by a copy of the decree. The memorandum of appeal must be accompanied by a copy of the judgment and this alone is the mandatory requirement under Order XLI Rule 1. It is not in dispute in the instant case that a copy of the judgment appealed against has been annexed with the memorandum of appeal. It must, therefore, necessarily be held that the appeal is competent and has rightly been entertained. The submissions of learned counsel for the petitioner to the contrary therefore cannot be accepted and must necessarily be rejected.

The amendment aforesaid in Rule 1 of Order XLI of the Civil Procedure Code has been made in view of the 125th report of Law Commission of India which had suggested this amendment so as to dispense with the requirement of filing a certified copy of the decree along with the memorandum of appeal. It was so recommended because the period of limitation for filing of appeal invariably got extended due to the delay in preparation of decree itself. Thus, the object of the amendment was to shorten the period of limitation, atleast by the period spent in drawing up a decree, after the judgment had been pronounced.

It is therefore, held that any appeal filed, annexing with the memorandum a certified copy of the judgement and without a copy of the decree founded upon such judgement is in proper form and therefore entertainable. **(Smt. Tara Devi v. Addl. Commissioner, Gorakhpur and others, 2016 (114) ALR 850)**

Order XLI, Rule 2 –Appeal- Points not pleaded in the memorandum of Appeal- Appellants has right to raised the same in appeal

In this case, in memo of appeal filed by defendant- appellant before the Court of District judge the point of non-consideration of evidences or Commissioner's Report was not mentioned. When he had not pleaded such points in his memorandum of appeal under Order XLI, Rule 2, C.P.C., then he has no right to raise this point. **(Rameshwar Prasad Twari v. Om Prakash Srivastava, 2016 (115) ALR 196)**

CPC

Order XLI, Rule 27- Additional evidence- Allowance of- Additional evidence cannot be allowed at appellate stage except in three situation

The additional evidence cannot be allowed at the appellate stage except in the three situations mentioned in Rule 27, and any evidence given in

Appellate Court not covered under the Rule shall not be read in evidence. Permission to adduce additional evidence can be given by Appellate Court subject to such conditions and limitations as are prescribed in Order XLI Rule 27 CPC. Mere ground that the document can be produced at any time before the decision of the appeal is not sufficient to allow additional evidence. In the instant case, addition al evidence thus filed by respondent no. 1 / plaintiff relate to the period of pendency of present second appeal. In other words, such documents were not available either at the stage of trial or during the pendency of first appeal. Since the documents so filed have a bearing on the merits of the instant case, therefore, permission can be granted to the respondent no. 1 / plaintiff to produce such additional evidence under Order XLI Rule 27 CPC. Possibly, the Appellate Court may require such additional evidence to enable it to pronounce judgment or for any other substantial cause. Production of additional evidence cannot be allowed where the party applying for it does not satisfy the court that such evidence was not within his knowledge or could not be produced with due diligence. It is only when the Appellate Court 'requires it' that additional evidence can be admitted. **(Swami Ram Nivas Ram Sanehi v. Swami Ram Vinod and another. 2016 (130) R.D. 492)**

Order XLI, Rule 31- parts for determination- Non framing of- Effect

Where parties has led the evidence and said evidence has been considered for recording finding and if controversy is discernible form the judgment, then non-framing of points for determination does not vitiate the judgment and same will be treated to be substantial compliance of Order 41 Rule 31 CPC. **(Raj Kumar And Ors. V. Ashok Kumar Chaurasia and ors, 2016 (1) ARC 645)**

Constitution of India

Articles 14 and 226- Applicability of- Fundamental right U/A 14 of constitution is available against a state and its authorities and not against probate body to maintain a writ petition

This writ petition has been filed by a student through his father aged about 17 years, being aggrieved by the action of opposite party no.9 i.e. Principal La Martiniere College, Lucknow declining him admission in standard XI. By means of this petition the petitioner has sought a writ of certiorari quashing the reply dated 21.06.2015 submitted by the Principal to the District inspector of Schools Anglo India Schools, Lucknow and has also sought a writ of mandamus commanding the respondents to admit him in standard XI (Science-Biology stream) of La Martiniere College, Lucknow for the academic

session 2015-16 and specifically to the District Magistrate, Lucknow for taking necessary action in the matter in accordance with law.

The assertion that the action of respondent school being arbitrary was hit by Article 14 of the Constitution has been made only for being rejected. The Fundamental Right under Article 14 of the Constitution is available against a State and its authorities and not against a private body certainly not for maintaining a writ petition under Article 226 of the Constitution against such bodies. Arbitrary action, if any, may give cause for the aggrieved person to initiate civil action before the Civil Court but not a writ petition against a private educational institution. The opposite parties have been able to demonstrate that admission to standard XI is a fresh admission and not an automatic promotion, a stand supported by learned Senior Advocate Sri Nagar, who appeared and argued on behalf of Indian School Certificate Board and placed before the Court the relevant Regulations in this regard.

The first relief claimed in the writ petition is for issuance of a writ of certiorari quashing the letter dated 21.06.2015 written by the Principal of the School, which is a private unaided educational institution. Moreover the said letter is in response to some letter written by the District Inspector of Schools Anglo India Schools Lucknow. Issuance of a writ of certiorari for quashing a reply such as the one contained in the letter dated 21.06.2015 is unheard of. The claim for issuance of such a writ is not supported by any decision. A writ of certiorari cannot be issued to quash a letter/reply sent by the Head of the private Institution. The Indian School of Certificate Board to which the institution is affiliated, is, itself not a statutory authority nor any effort was made by the petitioner to prove that it was.

In view of the discussion made herein above it hardly needs to be emphasised that in the facts of the present case, no case is made out for issuance of a writ of certiorari or mandamus as prayed for in the writ petition. **(Vatsal Gupta Thru His Father v. State of U.P., 2016 (1) AWC 161)**

Articles 15 (4) and 16 (4) –Removal from the post of Post Graduate Teacher- Upon Cancellation of caste certificate of Scheduled Caste community- Validity of

In this case, petitioner belonged to forward class of prosperous Hindu community, she married upon age of majority with person belonging to Scheduled Caste community. As such she could not be said to have a quired

status of. Scheduled cast community.

When a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also undergo and have had some of the handicaps, and must have been subjected to the same disabilities, advantages, indignities or suffering so as to entitle the candidate to avail the facility of reservation. The candidate who had advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in scheduled caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Articles 15(4) and 16(4), as the case may be. Acquisition of the status of scheduled caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution. (Vide Murlidhar Dayandeo Kesekar Versus Vishwanath Pandu 1995 Suppl (2) SCC 549 and R. Chandevarappa Versus State of Karnataka, (1995) 6 SCC 309)

Having considered the facts and circumstances of the case, it is not in dispute that the petitioner belongs to the forward class of a prosperous hindu community, she married upon attaining the age of majority a person belonging to the Scheduled Caste, as such, it cannot be said that she acquired the status of that community, therefore, it cannot be said that she would be entitled to the constitutional protection and benefit conferred in terms of Article 15(4) and 16(4) of the Constitution. **(Smt. Sunita Singh Vs. State Of U.P. And Others, 2016 (2) AWC 1343)**

Article 226- Whether a writ petition under Article 226 of constitution of India can be filed by a power of attorney holder – Held, "Yes"

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, court 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, court 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 (34) LCD 373)**

Art. 226- Writ of Mandamus- Relief of

In the absence of Statutory provision casting a duty upon the respondents authorities to consider and decide the applications made by the petitioners, no mandamus, as claimed, is liable to be issued. The law in this regard is well settled that no mandamus can be issued commanding the authority unless a Statutory duty has been case upon him by provisions of some Statutes and the authority has failed to discharge such a duty. **(Hari Prasad and another v. State of U.P. through Principal Secretary, Homes. Govt. of U.P. Lukcnow and others, 2016 (130) RD 154)**

Art. 227- Absence of pleading in petition –Effect of- Not open to the court in exercise of supervisory jurisdiction u/A 227 to go into the question

The respondent-landlord preferred a suit before the small causes court for arrears of rent, ejectment and for making material alterations in the suit property which is a residential house. The original-tenant appeared and contested the suit by filing written statement. It was admitted in the written statement that the respondent is landlord but it was averred that the defendant had no knowledge of hibba (oral gift). The applicants who are legal heirs of erstwhile tenant filed an additional written statement adopting the written statement filed by their father. In the additional written statement, plea of validity of notice or derivative title of the respondent-landlord was not assailed. The courts below upon considering the evidence and material available on record, noted that the applicants had already purchased a residential premises in the same locality, therefore, were not entitled to the benefit of Section 20(4). Submission of the learned counsel for the applicant is that the courts below have not considered that the notice under Section 106 of Transfer of Property Act was bad and not legal, hence, the applicant could not have been evicted on that basis. Learned counsel for the applicant submits that the point was raised before the courts below but was not considered. However, in the pleadings

before this Court, no ground or assertion has been made that the notice under Section 106 of Transfer of Property Act is bad, as such, the applicant could not have been evicted. Even otherwise, a ground though raised but not pressed before the courts below cannot be gone into in the first instance by this Court.
In absence of pleadings before this Court that the notice under Section 106 of Transfer of Property Act is bad, it is not open for this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution to go into the question. **(Angoori Begum (Smt.) And 6 Others v. Mohammad Masroor Khan, 2016(1) ARC 122)**

Contempt of Courts Act

Section 2(c)- Criminal Contempt –What amounts to- Resolution passed by Bar Association asking advocates to abstain from judicial work is per se illegal and also amounts to an intentional act of Criminal contempt defined u/s 2(c)

Before this Court, contemnors 1 and 3 have not hesitated in condemning the conduct of Presiding Officer is derogatory language through in respect of discharge of judicial function on 12.4.2013, despite resolution passed by Bar Association. As per own impression of contemnors 1 to 3 and Bar Association Sonbhadra, audacity of Presiding Officer of court below in continuing to discharge judicial function despite resolution of abstention from judicial work passed by Advocates was an uncondonable act justifying act of obstruction and disturbance in Court functioning besides condemnation by raising slogans. This assumption is also reflected in subsequent resolution of Bar Association, which has been relied by contemnors 1 to 3 in their reply affidavits. They appears to have assumed that though court below is an independent judicial authority but in one or other way, subordinate to them, bound to obey their resolution, how-soever illegal it is. This attitude and assumption on the part of Bar Association in general and contemnors 1 to 3 in particular, is per-se not only illegal but amounts to a gross criminal contempt on their part. Nothing more than this can have the effect of lowering authority and majesty of Court of law. **(Amit Kumar Prajapati v. Mahendra Prasad Shukla & Ors. 2016 (1) ALJ 369)**

Criminal Procedure Code

Section 88- To get benefit of- Accused has to appear in person before court.

As far as the provisions of Section 88, Cr.PC. are concerned such provisions can be availed only in case the person for whose appearance or arrest the summon or warrant has been issued to present in such Court. Section 88, Cr.P.C. also does not speak to exempt the accused without executing the bond with or without sureties for his appearance in the Court. In view of the provisions of Section 90,

Cr.PC., this provisions is also applicable only to every summon and every warrant of arrest issued under this Code. Admittedly, the petitioner has not yet appeared personally before the Court. Therefore, he cannot get the benefit of Section 88, Cr.P.C. **[Arvind Kejriwal v. The State of U.P. & others, 2016 CRI.L.J. 128]**

Section 145- Proceedings under –Are of summary Nature, went for maintaining Law and order

The contention of learned Counsel for the appellant was that since the appellant had got the possession of disputed property after the direction of Executive magistrate passed in proceedings under section 145 Cr.PC, therefore, his possession is lawful, and on the basis of such lawful entry over disputed land, he is entitled to retain it. This contention is found unacceptable. The proceedings under section 145 Cr.PC are that of summary nature, which are meant for maintaining law and order and preventing the apprehension of breach of peas. **(Ram Naresh v. Bachchi Singh and others, 2016 (130) RD 821)**

Sections 205 and 317-Whether application under Section 205 or Section 317 is maintainable without personal appearance and without furnishing bail bonds- No.

After taking cognizance and issuance of the process, may be summon or warrant, the exemption application under Section 205 or under Section 317, Cr.P.C. is maintainable without personal appearance and without furnishing bail bonds is, therefore, decided accordingly that in case of an accused is warrant trail, the provisions of Section 205 or Section 317, Cr.P.C. will not apply unless the accused has been granted bail and he has furnished bail bonds. **[Arvind Kejriwal v. The State of U.P. & others, 2016 CRI.L.J. 128]**

Criminal Trial

F.I.R. Is not a substantive piece of evidence but, it is an important piece of evidence.

It is the settled proposition of law that FIR is not a substantive piece of evidence but, it is an important piece of evidence upon which the entire edifice of the prosecution stands. A prompt FIR rules out all the elements of concoction, coloration and exaggeration. No specific format is provided but, if the FIR disclose the time, date, place and manner of occurrence in the name of accused persons and the witnesses, if any, it certainly facilitates the investigating agency in the process of investigation.

In the instant case, where three murders have been committed in same

transaction, keeping this aspect in view, the FIR of the incident that took place at 8.30 a.m. was lodged with the police as 10.45 a.m., in our considered opinion, it is prompt FIR and there is no delay in such circumstances. [**Yaseen and others v. State of U.P., 2016 (1) ALJ 21]**

Effect of Delay in lodging FIR in cases of Sexual assault.

The Hon'ble High Court held that the offences relating to the sexual assault are taken to be very heinous offence. These offences have a great impact on the social status, prestige of the family of the victim as well as it has impact on the dignity, reputation and prestige of the victim is always at jeopardy in the event of victimization of sexual assault in her known circle. After such incident normally a mature decision is taken by the family members about lodging of the FIR. Sometimes because of the social prestige and social constraint, such offence even go unreported to the police. The distance of the police station is 13 kms. Ex. Ka-1 the typed report was initially got typed and thereafter it was lodged with the police. All these factors must have consumed reasonable time. Reasonable time is also involved in travelling a distance of 13 kms as is mentioned in the FIR.

In the present matter FIR of the case was lodged with the police on 31.3.2008 at 16:30 hours with respect to an incident occurred on 11 a.m. on the same date. The FIR was delayed of the police station from the place of occurrence has been shown to be 13kms.

In view of the facts and circumstances of the case, Hon'ble court in the considered opinion that the delay is not an inordinate delay and it will neither have adverse impact on the authenticity of the FIR nor would be fatal for prosecution. **[Guddu Urf Raghvendra, Arjun Singh v. State of U.P., 1016 CRI.L.J. 1314]**

Evidentiary Value of Confessional Statement of co-accused.

The confession of co-accused cannot be made basis for conviction. The reason behind is that the said confession was recorded by the police officer while the maker was in police custody. The second reason is that the accused has no opportunity to test the same through cross-examination nor evidence of such maker of the confession is recorded in his presence. As discussed in case of Haricharan Kurmi, 1964(1) ACC 159(SC) (Constitution Bench). Pancho v. State of Haryana, 2012(77) ACC 269(SC). That confession of co-accused is a weak type of evidence. **[Santosh alias Neta Khatik v. State of U.P., 2016(92) ACC 168].**

Appreciation of evidence of hostile witness.

Law is settled on the point that even if the witnesses have been declared hostile, even then their evidence does not stand wiped out from the record and the Court would be lawful in seeking corroboration from the said evidence on any point where the evidence of such witness supports the case of the prosecution. Reference may be made on this point to the pronouncement of Hon'ble the Apex Court in the case of Rohtash Kumar v. State of Haryana, 2013 (82) ACC 401(SC) wherein Hon'ble the Apex Court has observed that the evidence of a hostile witness cannot be rejected in toto merely because the prosecution choose to treat him as hostile and cross examined him. **[Santosh alias Neta Khatik v. State of U.P., 2016(92) ACC 168].**

Family Law

Hindu Law- Hindu Undivided Family- A member of joint Hindu Family is not debarred from acquiring property separately

In this case Court has held that, even if it is found that at that time sons of Devata were living jointly, a member of joint Hindu family is not debarred from acquiring property separately. Findings of facts in these respect cannot be interfered by this Court. **(Ram Naresh and others v. D.D.C., Sultanpur and other, 2016 (130) RD 356)**

Family Settlement –Nature and object- If oral, no registration is necessary –operates as estoppels

On the question of family settlement, a celebrated judgment of the Constitution Bench of the Hon'ble Apex Court was rendered in Civil Appeal No.37 of 1968, Kale and others Vs. Deputy Director of Consolidation and others, on 21.1.1976, reported in 1976 (2) Revenue Decisions 69 . This judgment was unequivocal on the question of family settlement/arrangement and it is reigning the commands of law in this field even today.

In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be educed into the form of following propositions :

(1) The family settlement must be bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.

(2). The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3). The family arrangement may be even oral in which case no registration is necessary;

(4). It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should

be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17 (2) of the Registration Act and is, therefore, not compulsorily registrable;

(5). The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole

owner, then the antecedent title must be assumed and the family arrangement will be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6). Even if bona fide dispute, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable is final and binding on the parties to the settlement. A family arrangement being binding on the parties to the arrangement clearly operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same. Even if the family arrangement was not registered it could be used for a collateral purpose, namely, for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement and also for the purpose of applying the rule of estoppel which flowed from the conduct of the parties who having taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement." **(Smt. Rama Devi and another v. Mahendra Pal and others, 2016 (130) RD 27)**

Hindu Law- Hindu widow is not coparcener in HUF of her husband therefore, cannot act as Karta of HUF

While there can be no doubt that a Hindu Widow is not a coparcener in the HUF of her husband and, therefore, cannot act as Karta of the HUF after the death of her husband the two expressions i.e. Karta and Manager may be understood to be not synonymous and the expression "Manager" may be understood as denoting a role distinct from that of the Karta. Hypothetically, we may take the case of HUF where the male adult coparcener has died and there is no male coparcener surviving or as in the facts of the present case,

where the sole male coparcener (Respondent-Plaintiff-Ashok Vidyarthi) is a minor. In such a situation obviously the HUF does not come to an end. The mother of the male coparcener can act as the legal guardian of the minor and also look after his role as the Karta in her capacity as his (minor's) legal guardian. **(Shreya Vidyarthi v. Ashok Vidyarthi and others, 2016 (1) ALJ 523)**

Hindu Law- Onus –of proof- Will surrounded by suspicious circumstances- onus is on propounder to remove such circumstances

If a will is surrounded with suspicious circumstances, the propounder is required to remove suspicious circumstance. Supreme Court in H. Venkatachala Vs. B.N. Thimbajamma, AIR 1959 SC 443 held that there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated. There may, however, be cases in which the execution of the will may be surrounded by suspicions circumstances. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. **(Sohan Lal v. D.D.C., Bareilly and others, 2016 (114) ALR 837)**

Joint family – A member of joint family would not be debarred from acquiring property separately

A Member of joint family is not debarred from acquiring property separately as

held by this Court in Sheo Nath v. DDC and others, 1983 RD 107and Bodh Raj v. JDC and others, 1996 (Suppli.) RD 383 (LB) **(Ganga Ram and others v. D.D.C. Barabanki and others, 2016 (115) ALR 306)**

Muslim Law- Divorce –Validity of –Single pronouncement indicating clear intention to desolve marriage irrevocably would sufficiently constitute a valid divorce

Question, whether two notices sent by plaintiff-respondent constitute a valid divorce? In this regard, the first notice dated 27.3.2002 clearly makes a contingency that in case appellant does not come back to husband's residence to reside with him, she would stand divorced. It is apparently a contingent divorce, which was to operate in case of non performance of contingency by other party. From the date of sending the notice, as stated by appellant, the next three days were holiday, but the fact is that even thereafter it has not been proved that she returned to husband's house and not even when the second notice dated 30.4.2002 was given to her. The second notice reaffirm and clarify entire things that divorce has already come into effect and has become operative.

In the present case notices clearly show that there is a divorce and defendant-appellant is no more wife of plaintiff and she is free to stay wherever she likes. It was proved that notice dated 27.3.2002 has been made final by the notice dated 30.4.2002. Having gone through two documents, we find that the same can be construed to have pronounced divorce to defendant-appellant.

So far as reasonable cause for divorce is concerned, it has clearly been stated in the notice that defendant-appellant was depriving plaintiff-respondent from her matrimonial obligations, etc. by staying at her parent's residence and away from husband. Therefore, it cannot be said that divorce in the case has been granted by husband without any reasonable cause. **(Smt. Husna Praveen v. Rashid Ahmad, 2016 (114) ALR 325)**

Mohammedan Law- Among Muslim family concept of joint Hindu family or Karta of joint family is not applicable

Among Muslim family, concept of joint Hindu family or karta of joint family is not applicable . **(Nadira Ali and others v. Joint Director of Consolidation, Sultanpur and another, 2016 (130) RD 661)**

Kazis Act- Sec. 4- Right to certify marriage by Kazi- Held, certificate of marriage issued by has no authority in law

The aforesaid Act authorizes the State Government to appoint Kazi for any local area after consulting the principal Mohammadan residents of that area. The aforesaid Act vide section 4 clearly lays down that no Kazi appointed

under the Act shall be deemed to have been conferred with any judicial or administrative powers and that it is not necessary to have the presence of a Kazi or Naib Kazi at the celebrations of any marriage or the performance of any rite or ceremony.

A plain reading of the provisions of the Act clearly demonstrate that it is an enactment authorizing the State Government to appoint a Kazi for a local area and nothing more. It does not envisages to vet any powers either administrative or judicial upon the Kazis so appointed under the Act.

The Act does not gives any power to a Kazi to certify any marriage. In view of the above, the certificate of marriage dated 8.11.2015 issued by the aforesaid Kazi has no authenticity in law. **(Smt. Salma and another v. State of U.P. and others, 2016 (130) RD 747)**

Adoption –Registered more than twenty years old adoption and ceremonies of adoption has also proved- Admissible in evidence

After considered the arguments of the Counsel for the parties and examined the record. Consolidation officer found that respondents- 3 filed original registered adoption deed dated 28.06.1949, which was more than twenty years old as such it was admissible in evidence. Ceremonies of adoption of Bajrang by Kallu was proved by Trivedni Pandit, in his oral statement. Findings in this respect do not suffer from any illegality. **(Ganga Ram and others v. D.D.C. Barabanki and others, 2016 (13) RD 197)**

(i) **Will- Attestation of will is not an empty formality – Discussed**

The attestation of the will in the manner stated above is not an empty formality. It means signing a document for the purpose of testifying of the signatures of the executant. The attesting witness should put his signature on the will animo attestandi. It is not necessary that more than one witness be present at the same time and no particular form of attestation is necessary. Since a will is required by law to be attested, its execution has to be proved in the manner laid down in the Section 68 of the Evidence Act which requires that at least one attesting witness has to be examined for the purpose of proving the execution of such a document. **(Ram Adhar v. D.D.C. hardoi and others, 2016 (130) RD 207)**

(ii) **Will –Proof of –If suspicious circumstances is surrounded the will, the propounder is required to remove these suspicious circumstances**

Apart from proving due execution of the will, if a will is surrounded by suspicious circumstances, the propounder is required to remove suspicious circumstances. Supreme Court in H. Venkatachala vs. B.N. Thimbajamma, AIR 1959 SC 443 held that there is one important feature which distinguishes wills

from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated. There may, however, be cases in which the execution of the will may be surrounded by suspicions circumstances. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. **(Ram Adhar v. D.D.C. hardoi and others, 2016 (130) RD 207)**

Guardians and Wards Act

Sections 6 and 9 –Family court –Jurisdiction –Determination

There are two question for determination in this appeal; (i) whether Family Court at Rampur had jurisdiction to entertain application under section 6 of Guardian and Wards Act, 1890 (hereinafter referred to "Act, 1890'), and (ii) whether the application in question was to be governed by the provisions of Act, 1890 , or of Hindu Minority and Guardianship Act, 1956 (hereinafter referred to "Act, 1956')

Court is clearly of the view that the application under section 6 of Act, 1890, therefore, could not have been entertained by the Court at Rampur and the application was maintainable in the competent Court in Judgeship Gautam Budh Nagar **(Chatrasal Singh v. Smt. Priyanka, 2016 (114) ALR 539)**

Hindu Marriage Act

Section 8- U.P. Hindu Marriage Registration Rules R. 4(3) –Registration of marriage- Essential requirements

The best evidence regarding the age of any person is the certificate of birth Registration under the Deaths and Births Registration Act, 1969 and in the absence of the same, it is the High school certificate which is ordinarily accepted to be most common mode of proof of age/date of birth of any person.

This apart, Rule 4(3) of the U.P. Hindu Marriage Registration Rules, 1973 provides that the application for registration of marriage shall be accompanied by a certificate of a Member of Parliament, Member of State Legislative, Gazetted Officer, Pradhan of the Gaon Sabha, Sarpanch Pramukh of Nyaya Panchayat, Pramukh of Keshtrya Samit or the President of any other local body.

The application for registration of marriage as moved by the petitioner, the original of which has been produced before me by the Sub-Registrar does not contain certificate of any of the above authorities. In these circumstances, the Sub- Registrar was completely in error in registering the said marriage.

In view of the above, the certificate of marriage which has been filed as annexure 3 to the petition cannot be relied upon and since as per the High School certificate as the date of birth of petitioner No. 1 is 15.5.1998, she is certainly a minor who has not completed 18 years of age on the date of marriage or even today. **(Smt. Nainsee & Another Vs. State Of U.P. & Others, 2016 (2) ALJ 291)**

Section 13(1) (ia)- Divorce- Cruelty- Apprehension in mind of wife that the would be administered poison- said apprehension constitute mental cruelty

In the instant case, there is now lack of mutual respect. Both the parties are still leveling accusations against each other. Such accusations against each other. Such accusation constitutes mental cruelty. The apprehension in the mind of the appellant that she will be administered poison cannot be ruled out. Such apprehension, even if it is assumed to be a reasonable apprehension would, in court view, constitute mental cruelty. Further, the parities are living separately for the last time years. They only cohabited for a short period of four months. The spark between them has gone out. In our view, for all practical purpose, the marriage has broken down, it has become a dead marriage. In such a situation, the agony of continuing the marriage should not be prolonged. Court find that the couple are still young. The appellant and the opposite party would be in their late twenties or early thirties. A whole life is ahead of them. They can start and build their lives afresh. It would be a travesty of justice, if in such a situation; the parties are directed to live together. Such direction would only bring more misery in their lives.

In view of the aforesaid, court is of the opinion that in the facts and

peculiar circumstances of this case, continuance of marriage would constitute cruelty. Consequently, the marriage cannot continue any further and is dissolved. **(Smita Tripathi v. Vikram Singh, 2016 (1) ALJ 572)**

Hindu Adoption and maintenance Act

Sections 6, 7 and proviso of S. 7- adoption –Consideration of- In absence of any finding in adoption, consent of wife was mandatory

Having heard the learned counsel for the plaintiff-appellant and after having perused the material and documents brought on record, this Court finds that the findings returned by the courts below on the issue of adoption are concluded purely by findings of fact, which are not required to be reappraised by this Court in the instant appeal under section 100 C.P.C. So far as the provisions of Hindu Adoption and Maintenance Act, 1956 are concerned, section 7 thereof is relevant for the present purpose, which is reproduced:-

> "Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:
>
> Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

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. 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 thepresent 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. **(Beeru v. AAm Janata and others, 2016 (114) ALR 627)**

Hindu Minority and Guardianship Act

Section 6 (a) –Guardian- Minor mother is competent to act as guardian of her child.

A question that arises is as to whether a minor mother has the capacity to give her child in adoption. For this purpose it is relevant to refer to the provisions of The Hindu Minority and Guardianship Act, 1956

Section-4: Definitions:

In this Act,-

(a) "minor" means a person who has not completed the age of eighteen years.

(b) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property, and includes -

(i). a natural guardian,

(ii). a guardian appointed by the will of the minor's father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any court of wards;

(c). "natural guardian" means any of the guardians mentioned in Section 6.

Section-6:Natural guardians of a Hindu minor:-

The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are -

(a) in the case of a boy or an unmarried girl-the father, and after him the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b). in the case of an illegitimate boy or an illegitimate unmarried girl the mother, and after her, the father;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this Section-

(a). if he has ceased to be a Hindu, or

(b). if he has completely and finally renounced the world by becoming a hermit (vanaparastha) or ascetic (yati or sanyasi)

Explanation:- In this section, the expression "father" and "mother" do not include a step-father and a step-mother.

In view of the above provisions, it has been submitted by the amicus curiae that in the case of an illegitimate boy or an illegitimate unmarried girl the mother is the natural guardian. Expression 'Illegitimate' refers to a child born not out of a marriage wed-lock.

Thus, the petitioner is the natural guardian of her child under section 6 (ia). She may also be covered under clause (a) in view of the fact that it provides 'mother to be the natural guardian after father. The expression 'after' as interpreted in the case of *Githa Hariharan v. Reserve Bank of India AIR, 1999 SC 1149* means 'in the absence of' and the word 'absence' refers to father's absence from the care of minor's person or property for any reason whatsoever. Otherwise if 'after' is read to mean a disqualification of a mother to act as guardian during life time of the father the same would violate one of the basic principles of the our Constitution i.e. gender equality.

Thus the minor mother is competent to act as guardian of her child. She has the capacity to give the child in adoption. **("A" Through Her Father "F" v. State of U.P. and others, 2016 (1) ALJ 625)**

Section 8- Right of minor's- Protection of –Rights of minors involved in suit land- Refusal to grant relief of specific performance by court by relying upon S. 8 of above Act to protect estate of minor would be proper

From perusal of provisions of Section 20 of the Specific Relief Act as well as the above mentioned judgment of the Apex Court, it is clear that the court is not always bound to grant relief of specific performance of contract at the time of decreeing the suit instituted for the same and may grant alternative relied of refund of amount as compensation or damages or consideration to plaintiff.

Therefore in light of Apex Court judgment the rulings cited the arguments advanced by learned counsel for appellant are unacceptable and is found that the trial court as well as first appellate court had rightly relied on provisions of section-8 of Hindu Minority Guardianship Act for declaring the relief of specific performance and granting the alternative remedy. **(Virendra Singh v. Rohit and Ors., 2016 (2) ALJ 251)**

Hindu Succession (Amendment) Act

Section 6- The Amendment- Applicability of- Amendment applicable on and from its commencement and only if death of the coparcener in

question is after the amendment

Contention of the respondents that the Amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20th December, 2004 unaffected can also not lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. **(Prakash and others v. Phulavati and others, 2016 (1) ARC 45)**

Rule of Interpretation –Normal rule is to read the works of a statute in ordinary sense, in case of ambiguity, rational meaning has to be given- In case of apparent conflict harmonious meaning to advance the object and intention of Legislature has to be given

Interpretation of a provision depends on the text and the context ***RBI v. Peerless (1987) 1 SCC 424, para 33***. Normal rule is to read the words of a statute in ordinary sense. In case of ambiguity, rational meaning has to be given ***Kehar Singh v. State (1988) 3 SCC 609***. In case of apparent conflict, harmonious meaning to advance the object and intention of legislature has to be given *District Mining Officer v. Tata Iron and Steel Co. (2001) 7 SCC 358*. **(Prakash and others v. Phulavati and others, 2016 (1) ARC 45)**

Indian Succession Act

S. 63- Requirements of –Explained

Section 63 of the Succession Act, 1925 requires that testator shall sign or shall affix his marks to the will, or it shall be signed by some other person in his presence and by his direction. Execution of the will is required to be proved by at least by one attesting witness under Section 68 of the Evidence Act, 1872, which is quoted below:-

68. Proof of execution of document required by law to be attested.--If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in

accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

A three Hon'ble Judges Bench of Supreme Court in Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780, after reviewing earlier judgments held that as per provisions of Section 63 of the Succession Act, for the due execution of a will:

(1) the testator should sign or affix his mark to the will;

(2) the signature or the mark of the testator should be so placed that it should appear that it was intended thereby to give effect to the writing as a will;

(3) the will should be attested by two or more witnesses, and

(4) each of the said witnesses must have seen the testator signing or affixing his mark to the will and each of them should sign the will in the presence of the testator.

The attestation of the will in the manner stated above is not an empty formality. It means signing a document for the purpose of testifying of the signatures of the executant. The attested (sic attesting) witness should put his signature on the will animo attestandi. It is not necessary that more than one witness be present at the same time and no particular form of attestation is necessary. Since a will is required by law to be attested, its execution has to be proved in the manner laid down in the section and the Evidence Act which requires that at least one attesting witness has to be examined for the purpose of proving the execution of such a document. **(Sundar Lal v. D.D.C., Sitapur and others, 2016 (130) RD 23)**

Indian Trust Act

Sections 45 and 47 –Attractibility of –Once Trust is held to be a charitable public Trust, sections 45 and 47 of Trust Act is not attracted

In the present case, it has also come on record that Sri Har Swaroop, father of plaintiff, instituted Original Suit No. 81 of 1959. In para 4 of the plaint, he mentioned that the above Trust was a "Public Trust". The plaint is Ex.-A6. It mention that under the 'will', the lady created a Charitable and Public Trust. The aforesaid document shows an admission on the part of sole Trustee, appointed by Author of the Trust, that the Trust in question was a Charitable Public Trust. The plaintiff claiming his right deriving from Sri Har Swaroop cannot take a different stand. The admission is best evidence. I have no hesitation in holding that the Trust in question constituted by Author of the trust is a Public Charitable Trust. Question No. 1 is answered accordingly.

Once it is held that the Trust in question is a "Public Charitable Trust", Act, 1882 would have no application to the Trust in question. Therefore,

reliance on Section 46 and 47 of the said Act would be wholly erroneous. Question No. 2 is answered accordingly holding that Act, 1882 has no application to the Trust in question, therefore, would not attract Section 46 and 47. It is accordingly answered against the plaintiff-appellant. **(Bhupender Kumar v. Arya Patinidhi Sabha, 2016 (114) ALR 315)**

Sections 46, 47- Attractibility of

Once it is held that the Trust in question is a "Public Charitable Trust". Act, 1882 would have not application to the trust in question. Therefore, reliance on section 46 and 47 of the said Act would be wholly erroneous. Question No. 2 is answered accordingly holding that Act, 1882 has no application to the Trust in question, therefore, would not attract section 46 and 47. It is accordingly answered against the plaintiff-appellant. **(Bhupender Kumar v. Arya Pratinidhi Sabha and another, 2016 (130) RD 758)**

Interpretation of Statutes

Words of statue must be given meaning and effect and an interpretation should not be adopted which would render any part of the statutory provision meaningless

The well settled principle of interpretation, the words of statute must be given meaning and effect and an interpretation should not be adopted which should render any part of the statutory provision meaningless. The words which the legislature uses cannot be regarded as being without any meaning or implication and must be imparted some significance. A contextual and purposive interpretation must in these circumstances be adopted. **(Ram Sewak Shukla v. State of U.P. through Chief Secretary, U.P. Govt, 2016 (13) RD 115)**

Interpretation of statutes- Depends upon the text and cader- Normal rule is to read the words of statute in ordinary sense- Rational meaning to be given in case of ambiguity

Interpretation of a provision depends on the text and the context, RBI v. Peerless (1987) 1 SCC, para 33. Normal rule is to read the words of statute in ordinary sense. In case of ambiguity, rational meaning has to be given. In case of apparent conflict, harmonious meaning to advance the object and intention of legislature has to be given. **(Prakash and others v. Phulawati and others, 2016 (130) RD 718)**

Juvenile Justice (Care and Protection of Children) Act

Section 2 (d)-Scope of- Newly born Child of rape victim is clrearly a child

in need of care and protection U/s 2(2)

The newly born child of the victim is clearly a child in need of care and protection as per Section 2(d) (iv) and Section 2(d) (v).

Section 29 provides for Child Welfare Committee, which reads as under:-

(1) The State Government may, (within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette constitute for every district), one or more child Welfare Committees for exercising the powers and discharge the duties conferred on such Committee in relation to child in need of care and protection under this Act.

(2). The Committee shall consist of a chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

(3). The qualifications of the chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

(4). The appointment of any member of the Committee may be terminated after holding inquiry, by the State Government, if-

(i). he has been found guilty of misuse of power vested under this Act;

(ii). he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii). he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three fourth of the sitting in a year.

(5) The Committee shall function as a bench of magistrates and shall have the powers conferred by the Code of Criminal procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a judicial Magistrate of the first class.

Chapter IV deals with rehabilitation and Social Reintegration

Section 40 provides for the Process of rehabilitation and social reintegration which reads as under:-

The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out

alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organization.

Section 41(2) provides that the adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

Section 42 provides that foster care may be used for temporary placement of those infants who are ultimately to be given for adoption.

The Central Government, Ministry of Child & Women Development, in pursuance of the powers conferred by Section 41 (3) of the Juvenile Justice (Care & Protection of Children) Act, 2000, has notified the "Guidelines Governing Adoption of Children, 2015", to provide for the Regulation of adoption of orphan, abandoned or surrendered children.

The expressions orphan, abandoned and surrendered have been defined under the Guidelines 2015 which are as under:-

Para 2 (2) defines abandoned as under:-

"abandoned' means an unaccompanied and deserted child as declared abandoned by the Child Welfare Committee after due inquiry;

Para 2 (23) defines of Orphan as under:

"Orphan" means a child (i) who is without parents or legal guardian; or (ii) whose parents or legal guardian is not willing to take, or capable of taking care of the child;

Para 2 (33) defines surrenders child as follows:-

"Surrendered child" means a child who in the opinion of the child welfare committee is relinquished on account of physical emotional and social factors beyond the control of the parent or legal guardian;

The newly born child is a 'child in need of care and protection' and falls within the expression 'Surrendered or orphan child'. The necessary directions for her rehabilitation including adoption are thus required to be issued to the competent authority under the JJ Act read with the Guidelines 2015 in the welfare of the child. **("A" Through Her Father "F" v. State of U.P. and others, 2016 (1) ALJ 625)**

Age of Child/Victim can be determined on the priority which has been given in rule 12 of (2007) related to JJ Act.

The Act is a special enactment made by the parliament of deal with the cases of juvenility. The provision in Rule 12 for determining the age of a child or a juvenile in conflict with law is a special provision.

The order of priority has been dealt with in a judgment of the Supreme Court in Jarnail Singh v. State of Haryana, AIR 2013 SC 3467. While interpreting Rule 12, the Supreme Court observed that Rule 12 must apply

both to a child in conflict with law as well as to a victim of crime.

The learned single Judge therefore cannot be faulted for having adopted the course of action as was followed in placing reliance on the High School Certificate. The approach is in accordance with the provisions of Rule 12. **[Ali Mohammad v. State of U.P. and others, 2016 (1) ALJ 54]**

Land Acquisition Act

Section 18- Land acquisition –Determination of market value- size of land acquired is the important factor

The size of the land, therefore determine market value. It cannot be , would constitute an important factor to be doubted that small size plot may attract a large number of persons being within their reach which will not be possible in respect of large block of land wherein incumbent will have to incur extra liability in preparing a lay out and carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers etc. The Court said that in such matters, factors can be discounted by making deduction by way of an allowance at an appropriate rate ranging between 20% to 50%, to account for land, required to be set apart for carving out road etc. and for plotting out small plots. **(M/s Indian Oil Corporation Ltd. V. Jai Ram and another, 2016 (13) RD 767)**

Section 23- For ascertaining the market value of land the potentiality of the acquired land should also be taken into consideration

In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. (Ref. Valliyammal and another v. Special Tahsildar Land Acquisition and another (2011) 8 CC 9 Paras 13, 14,15,16 17, 18 and 19) **(Power Grid Corporation of India Ltd. v. Chandru and another, 2016 (114) ALR 389)**

Limitation Act

Section 5- Condonation of delay – Ground of – If the order was passed without any notice to a defendant then it is a sufficient cause for condonation of delay

In the present case, respondent-2 has stated that order dated 22.01.1999 was passed without giving notice to his father and was an exparte order. The petitioner, in his objection, has stated that notice was served by pasting it on the door of Abdul Mazid. Thus there was no personal service of notice of reference

upon Abdul Mazid. The only objection of the petitioner was that respondent-5 had knowledge of the order from very beginning. But he could not adduce any evidence to prove this allegation. If the notice was not served and an exparte order was passed then in view of Section 201 of U.P. Land Revenue Act, 1901, the order was liable to be recalled. The application for recall of the order is required to be filed within fifteen days of communication of the order. The petitioner failed to prove that order dated 22.01.1999 was ever communicated to Abdul Mazid or respondent-2. Restoration application cannot be said to time barred. In any case, if the order was passed without any notice to a defendant then it was a sufficient cause for condonation of delay. **(Abdul Wadood v. Upper Ziladhikari (Bhu Rajswa), 2016 (114) ALR 724)**

Section 54- Suit for mandatory injunction for recovery of possession – Limitation – Consideration of

A suit for mandatory injunction was filed by Smt. Sushma daughter of Lilpat on the ground that the defendant was inducted as a licensee in March 1996 by her father. Even after expiry of the period of license, he did not vacate the house in question. The father of the plaintiff died in January 1997, leaving behind his widow, two daughters, the plaintiff and her sister Km. Poonam. Her mother Smt. Vidhyavati also died within a short time thereafter. The plaintiff was minor at the time of death of her parents. After some time she made oral request to the defendant to vacate the house in question but received no response. Ultimately, a notice dated 17.3.2009 was sent through registered post, which was duly served upon the defendant. Despite clear intention shown by the plaintiff in the notice dated 17.3.2009, the defendant had continued in possession of the house in question. The defendant neither responded to the notice nor vacated the house in question and hence the cause of action for filing the suit arose after expiry of the period given in the notice.

A relief for mandatory injunction was sought with the relief for a direction to the defendant to handover the vacant possession of the house in question.

The relevant observations of the Apex Court in Joseph Severance & Others on the plea of delay taken in the Second Appeal in paragraph 15 are as under:-

> "The explanation offered by the plaintiffs is plausible. The defendants did not specifically raise any plea that the time taken was unreasonable. No evidence was led. No specific plea was raised before the trial court and first appellate court. The question of reasonable time was to be factually adjudicated. For the first time in the second appeal the dispute essentially founded on factual foundation could not have been raised"

The same view has been taken by the learned Single Judge of this Court

in the case of Ram Shankar Shukla following the above dictum of the Apex Court. It was found that the Second Appeal raising the question about the maintainability on the plea of acquiescence was liable to be dismissed on the ground that these questions did not arise therein. It was held that such a plea was not taken before the Courts below. The plea of acquiescence or delay on the part of the plaintiff is not instituting the suit at the earliest is essentially a question of fact which needs pleading and evidence. As this question was not raised before the Courts below, the defendant could not be permitted to raise this factual controversy not pleaded in the written statement for the first time in Second Appeal.

Applying these principles, on the facts of the present case it is not possible to hold that there was a delay in filing the suit so as to dis-entitle the plaintiff to get the relief claimed. The suit has been filed soon after sending a registered notice asking the defendant to handover vacant possession of the house in question in the year 2009. By means of this notice the plaintiff who had stepped into the shoes of the licensor and allowed the defendant to occupy the suit property as a licensee had terminated the license. Service of notice is not denied by the defendant and hence his occupation after revocation of the license by the notice dated 17.3.2009 in view of express intention shown by the plaintiff is only that of a trespasser. He cannot be allowed to occupy the suit property. A suit for mandatory injunction for recovery of possession of the property instituted after revocation of license is clearly maintainable. Moreover, the defendant had made an attempt to set up his title over the suit property in which he had utterly failed. **(Dharma Veer Singh Vs. Smt. Sushma, 2016 (2) ALJ 4)**

Motor Vehicles Act

Sections 169 and 176- U.P. Motor Vehicles Rules, R. 221- Scope of- Under the Act and Rules the claim Tribunals has not been invested with power of substantive review , they can only make changes in the award when there is any human error or in a case of procedural review

Under the Act and the Rules framed there under, the Motor Accident Claims Tribunal has not been invested with the power of substantive review given to a Civil Court by section 114 and Order XLVII, CPC. There is even no provision under the Act or the Rules wherefrom such power can be said to be impliedly conferred on a Motor Accident Claims Tribunal. Thus, the Motor Accident Claims Tribunal can only make changes in the award if the case falls under the first three categories delineated above and not where a substantive review is sought on merits. **(M/s . R.K.B.K. Ltd. Through its Manager v. Sushila Devi and others, 2016 (114) ALR 67)**

Practice and Procedure

Eviction suit- General rule- That no trespasser should be evicted except in accordance with process of Law- This legal position is also certain that not injunction can be granted against true owner at 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 (37) ALR 572 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, 2016 (130) RD 821)**

Plea of opportunity of hearing and evidence not afforded to appellant raised directly in second appeal not in trial court and fist appellate court effect of

Contention of learned counsel for the appellant is not acceptable that opportunity of hearing and opportunity for adducing evidence were not afforded to appellant. In fact perusal of the original records reveal that such opportunities were given but only plaintiff side had adduced evidences of expert. So far the contention of allegedly non affording such opportunity is concerned, it is not acceptable because the same has also not been taken either before the trial court or before the first appellate court. Even in memo of appeal, no such plea was raised so appellant is stopped from raising such averment. Such plea cannot be raised directly is second appeal to the prejudice of respondent/plaintiff. **(Mamta Gupta (Smt.) v. Ramesh Chandra Gupta, 2016 (1) ARC 321)**

Person has to establish his case pleaded-

The facts of the case briefly stated are that the land in dispute in the basic year, was recorded in the name of Gulam Sabir son of Amir Hussain. An objection under Section 9-A (2) was filed by one Gulam Sabir praying that his parentage be corrected to Amir Hussain in place of Mohammad.

All the other contentions raised on behalf of the petitioners are basically about lacuna in the case of the respondents. Since initially an objection where-from the proceedings arose, was an objection filed by the father of the petitioners, it is for them to establish their case and they cannot be permitted to derive any benefit from the weakness, if any, in the case of the respondents. **(Abdul Salam v. Deputy Director of Consolidation Rampur, 2016(130) R.D. 375)**

Protection of Women from Domestic Violence Act

Section 12-- Whether Divorced wife can claim maintenance- yes.

In the present case it has been alleged by the opposite party No. 2 that she was physically assaulted and driven out of her matrimonial home and thereafter was neglected by not providing her maintenance even though the applicant was gainfully employed and she had no source of income. From the allegations it, therefore, appears, at least prima facie, that she was subjected to an act constituting domestic violence while she was in domestic relationship with the respondent (applicant herein) during subsistence of marriage. Accordingly, her application under the Act is maintainable. **[Rajeev Kumar Singh v. State of U.P. & another, 2016 CRI.L.J. 811 Allahabad High Court**].

Provincial Small Causes Courts Act

Section 25 –Ejectment suit –Tenancy terminated after serving notice- No defect in the notice terminating tenancy- Suit rightly decreed

The defendant-revisionist assails the validity of the judgement rendered by the Judge Small Causes Court on 8 December 2015 decreeing the suit instituted by the plaintiff-respondent. The tenancy is stated to have been created firstly on 1 June 2001 and ultimately came to be extended in the statement of the revisionist for a period of 5 years pursuant to a rent agreement dated 17 March 2011. The plaintiff respondent terminated the tenancy by issuing a notice under Section 106 of the Transfer of Property Act on 16 February 2015 and the suit itself came to be instituted thereafter.

Having heard the learned counsel for the parties, it appears that the rent agreement dated 17 March 2011 which allegedly provides a tenancy for a period of 5 years was an unregistered agreement. Since the term of the tenancy was for a period of more than one year it was compulsorily registerable. It is admitted to the learned counsel for the revisionist that this unregistered agreement could not be read for except collateral purposes. No defect could be pointed out in respect of the notice under Section 106 of the Transfer of Property Act. For the aforesaid reasons, this Court finds no merit in the present revision nor has any manifest error of facts or law been pointed out in the judgment impugned herein. It shall accordingly stand dismissed. **(Chirag Gupta v. Dr. Rajeev Garg, 2016 (1) ARC 542)**

Registration Act

Sections 17, 49- Unregistered sale deed- Effect of- It is admissible in evidence only for collateral purposes and could not be used for purpose of saying that deed created, declared assigned or extinguish a right to immovable property

In this matter learned counsel for the respondent contends that even if the two sale deeds were not registered, but they should certainly be looked into for collateral purpose and a bare perusal of two sale deeds reveals that on 21.2.2014 and 22.2.2014, the respondent/plaintiff was put on possession of plots in suit and in view of above, learned counsel tried to justify the impugned order.

This proposition is correct that if a document is invariably registrable and has not been registered, it will be admissible in evidence only for collateral purposes but collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguish the right to immovable property. If the document is unregistered then it could not be used for showing that it created, declared, assigned or extinguish a right to immovable property. The term collateral purpose could not permit the party to establish any of these acts from the deed. **(Vinod Kumar And 3 Others Vs. Sudha Land Ventures And Homes Pvt. Ltd., 2016 (2) ALJ 254)**

Rent Laws

Release application has been allowed by both courts below- Challenged on the ground that the applicant failed to proof sole owner of disputed property, hence release application not maintainable –Validity of

In this case, Challenging the concurrent findings recorded by both the

Courts below on the issue of relationship of landlord and tenant, the contention of the learned counsel for the petitioner is that the applicant has failed to prove that he is the sole owner of the disputed property.

Court observed from the evidence on record it could not be proved that Smt. Chandan Devi is the sole owner rather evidence shows that applicant Ramesh Kumar is the co-owner of the property and rent receipts filed by the applicant also establish that the rent had been tendered to Ramesh Kumar by the petitioner. Further the alternative submission is that even if the petitioner has not been able to prove that Smt. Chandan Devi is the sole owner,however since the evidence on record proves that the applicant is only a co-owner, at least this much can be inferred that Smt. Chandan Devi had objected to the release application and therefore release could not be proceeded.

This contention of the learned counsel for the petitioner cannot be accepted for the simple reason and in view of her objection it can not be presumed. Her contention was that the applicant is a rank outsider which could not be proved by the evidence on record. The court cannot go beyond the pleadings and draw its own inference as suggested by the learned counsel for the petitioner. **(Rajju @ Raja Ram v. Ramesh Kumar And 2 Others, 2016 (1) ARC 248)**

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act

Sine qua non for application of Section 3(2) (v) of SC/ST Act is that an offence must have been committed against a person on the ground that such person is a member SC/ST Community.

The provision of Section 3(2) (v) of the SC/ST Act, as noted above provides that person can be punished under this provision only when he commits such offence against a person of the SC/ST community on the ground that such a person/victim is a member of SC/ST. From the evidence in the present case, it appears that alleged act of the present case, it appears that alleged act of the victim going with the accused-appellant had been committed because the victim was not willing to live with her parents and they had developed love and intimacy, and not for any other reason. It was not prosecution case that offence was committed because the victim belongs to the scheduled-caste community. At least there is no evidence in this regard. Therefore, we are of the considered opinion that had the factum of charges been proved, in that event also, the accused-appellant cannot be punished for the offence punishable under Section 3(2)(v) of SC/ST Act.

As Hon'ble Supreme Court already discussed in Dinesh alias Buddha v. State of Rajasthan, AIR 2006 SC 1267 and in Ramdas v. State of Maharashtra

AIR 2007 SC 155**. [Ishwar Kewat v. State of U.P., 2016 (1) ALJ 37], [Guddu Urf Raghvendra, Arjun Singh v. State of U.P., 1016 CRI.L.J. 1314].**

Societies Registration Act

Membership of Society- Dispute with regard to –No person has any vested or fundamental right to become member of a society

The right to form Associations guaranteed under Article 19 (1) (c) of the Constitution of India though fundamental but does not inheres in a person a right to become a member of any Association in existence by force or against the wishes of its existing members. Thus, no person has any vested or a fundamental right to become a member of a Society merely for the reason that he fulfils the eligibility conditions unless he is accepted to be a member by the Society itself.

In Smt. Damyanti Naranga Vs. Union of India and others 1971 (1) SCC 678 the Constitution Bench of 5 Judges while considering the right of the citizens to form association or Union under Article 19 (1) (c) of the Constitution held that freedom of association includes right to associate with persons of one's choice. It was held that right to form an association, in the opinion of the Court necessarily implies that the persons who form the association have also the right to continue to be associated with only those, whom they voluntarily admit in the association.

In view of the above legal position no person even if he is eligible and qualified to be member of a Society has any right to be admitted as member until and unless the persons forming the association or running the same voluntarily accepts him to be a member. The aforesaid 7 persons have not been accepted to be members of the Society by its Managing Committee or the general body. Thus, they can not be thrust upon the Society as members.

In the instant case, the validity of the members of the Society was not in dispute rather the complaint was that the 7 persons were arbitrarily left out from being enrolled as members of the Society.

The order of the High Court dated 30.5.2012 passed in Writ Petition No. 28022 of 2012 also does not confer any power upon the Registrar/Assistant Registrar to decide if the said 7 persons are entitled to be enrolled as members. It only directs to adjudicate about the validity of the members of the Society. In deciding the validity of the membership, the Assistant Registrar was not possessed of any power to rule about the persons who were never accepted as members. He could have only decided if the existing members have been legally enrolled or if any of the them has been illegally thrown out.

The ratio of the above decision is that a dispute of membership/electoral roll of

any organization is not open to challenge before the elections and if necessary, could be challenged after the elections are over or by filing a civil suit. The 7 persons who have been denied membership of the Society could have taken recourse to the civil suit but the Assistant Registrar could not have usurped the jurisdiction to direct the Society for giving membership to them. Such a direction is even contrary to the bye laws of the Society.

In view of the above facts and circumstances, the impugned order dated 30.6.2012 passed by the Assistant registrar is held to be without jurisdiction and is quashed. The consequential order of the DIOS dated 29.8.2012 also falls to the ground.**(Maharashtra Shikshan Mandal, Jhansi and another v. State of U.P. Thru. Secy. And another, 2016 (114) ALR)**

Service Laws

Compassionate Appointment- Purpose and scope

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.

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 others, 2016 (34) LCD 475)**

Constitution of India- Compassionate Appointment –Discretion to relax period of Limitation on –Determination of

The father of the respondent died on 31.07.2001. The first application claiming compassionate appointment was moved on 20.02.2002. This application was within time. In this application, name, age and other details pertaining to all family members of the deceased employee, particularly about their marriage, employment and income and details of the financial crises as required under Rule 6 was not mentioned. The application was not maintainable for the want of requisite details. However, the claim of the respondent has been entertained and the respondent has been given the opportunity to appear in Sub Inspector (M) test, for which he was eligible but he failed. The application claiming the compassionate appointment on the post of Sub Inspector was moved on 09.09.2008. This application was beyond the period of five years. In the said application, name of the family members, age of the family members and other details pertaining to all family members of the deceased employee, particularly about their marriage, employment and income, which was required under Rule 6 and was mandatory was not provided. Therefore, the application was not maintainable at all. It may be mentioned here that these details are required to assess that whether any financial help to meet the financial crises, which arose on account of the death of the deceased employee was required, by way of compassionate appointment or not.

Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner. The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government, after considering all the facts to take an appropriate decision. The power of relaxation is in the nature of an exception and is subject to the existence of objective consideration to the satisfaction of the Government.

In the present case, no reasonable justification has been given nor any document has been filed explaining the cause of delay. Therefore, we are of the view that the State Government has rightly refused to relax the period. **(State of U.P. and others v. Raj Surya Pratap Singh, 2016 (1) ALJ 609)**

Date of Birth –Proof

There are only two requirements namely the extract of the voters list and the Affidavit/declaration of the candidate for the purpose of age.

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, Uttar Pradesh and others, 2016 (34) LCD 541)**

Promotion- Criminal prosecution- Charges against petitioner for financial misappropriation- on date of recommendation of promotion, charge-sheet not filed –Promotion kept in scaled cover- Petition against it

The petitioner is aggrieved with the office order dated 13 October 2014 issued by the Finance Department of the State Government, whereby the State Government has declined to act upon the recommendations of the selection committee for the reason that petitioner is facing a criminal prosecution in which the charge sheet has been filed in the Court. A criminal case had been registered as case crime No. 156 of 2002 P.S. Maniar District Ballia against the petitioner under Sections 420, 467,468 & 471 I.P.C. and under Sections 7/13 of the Prevention of Corruption Act. Therefore, the petitioner's matter of promotion was kept in sealed cover in terms of office memorandum dated 28 May 1997.

The subject of the office memorandum is "The determination of procedure for following sealed cover proceedings in matters relating to promotion of State Government employees".

While pendency of a criminal prosecution against the petitioner, his matter was also considered by the selection committee and the recommendations of the Selection Committee was kept in a sealed cover.

The charge against the petitioner is of financial misappropriation. Indisputably the State Government had sanctioned the prosecution to prosecute the petitioner on 2 February 2011. Later on the Departmental Promotion Committee held a meeting on 31 August 2012 and recommended the petitioner's case for promotion, however, the charge-sheet was filed on 18 September 2002. The dates and events enumerated above show that on the date of recommendation of petitioner's promotion by the Departmental Promotion Committee, the charge-sheet was not filed in the Trial Court.

In view of the aforesaid proposition of law laid down by the Hon'ble Supreme court, we are of the view that the pendency of prosecution is not based upon the submission of charge-sheet in the competent Trial Court. Once the competent authority took a decision to initiate a criminal proceeding and sanctioned the prosecution, it is an appropriate stage to withhold the recommendations of the Departmental Promotion Committee from giving effect to.

In the case on hand the facts as mentioned above show that the prosecution had been sanctioned prior to the decision of Departmental Promotion Committee, therefore, we are of the view that it is the sufficient material to withhold the recommendation of Departmental Promotion Committee from giving effect to. **(Dharam Narain Upadhyaya v. State of U.P., 2016 (1) AWC454)**

Specific Relief Act

Section 16 (c)- Suit for specific performance of contract- Readiness and willingness- Determination

The over all reading of plaint makes it clear that plaintiff had all along being ready and willing to perform his part of contract in question. On the basis of pleadings of the parties, trial court had framed specific issue no. 1 regarding registered agreement to sell being legally executed, and issue no. 2 that whether plaintiff had always being ready and willing to perform his part of contract. Parties had given evidences on these points, therefore, there is likelihood of any infringement of legal right of defendant-appellant as no prejudice has been caused to her. It is also pertinent to mention here that the defence case of written statement about registered agreement to sell or its pleading for cancellation of registered agreement to sell dated 12.2.2009 had not been proved by defendant-appellant side. It is also pertinent to mention that even first appellate court had given specific finding of fact that plaintiff had been ready and willing to perform his part of contract dated 12.2.2009 for which he had gone to office of Sub Registrar, Pilibhit and got his presence noted in said office but defendant-appellant absented, due to which sale deed could not be executed. There is specific finding of fact by first appellate court about continuous readiness and willingness of plaintiff-respondent to perform his part of registered agreement to sell in question.

From the aforementioned sequence of facts and events, it can be safely inferred that the respondent-plaintiff was always ready and willing to discharge his obligation and perform his part of the agreement. In my considered opinion,

the undisputed facts and events referred to hereinabove shall amount to sufficient compliance with the requirements of Section 16(c) of the Specific Relief Act. Taking into consideration the entire facts and circumstances of the case and the law discussed hereinabove, in my considered opinion the impugned judgments passed by the trial Court as well as the first appellate Court are not erroneous on this point of law. **(Smt. Tarawati v. Rm Murti Lal Gangwar, 2016 (1) ALJ 600)**

Section 20 –Discretion for granting relief of specific performance- Benefit of S. 20 of S.R. Act, the defendant can't claim the discretion as a matter of right

In present matter promptness, readiness and willingness on the part of plaintiff-appellant for the specific performance of contract in question has been proved by the evidence, as held by the trial court and affirmed by the first appellate court. Simultaneously, the mala fide on the part of appellant after accepting the advance consideration is also proved by evidence, and concurrent findings of the two courts below, which are acceptable. Therefore findings of lower courts are neither infirm nor arbitrary or perverse. In such case it appears fair and reasonable that plaintiff-respondent should not suffer due to overt and acts of the defendant-appellant who had been presenting incorrect defence and harassing the respondents. Other points relating to appellant being allegedly 'pardanasheen' lady or alleged fraud being committed with her are unacceptable in presence of evidence and concurrent finding of facts against appellant on this point. The counsel for appellant had also pointed that it is the duty of the court to consider suo moto for consideration of applicability of section 20 of the Specific Relief Act in favour of appellant-defendant. I am not in agreement with this contention. There has been guidelines laid down by the Apex Court which should be followed for reaching the decision as to whether in suit for specific performance benefit of Section-20 of the Specific Relief Act should be granted to the defendant or not; but the defendant cannot claim this discretion as a matter of his right. **(Reshamwati (Smt.) v. Naubat Rama, 2016 (1) ARC 103)**

Section 20 (2) –Invoking of- Benefit of S. 20 of above Act could not be claimed by the defendant as right

Original Suit No. 342/2002, Naubat Ram Vs. Smt. Reshwamwati was filed for the relief of specific performance of contract of sale of property of defendant in favour of plaintiff. This suit was decreed by the judgment dated 10.04.2014 of Addl. Civil Judge (S.D.), Badaun. Against this judgment of trial court, Civil Appeal no. 10/2014, Smt. Reshamwati Vs. Naubat Ram was preferred which was dismissed on merits by the judgment dated 16.09.2015 of

the Additional District Judge, Court No. 9, Budaun, who had confirmed the findings of the trial court for specific performance of contract. Aggrieved by the judgment of the two courts below, present second appeal has been preferred by the defendant of the original suit.

So far factual aspect is concern, it was not challenged by the appellant. A perusal of the record reveals that there has been consistent and concurrent finding of fact on above mentioned point. Therefore, execution of registered agreement to sell has been proved and it is also proved that plaintiff-respondent has been ready and willing to perform his part of the contract, but it could not be executed due to fault of defendant-appellant.

In present matter promptness, readiness and willingness on the part of plaintiff-appellant for the specific performance of contract in question has been proved by the evidence, as held by the trial court and affirmed by the first appellate court. Simultaneously, the mala fide on the part of appellant after accepting the advance consideration is also proved by evidence, and concurrent findings of the two courts below, which are acceptable. Therefore findings of lower courts are neither infirm nor arbitrary or perverse. In such case it appears fair and reasonable that plaintiff-respondent should not suffer due to overt and acts of the defendant-appellant who had been presenting incorrect defence and harassing the respondents. Other points relating to appellant being allegedly 'pardanasheen' lady or alleged fraud being committed with her are unacceptable in presence of evidence and concurrent finding of facts against appellant on this point. The counsel for appellant had also pointed that it is the duty of the court to consider suo moto for consideration of applicability of section 20 of the Specific Relief Act in favour of appellant-defendant. I am not in agreement with this contention. There has been guidelines laid down by the Apex Court which should be followed for reaching the decision as to whether in suit for specific performance benefit of Section-20 of the Specific Relief Act should be granted to the defendant or not; but the defendant cannot claim this discretion as a matter of his right. In the light of law discussed above there appears no propriety for this court to exercise its power to interfere in the judgments of the two courts below for granting any relief to the appellant.

On examination of the reasonings recorded by the trial court, which are affirmed by the learned first appellate court in first appeal, I am of the view that the judgments of the trial court as well as the first appellate Court are well reasoned and are 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. **(Smt.**

Reshamwati v. Naubat Rama, 2016 (114) ALR 580)
Sections 38 and 41- Perpetual Injunction –When can be granted – Perpetual injunction can be granted only to prevent defendant from committing breach of an obligation

In this regard, Court refer to Sections 38 and 41 of Act, 1963, which read as under:

"38. Perpetual injunction when granted.-- (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:--

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings."

"41. Injunction when refused.--An injunction cannot be granted—

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other

usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter."

A perpetual injunction, thus, in the light of Section 38 of Act, 1963 may be granted to prevent breach of an obligation existing in favour of plaintiff. Sub-Section (2) further says that if such application has arisen from contract, the Court shall be guided by the rules and provisions contained in Chapter II. Meaning thereby, it has to be seen whether agreement is enforceable or not and whether plaintiff himself as complied with the obligation which he was to observe under the agreement. Further, injunction may be granted when defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property. **(New Okhla Industrial Development Authority v. M/S. Marwan Hotels Pvt. Ltd. 2016 (115) ALR 79)**

Stamp Act

S. 47- A (U.P. Amendment)- Stamp duty on sale deed- Determination of– Taxable event is date of execution of instrument, future use of property is irrelevant.

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 is 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. **(Sri Sumati Nath Jain Vs. State Of U.P. And Another, 2016 (2) ALJ 292)**

Statutory Provisions

English Translation of Nyaya Anubhag-2 (Adhinasth Nyayalaya), Not. No. 5/2016/1684/VII-Nyaya-2-2015-202(34)- 76, dated January 29, 2016, published in the U.P. Gazette. Extra, Part 4, Section (Kha), dated 29th January,2016, p. 2

In exercise of the powers under Section 4, 13 and sub-section (1) of Section 14 of the **Bengal, Agra and Assam Civil Courts Act, 1887** (Act No. XII of 1887) and Section 5 of the **Provincial Small Causes Act, 1887** (Act No IX of 1887) read with Section 21 of the **General Clauses Act 1887** (Act No. X of 1887), the Governor in consultation with the High Court of Judicature at Allahabad, is pleased to notify the Court of the Civil Judge (Senior Division) at Tehsil Mohammadi in the district of Lakhimpur-Kheri. With effect from the date of taking over charge by the Presiding Officer in respective "Court to fix the local limits of jurisdiction and the place of sitting of such Court and to make the following amendment in the Schedule appended to Notification No. A-1104/VII-710-53, Dated April 12, 1956, as amended from time to time.

AMEMDMENT

In the Schedule to the aforesaid notification-

(1) For the existing entry at Serial No. 134, the following new entry shall be substituted, namely-

Sl. No.	Name of Court	Revenue areas forming limits of jurisdiction	Place or places for sitting	Combined Office	Title
1	2	3	4	5	6

134	Civil Judge (Senior Division)	Whole revenue area of district Lakhimpur-Kheri excluding the revenue area of Tehsil Mohammadi in the district Lakhimpur-Kheri	Lakhimpur-Kheri	-	Civil Judg (Senior Division) A Lakhimpur-Kheri)

(2) After entry at Serial No. 134, the following new entry at Serial No. 134-A, shall column wise be inserted, namely-

Sl. No.	Name of Court	Revenue areas forming limits of jurisdiction	Place or places for sitting	Combined Office	Title
1	2	3	4	5	6
134-A	Civil Judge (Senior Division)	Whole revenue area of Tehsil Mohammadi of district Lakhimpur-Kheri	Mohammadi	-	Civil Judg (Senior Division) A Mohammadi

English translation of Upbhokta Sanrakshan Evan Bant Maap Anuphag-2, Noti. No. 32/2015/C.P. 221 /84-2-2015- C.P. 29/96, dated November 6, 2015, published in the U.P. Gazette, Extra., Part 4, Section (Kha), Dated 6th November, 2015, pp 3-4

In exercise of the powers under sub-section (2) of Section 30 of the **Consumer Protection Act, 1986** (Act No. 68 of 1986), the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Consumer Protection Rules, 1987 (1988-LLT-V- 291 [152])

1. **Short title and commencement. –** (1) These rules may be called the Uttar Pradesh Consumer Protection (Twelfth Amendment) Rules, 2015

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

2. **Amendment of Rule 3.** – In the Uttar Pradesh Consumer Protection Rules, 1987 hereinafter referred to as the said rules, in Rule 3 for the existing sub-rule (1), the following sub-rule shall be substituted, namely-

   "(1) (a) the President of District Forum shall receive the salary of the Judge of a District Court if appointed on whole time basis. A member if sitting on whole time basis, shall receive a consolidated honorarium of Rs.

13, 950 per month.

(b) the President of the District Forum shall receive House Rent Allowance of Rs 3290 per month if appointed on whole time basis and not Government accommodation is provided to him.

(c) The Member of the District Forum shall receive House Rent Allowance of Rs 2470 per month if appointed on whole time basis and no Government accommodation is provided to him."

3. **Amendment of Rule 6.-** In the said rules, in Rule 6 in sub-rule (1), for the existing clauses (a) and (c), the following clauses shall be substituted, namely-

"(a) the President of the State Commission shall receive the salary of the Judge of the High Court if appointed on whole time basis. A member if sitting on whole time basis shall receive a consolidated honorarium of Rs. 20 910 per month.

(c) The Member of the State Commission shall be entitled to rent free Government accommodation, if no such accommodation is provided, to the Member of the State Commission, he shall get house rent allowance of Rs. 4110 per month".

Ministry of Women and Child Development, Noti. No. S.O. 110 (E), Dated January 12, 2016, published in the Gazette of India, Extra., Part II, Section 3 (ii), Dated 13th January, 2016, p1, No. 96

In exercise of the powers conferred by sub-section (3) of Section 1 of the **Juvenile Justice (Care and Protection of Children) Act, 2015** (2 of 2016) (2016 –CCL-II-14), the Central Government hereby appoints the 15th day of January, 2016 as the date of which the said Act shall come into force.

Ministry of Environment Forest and Climate Change, Noti. No G.S.R. 13 (E), Dated January 7, 2016 published in the Gazette of India, Extra., Part II Section 3(i) Dated 7th January, 2016 pp. 2-3 No. 13

In exercise of the powers conferred by Section 22 of the **Prevention of Cruelty to Animals Act, 1960** (59 of 1960), and in supersession of the notification of the Government of India in the Ministry of Environment and Forest, Government of India, number G.S.R. 528 (E), dated the 11th July, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, hereby specifies that the following animals shall not

be exhibited or trained as performing animal, with effect from the date of publication of this notification, namely-

1. Bears
2. Monkeys
3. Tigers
4. Panthers
5. Lions
6. Bulls

Provided that bulls may be continued to be exhibited or trained as a performing animal, at events such as Jallikattu in Tamil Nadu and bullock card races in Maharashtra, Karnataka, Punjab, Haryana, Kerala and Gujarat in the manner by the customs of any community or practiced traditionally under the customs or as a part of culture, in any part of the country subject to the following conditions, namely-

(i) Such event shall take place in any District where it is being traditionally held annually, at such place explicitly permitted by the District Collector or the District Magistrate;

(ii) Bullock cart race shall be organized on a proper track, which shall not exceed two kilometers. In case of Jallikattu, the moment the bull leaves the enclosure, it shall be tamed within a radial distance of 15 metre;

(iii) Ensure that the bulls are put to proper testing by the authorities of the Animal Husbandry and Veterinary Department to ensure that they are in good physical condition to participate in the event and performance enhancement drugs are not administered to the bulls in any form; and

(iv) Ensure that the rights conferred upon the animals under Section 3 and clause (a) and clause (m) of sub-section (1) of section 11 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960) and five freedoms declared by the Hon'ble Supreme Court in its order, dated 7th May, 2014 in Civil Appeal No 5387 of 2014 are fully protected during such event:

Provided further that any event of Jallikattu or bullock cart races so organized shall be held with the prior approval of the District Authorities concerned:

Provided also further that the Jallikattu or bullock cart races so organized shall be duly monitored by the District Society for Prevention of Cruelty to Animals and State Animal Welfare Board or the District Authorities as the case may be, ensuring that no unnecessary pain or suffering in inflicted or caused, in any

manner, whatever, during the course of such events, or in preparation thereof.

Ministry of Social Justice and Empowerment, , Noti. No S.O. 152 (E), Dated January 18, 2016 published in the Gazette of India, Extra., Part II Section 3(i) Dated 18th January, 2016 pp. ,1 No. 136

In exercise of the powers conferred by sub-section (2) of Section 1 of the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015** (1 of 2016 (2016 –CCL- II-3), the Central Government hereby appoints the 26th day of January, 2016 as the date on which the provisions of the said Act shall come into force.

U.P. Consolidation of Holding Act

Exparte order- Recalling of- Every Court/Tribunal has inherent jurisdiction to recall exparte orders- Explained

So far as recalling of ex parte order is concerned, every Court/Tribunal has inherent jurisdiction to recall the ex parte orders. This powers is derived upon the maxim "actus coriae neminem gravabit." By act of the Court no one should suffer any injury. If a Court /Tribunal passed ex parte order in violation of principles of natural justice then it has jurisdiction to recall its such order on the application of aggrieved person.

Supreme Court again in Rabindra Singh v. Financial Coop (2008) 7 SCC 663 held that what matters for exercise of jurisdiction is the source of power and not the failure to mention the correct provisions of law. Even in the absence of any express provision having regard to the principles of natural justice in such a proceeding, the courts will have ample jurisdiction to set aside an ex parte decree, subject of course to the statutory interdict. Same view has been again taken in Sunitadevi Singhania Hospital Trust v. Union of India, (2008) 16 SCC 365. **(Mumtaz Ahmad and others v. D.D.C., Lucknow and others 2016 (130) RD 3)**

S. 4 (2) – Effect of notification under- As per provision of Sec. 5 (2) of the Act all proceedings pending before Revenue Court or civil courts shall stand abated

Act deals with the effect of notification under Section 4 (2) of U.P.C.H. Act. Under Section 5 (2) (a) of U.P.C.H. Act it has been provided that upon the publication of notification under sub-Section (2) of Section 4 U.P.C.H. Act the consequence would be that every proceeding for correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether the first instance or of appeal,

reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stand abated, meaning thereby that all the proceedings pending before any revenue or Civil Court shall stand abated on the issuance of a notification under Section 4 (2) of U.P.C.H. Act. The Court in this regard is required to pass an order to that effect. In the present case in view of Section 5 (2) (a) of U.P.C.H. Act the decree and order dated 15.9.1995 shall also stand abated after issuance of notification under Section 4(2) of U.P.C.H. Act. The Consolidation Authorities in exercise of their powers shall not take cognizance of any such orders said to have been passed in the suit file under Section 229-B of U.P.Z.A. & L.R. Act. **(Ramzan Ali and others v. Board of Revenue, U.P. and others, 2016 (130) RD 620)**

Sections 9. 12, 48- Allotment of Chak- Petition for quashing the order of D.D.C. Which was passed without summoning or perusing record of proceeding before consolidation officer and settlement officer- Consolidation cannot be sustained, Hence impugned order set aside

The writ petition arises out of proceedings for allotment of chaks and seeks for quashing of the order dated 25.08.2015 passed by the Deputy Director of Consolidation whereby he has allowed the revisions no. 1686 and 1688 while a third revision being revision no. 1687 has been dismissed.

The submission of the learned counsel for the petitioner is that revisional court has passed the order impugned without summoning the record of the courts below. The lower court record was neither summoned nor was before the Deputy Director of Consolidation when the impugned order was passed. He, therefore, submits that the impugned order is vitiated in view of the law laid down in the Full Bench decision of this Court in Rama Kant Vs. DDC AIR 1975 (Allahabad) 126.

The impugned order passed by the Deputy Director of Consolidation which has admittedly been passed without summoning or perusing the record of the proceedings before the Consolidation Officer or the Settlement Officer, Consolidation, cannot be sustained and is, therefore, set aside. The writ petition is accordingly allowed and the impugned order dated 28.05.2015 is set aside. The matter is remanded back to the Deputy Director of Consolidation, respondent no. 1 to decide the revisions no. 1686 and 1688 afresh. **(Raj Nath Vs. Deputy Director Of Consolidation, Jaunpur And Others, 2016 (1) AWC 889)**

S. 19 –Second proviso- Scope of- If the tenure holder is allotted more than three chaks with approval of D.D.C, the same would not be invalid

The two provisions have to be read harmoniously. The first proviso provides that no tenure holder may be allotted more than three chaks. In case a tenure holder is to be allotted more than three chaks, this can be done only with the previous approval of the Deputy Director of Consolidation in writing. The second proviso, in my considered opinion must necessarily be held to mean that in case a tenure holder is allotted more than three chaks with the approval of the Deputy Director of Consolidation, the same would not be invalid. Providing any other explanation to the second proviso would make the first proviso redundant. **(Ram Singh and others v. Chief Revenue Office/ D.D.C., Basti and others, 2016 (130) RD 166)**

Section 42-A- Application under –Dismissed only on the ground of maintainability not on merit

In view of Section 27 (2) presumption relating to correctness of the map is rebuttable as such proceeding under Section 28 of the Act for correction of final consolidation map is not barred under Section 49 of U.P. Consolidation of Holdings Act, 1953 as held by Division Bench of this Court in ***Gaffoor v. Additional Commissioner, 1978 AWC 836 (DB)*** and Single Judge in ***Janhitkarini Samiti Kamla Nagar v. Board of Revenue U.P., 1999 ((90) RD 366*** and ***Subhash Dubey v. ADM and others, 2015 (128) RD 210***. The order of dismissal of the application of Rajnath Singh under Section 42-A is concerned, it was dismissed only on the ground of maintainability and not on merit as such fresh application is not barred by res-judicata or under Section 49. **(Lakshmi Raj Singh Rathore v. State of U.P., 2016(130) R.D. 350)**

Section 48- Powers of revisional Court –Revisional Court is last court of fact and competent to record findings both on facts and law

It appears that the Deputy Director of Consolidation who is the last Court of fact and is competent to record findings both on facts and on law in findings both on facts and on law in view of the third explanation to section 48 of the U.P. Consolidation of Holdings Act, has, in my considered opinion, failed to exercise jurisdiction vested in him and has unnecessarily remanded the matter back for afresh decision. Nothing prevented the Deputy Director of Consolidation from examined the natter and passing an appropriate order himself. Even otherwise, the Deputy Director of Consolidation being a Court of fact can direct reconstruction of any record and is also competent to permit evidence to be adduced before him. **(Ramshishya Singh and others v. D.D.C./ADM (F&R) and others 2016 (130) RD 16)**

Section 48- Whether revision against remand order is maintainable

Division Bench of this Court in Deena Nath v. DDC and others, 2010 (28) LCD 1396 (DB) held that revision against remand order is maintainable. Deputy Director of Consolidation found that the matter was 25 years old. None of the parties could adduce any evidence as such instead of remanding the case, Settlement Officer Consolidation ought to have decided the dispute on merit. Deputy Director of Consolidation decided the dispute on merit as such without pointing out any illegality in the order, it cannot be set aside only on the ground that he had interfered with the remand order. **(Girija Singh and others v. D.D.C., Barabanki and others, 2016 (130) R.D. 562)**

Section 49- Language used therein –Wide and comprehensive –Scope of-Explained

The language used in section 49 is wide and comprehensive. Declaration and adjudication of rights of tenure holders in respect of land lying in the area covered by the notification under section 4(2) of the Act and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, would cover adjudication of question as to title in respect of the said lands. **(Ram Murti Tiwari and others v. D.D.C. Unnao and others 2016 (13) RD 18)**

Section 53- Scope of -Exchange u/s 53 is only possible till such line the final revenue records have not been prepared

The writ petition has been filed against the orders of Sub-Divisional Officer dated 30.03.1993, Additional Commissioner dated 18.01.1995 and Board of Revenue U.P. dated 12.11.2000, 25.01.2005 and 04.05.2005 passed in mutation proceeding under Section 34 of U.P. Land Revenue Act, 1901 (hereinafter referred to as the Act).

The dispute between the parties relates to inheritance of Smt. Udai Raji widow of Ram Pal of village Fardaha Sumer, pargana Patti, district Pratapgarh, The petitioner, who is married daughter of Smt. Udai Raji, filed an application for mutation of her name as an heir of Smt. Udai Raji, on the basis of unregistered will dated 14.08.1988, allegedly executed by Smt. Udai Raji in her favour. In order to prove due execution of the will, she examined Shitla Prasad Tewari and Chandra Shekhar Dwivedi, both attesting witnesses of the will and her Power of Attorney. She also filed various documents to prove that Smt. Udai Raji fell ill on 21.08.1984 and was under treatment of Dr. Chintamani till

23.08.1984 and on 23.08.1984, she was admitted in hospital at Sultanpur and will dated 22.08.1984 set up by respondents-4 and 5 is a forged document. It may be mentioned that Smt. Bhagwan Devi, who was other married daughter of Smt. Udai Raji also filed an application for mutation of her name along with petitioner as an heir of Smt. Udai Raji. She later on, withdrew her mutation application, admitting will set up by the petitioner. **(Prabhoo Devi @ Prabhawati v. Board of Revenue, U.P., 2016(130) R.D. 346)**

U.P. Imposition of Ceiling of Land Holding Act

S. 11 (2) –Jurisdiction of Consolidation Courts- These Courts have no right to adjudicate as regards the ceiling proceedings and the Land to be declared.

In Court considered opinion, the consolidation Courts have no right to adjudicate as regards the ceiling proceedings and the land to be declared surplus etc. **(Radhey Shyam Yadav and others v. State of U.P. and others, 2016 (13) RD 168)**

U.P. Krishi Utpadan Mandi Adhiniyam, 1984

Nature of –Mandi Samiti Act is a special Act for the purpose of levy of Market fee

Mandi Samit Act is a special Act for the purpose of levy of market fee and therefore, the definition under section 2(a) in the Act would prevail over the other Acts, wherein "levy of tax" in question is to be interpreted in relation to those Acts. **(Sahkil Ahmad and another v. State of U.P. through the Special Secretary, Ministry of Agriculture Government of U.P. Civil Secretariat, Lucknow and other, 2016 (130) RD 174)**

U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam

Ss. 225 and 228- Powers and Scope of D.M. and Prescribed Authority

There is a clear distinction between the scope and powers of the Prescribed Authority and the District Magistrate viz aforesaid two sections. The aforesaid issue also does not appear to have been either argued or dealt with in the Division Bench judgment in the case of Smt. Gajala Chaudhary (supra). The Commissioner only has the power to annul the action taken by the Zila Panchayat in his capacity as the Prescribed Authority. There is yet another reason for the same, namely, the Zila Panchayat is a democratically elected

local body constituted under the statute and the resolution passed by the Zila Panchayat is an expression of the will of the elected representatives of the public large at the district level. In such a situation the control over Zila Panchayat obviously was intended to be by an authority higher than the District Magistrate/Collector and it is for this reason that the Commissioner was notified as the Prescribed Authority by virtue of a notification. **(Zila Panchayat Balrampur v. Commissioner Devi Patan Division Gonda, 2016 (1) AWC 69)**

U.P. Land Revenue Act

Nature of proceeding under –Summary neither relevant not operate as re judicata in said

The proceedings under the Act are summary in nature. It is neither relevant nor operate as res-judicata in suit. **(Prabhoo Devi @ Prabhawati v. Board of Revenue, U.P., 2016(130) R.D. 346)**

U.P. Panchayat Raj Act

S. 95 (i) (3) –Nature of spat inspection is mandatory of the consolidation officer and also the settlement officer but not for Dy. Director Consolidation

Sub clause (iii-a) of sub section (g) of Section 95 (1) mentions a ground of removal of Gram Pradhan, according to which, in case the Gram Pradhan has taken benefit of reservation on the basis of a false declaration subscribed by him/her stating that he/she is a member of Scheduled Castes, Schedules Tribes or the Other Backward Classes, as the case may be, he/she is liable to be removed. Thus, as per sub clause (iii-a) of Section 95(1)(g) of the Act in case it is found by the State Government that the benefit of reservation has been taken on the basis of some false declaration by a Gram Pradhan stating that he/she belongs to the reserved category and in fact such a declaration is found to be false, he/she can be removed from his/her office.

The proviso appended to Section 95(1)(g) also empowers the State Government to divest a Pradhan of his/her financial and administrative powers, if on an enquiry it is found that the Gram Pradhan is found, prima facie, to have committed financial and other irregularities. The impugned order does not make a mention of any other ground including the ground of financial and other irregularities which may be attributed to the petitioner as Pradhan. The reason indicated in the impugned order is that she got elected on the basis of OBC

certificate which was subsequently cancelled. It is also worth noticing that in the counter affidavit filed by the State nothing has been indicated as to whether any proceedings for removal as contemplated in Section 95(1)(g) have been initiated or concluded or not. The impugned order, thus, appears to have been passed in ignorance of the fact that sub clause (iii-a) of Section 95 (1) (g) of the Act has been declared to be ultra vires. In various cases, in similar circumstances, this Court has interfered with such matters. **(Kismataul Nisha v. State of U.P. and others, 2016 (13) R.D. 586)**

U.P. Urban Buildings (Reg. of Let, Rent and Eviction) Rules

Section 2 –Applicability of the Act in state of Uttrakhand- Above act is applicable to all Urban Buildings which are under the territory of the state of Uttrakhand.

Admittedly, the U.P. Act No. XIII of 1972 is applicable in the State of Uttarakhand it is again an admitted fact when the proceedings were initiated at Haridwar which is now a part of the Sate of Uttarakhand which was the paart of erstwhile State Of Uttar Pradesh in which the U.P. Act No. XIII of 1972 is applicable. The U.P. Act No. XIII of 1972 is applicable to all urban buildings which are under dthe territory of the State of Uttarakhand. Section 2 of the U.P. Act No. XIII of 1972, however, creates certain exemption. In case, building comes under these exemptions in would not be covered under U.P. Act No. XIII of 1972. **(Meera Devi (Smt.) IIIrd F.T.C./ Additional D.J. Haridwar & another, 2016 (1) ARC 421)**

Section 2 (2) Explanation -1 Clause-A- Date of Construction of building- for Applicability of Rent Act Explained

For ascertaining the date of construction of the building, for the purpose of applicability of the Act of 1972, Clause-A of Explanation-1 of Section 2(2) would provide different dates for determining the completion of building, namely--

(1) When the completion of the building is reported to the local authority.

(2) When the completion of the building is otherwise recorded by the local authority.

(3) When the first assessment of the building comes into effect.

(4) When it is actually occupied.

The explanation further clarifies that in case for the first three categories the dates are available then earliest of three dates will be the date of completion of the building and in case the first three dates are not available, it is only then the fourth date will be the date on which construction of the building shall be

taken to have been completed. In the facts of the instant case, admittedly, it is the first date of assessment which was placed before the court below and no other dates were available for the purpose of determining the date of completion of the building. **(Avanish Kumar Mittal v. Smt. Kamlesh Jain (Since Deceased) & 5 Others, 2016 (1) ARC 384)**

Section 14- Attractbility of – Sec. 14 contemplate regularization of only these occupants who are in occupation of buildings prior to commencement of amendment Act, 1976 –Petitioner's occupation from the year 2007, hence S. 14 would be attracted

The house in question was purchased by the respondent No.2 in the year 2007 under an agreement with the erstwhile owner. The petitioner who is son of the erstwhile owner has been allowed to occupy a portion of the house for a certain period. As he did not vacate the house, proceedings were initiated by the respondent No.2.

In paragraphs 4 and 5 of the affidavit filed in support of the application under Section 14 of the Act, the submission of the petitioner is that under the agreement dated 09.02.2007 arrived between the respondent no.2 and his father, the erstwhile owner, he was allowed to occupy two rooms, one store, one latrine and one bathroom on the first floor as a licensee. The license has not been revoked till date. No proceedings for his eviction has been initiated before any Court of Law and, therefore, his occupation be regularized under Section 14 of the Act.

Admittedly, as per own contention of the petitioner, he is in occupation of the house as a licensee with the consent of respondent no.2 from the year 2007. Section 14 contemplates regularisation of only those occupants who are in occupation of the building prior to the commencement of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Amendment Act, 1976.

The petitioner's occupation as per his own admission being of a licensee from the year 2007 he cannot claim benefit of Section 14 of the Act.

This submission of learned counsel for the petitioner is misconceived inasmuch as the Authority below has categorically recorded that Section 14 is not attracted in the facts of the case. **(Anurag Singh v. Rent Control & Another, 2016 (1) ARC 279)**

Section 21 (1) (a)- release application –for need of landlord's son- Allowed by both courts below- Validity of

Admittedly the said shop is not in vacant possession of the landlord. Even it is illegally occupied by the other tenant, it would not be open for the petitioner to challenge the finding of this ground. The need for younger son of the landlord was found genuine and there is nothing on record to indicate that there is any other place to establish him in business.

No interference is required on comparative hardship as it was found by the Courts below that the petitioner is in possession of his own house, he could start his lawyer's chamber therein. This apart the petitioner has not made any effort to get an alternative place for his lawyer's office. In the totality of facts and circumstances of the case, no interference is required. **(Jasbir Singh Yadav and others v. Amar Nath Sharma, 2016 (1) ARC 543)**

U.P. Z.A. and L.R. Act

Checkout Plat- Passing of order relating to title or share thereto by consolidation authorities –Validity of- No question of any order being passed by the consolidation Authorities

In this matter, contention of the learned counsel for the petitioner is that it was the case of the plaintiffs that the parties had ⅕ share in each in the disputed land was based upon the entries made in CH-4 of an order passed in the year 1971 recording their share to be 1/5 each. There is alleged to be a forged and fabricated entry.

In support of this contention, he has placed reliance upon the CH Form 2A to show that both the plots which were the subject matter of the sale deed and which are in dispute in the instant writ petition, were chak out plots and therefore there was no justification of any order being passed as regards the share of the parties therein, during the consolidation operations.

Since the plots were chak out plots, there was no question of any order being passed by the Consolidation Authorities as regards title or share thereto. **(Vijay Shanker v. Board of Revenue, Allahabad and others, 2016 (130)RD 402)**

Section 9A (2) –Withdrawal of suit after filing u/s 229-B by mother of the minor –effect of- Some was not binding on the minor- Finding regarding minority is a finding of fact

As regards the contention regarding filing of the suit under section 229B and its subsequent withdrawal without permission to file a fresh suit, it would

be relevant to note that the courts below have recorded a finding that this suit had been filed by the mother of Subedar and was also withdrawn by her and on her application. This was done during the minority of Subedar and, therefore, the same was not binding upon the respondent. The finding regarding minority of Subedar is a finding of fact, which cannot be assailed in a writ petition and, therefore, even the second submission made by the learned counsel for the petitioner, lacks substance. **(Green Land Public School Samiti, Duhai, Ghaziabad v. State of U.P. and others, 2016 (130) RD 44)**

Section 34 (5) Applicability of

Section 34 (5) of U.P. Land Revenue Act, 1901 provides that in case report relating to succession of transfer of possession has not been given under section 34 of U.P. Land Revenue Act then no Revenue Court shall entertain the suit. Thus the bar contained under section 34 (5) of U.P. Land Revenue Act is fully applicable.

Admittedly the petitioner has not filled any application under section 34 of U.P. Land Revenue Act for mutation of their names after death of their father. Thus the impugned orders do not suffer from any illegality. **(Dev Dutta and others v. Narendra Nath and others, 2016 (130) Rd 573)**

Section 182 –B- Applicability of- Explained

In this matter the allegation that the application under section 182 –B was filed as the final decree had been obtained by concealing material facts or that the final decree was not correct as it was passed regarding land which had already been acquired by the government, are in courtconsidered opinion, grounds for either an appeal or review. This could not be a ground for filing an application under section 182-B of the U.P.Z.A and L.R. Act which only provides that the principles to be followed while portion of a joint holding will be, as may be prescribed. **(Shekhar Agarwal v. Board of Revenue Allahabad Camp Court, Meerut and others, 2016 (115) ALR 424)**

Section 229- B- Admission made in mutation case not the sale basis for deciding the title in the title suit –Courts below also relied on the other evidence available on record

Court has carefully perused the orders passed by all the three courts below and I find substance in the submission of the learned counsel for the respondent that the alleged admission of the petitioner in a mutation case is not the sole basis of the orders impugned in the writ petition. The courts blow have also relied upon the other evidences available on record, like kutumb register, written statement filed in mutation case and the statement of the Pradhan. The

SOC has noticed another additional circumstance. He has stated that although the petitioner consistently denied that Subedar, respondent no. 4, was the son of Dular, yet she did not spell out his actual parentage. At a later stage, avoters' list was filed to show that Subedar was in fact son of one Gulab. However, the SOC has referred to the statement of Pradhan of the village, who has stated that no person by the name of Gulab resides in the village. It is, therefore, clear that the case has not been decided against the petitioner relying exclusively upon her alleged admission in the mutation case. Since the judgements are supported by various other documentary and oral evidences available on record, and since no perversity has been pointed out, I do not find any illegality in the impugned orders.

As regards the contention regarding filing of the suit under section 229B and its subsequent withdrawal without permission to file a fresh suit, it would be relevant to note that the courts below have recorded a finding that this suit had been filed by the mother of Subedar and was also withdrawn by her and on her application. This was done during the minority of Subedar and, therefore, the same was not binding upon the respondent. The finding regarding minority of Subedar is a finding of fact, which cannot be assailed in a writ petition and, therefore, even the second submission made by the learned counsel for the petitioner, lacks substance.

Since the alleged admission of the petitioner in the mutation case is not found to be the sole basis of the orders impugned, I do not consider it necessary to refer to various case-laws relied upon by the learned counsel for the petitioner in support of his contention that an admission made in the mutation proceedings has no relevance in the title proceeding. This question is not relevant for the purposes of the instant writ petition.

Accordingly, and in view of the above, the writ petition lacks merits and is dismissed. **(Green Land Public School Samiti, Duhai, Ghaziabad v. State of U.P. and others, 2016 (130) RD 44)**

Section 331- Scope of -Explained

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 at serial number 34 Column 3 deals with `Suit for declaration of rights'; and in front of it in column 4 name of court of original jurisdiction is given as `Assistant Collector, 1st Class'. Present suit of

the plaintiff-appellants is based on the claim that appellants are owner of disputed land. **(Parma Chauhan v. Luxmina, 2016(130) R.D. 396)**

Section 333, 122- B(4-F) – Revision –Remedy of- A remedy of a revision would not be available U/s 333 of above Act against an order which passed U/s 122-B(4-F) of the Act

This appeal has arisen from a judgment and order of the learned Single Judge dated 25 August 2015 by which a writ petition filed by the appellants to question the legality of orders passed by the Sub Divisional Officer, SDO, Rudauli, district Faizabad on 26 February 2014 and 13 January 2015 has been dismissed. The view of the learned Single Judge is a remedy of a revision would be available under sub-section (4A) of Section 122B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 against an order passed under sub-section (4F). Hence, the writ petition was not entertained on the ground of the availability of alternate statutory remedy.

Sub-section (4F) of Section 122B has been construed and interpreted in a judgment of the Hon'ble Supreme Court in Manorey alias Manohar vs. Board of Revenue (U.P.) and Ors.. The Supreme Court held that sub-section (4F) carves out an exception from the provisions of sub-sections (1), (2) & (3) under which a procedure for eviction of unauthorized occupants of land vested in the Gram Sabha is provided. The exception which is carved out by sub-section (4F) is in favour of agricultural labourers belonging to Scheduled Castes and Schedule Tribes having land below the stipulated ceiling of 3.125 acres. Where the conditions of sub-section (4F) are fulfilled, the legislature has provided that no action to evict such person shall be taken and he shall be deemed to have been admitted as Bhumidhar with non transferable rights over the land.

The 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 matter can be looked at from an additional perspective as well. Section 333 provides for the power of the Board of Revenue or Commissioner or the Additional Commissioner to call for the record of any suit or proceeding decided by any court subordinate.

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 (130) RD 610)**

Waqf Act

Sections 3(ee) and 54- Eviction of tenant from waqf property- Jurisdiction of Court- Effect of waqg Amendment Act, 2013 on eviction proceeding- not open to content that after the amendment courts which were ceased with eviction proceedings, ceased to

It is evident that by virtue of amendment, specific jurisdiction has been conferred on the Tribunal. Obviously, this will be prospective and in the absence of any provision for transfer of pending cases to the Tribunal, same will continue to be dealt with by the Courts in accordance with the prevalent law and amendment at the most can take effect from 1.11.2013.

Consequently, in the opinion of this Court, Amending Act does not affect the pending proceeding, as such it is not open to contend that after the enactment of The Wakf (Amendment) Act. No. 27 of 2013, the Courts Which were seized with the eviction proceeding, ceased to have jurisdiction. **(Mohd. Sageer Ahmad v. Wakf Masjid, 2016 (130) RD 484)**

Section 83- Wakf property- Determination of –Mere registration of property as wakf property is not conclusive

The Court has made only to find out whether mere registration by Board would be sufficient to deprive a person who otherwise had no occasion to participate in proceedings before the Board for challenging that the property in dispute is not a Wakf property and if such a dispute is raised, Board is bound to have the matter decided in appropriate forum and cannot assume conclusive jurisdiction of treating disputed property as a "Wakf Property" to deprive an otherwise contest or claim by any other person. **(U.P. Sunni Central Board of Waqf, Lucknow v. Additional District Judge, Muzaffar Nagar & another, 2016 (2) ALJ 209)**

Words and Phrases

(i) 'Reasons to believe' Meaning of

Reason to believe postulates an objective satisfaction after an application of mind to material and relevant circumstances. The expression

"reason to believe" when used in a statute is to be distinguished from an exercise of a purely subjective satisfaction.

In Barium Chemicals Ltd Vs Company Law Board23, the Supreme Court held that the words "reason to believe" or "in the opinion of" do not always lead to the construction that the process of entertaining a reason to believe or the opinion is altogether a subjective process, not lending itself even to a limited scrutiny by the Court that it was not formed on relevant facts or within statutory limits. Explaining the words "reason to believe" in Section 147 of the Income Tax Act 1961, the Supreme Court in ITO Vs Lakhmani Mewal Das24 held that the reasons for the formation of belief must have a rational connection with or a relevant bearing on the formation of the belief. A rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment on a failure to disclose fully or truly all material facts. Every material, howsoever vague, indefinite or distant, would not warrant the formation of the belief. Moreover, the reason for the formation of the belief must not be a mere pretence and must be held in good faith.

In Shiv Nath Singh Vs Appellate Assistant Commissioner of Income Tax, Calcutta25, the Supreme Court held that the expression reason to believe suggests that the belief must be that of an honest and reasonable person based on reasonable grounds and not merely on suspicion. These principles were reiterated in a judgment of the Supreme Court in Bhikhubhai Vithlabhai Patel Vs State of Gujarat26.

The formation of a reason to believe within the meaning of the proviso must be on objective considerations which have a rational connection or link to the material before the State Government. Fairness requires that this be disclosed to the President of the municipality before the consequences in the proviso ensue. The President must have an opportunity to explain. **(Parash Jain v. State of U.P. and others, 2016 (34) LCD 424)**

(ii) 'Appeal is a creature of statue' –Meaning and scope

An appeal, it is well settled, is a creation of statute. The remedy of an appeal owes its existence to the law by which it is brought into being. The legislature which confers the right of an appeal is legitimately entitled to structure the nature and extent of the right or to subject its exercise to the fulfillment of conditions. In Smt Ganga Bai Vs Vijay Kumar8, a Bench of two learned Judges of the Supreme Court made a distinction between "the right of suit and the right of appeal9. Whereas there is an inherent right in every person to bring a suit of a civil nature unless a suit is barred by statute, in the case of

an appeal - the Supreme Court held - the right must be traceable to a provision of law. The Supreme Court observed thus:

> "There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute. **(Yogesh Agarwal v. State Officer and others, 2016 (34) LCD 383)**

(iii) "Indomitable Courage"- Meaning of

The Government Order dated 3.2.1994 contemplates for out of turn promotion to certain categories of police personal, if a police personnel shows "Indomitable courage and gallantry. The word 'Courage' used in the said Government Order is qualified by the word-"Indomitable".

As per Oxford English-Hindi- dictionary the word-'Indomitable' means to defeat or frighten, even in a difficult situation, very brave and determine **(Vijai Kumar Singh Bhadoria v. State of U.P. Thru. Prin. Secy. Home and others, 2016 (1) ALJ 460)**

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Legal Quiz

Q. 1 Which Rules (Central Rules 2007 or State Rules 2004) will prevail for holding age determination Enquiry of Juvenile?

Ans. Sec. 68 of the Juvenile Justice (Care &Protection of Children) Act, 2000 provides that only such rules made by State shall apply which conform to Central Rules.

Rule 96 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 has also declared that until the new rules conforming to these rules are framed by the State Government Concerned u/s. 68 of the Act, these rules, 2007 shall mutatis mutandis apply in that State.

It is pertinent here to mention that U.P. Juvenile Justice (Care & Protection of Children) Rules, 2004 were made in the year 2004.

It is a settled principle that if there is a conflict between the provisions of two similar statutes, the provisions of subsequent enactment will ordinarily prevail over the earlier enactment.

You are advised to go through above provisions carefully and act accordingly.

Q.2 The police are investigating a case in which a 15 year old girl committed suicide after being pregnant after a supposed rape or consensual sex. The I.O. has submitted an application for allowing him to get the 5 or 6 suspects for DNA profiling for the purpose of nailing the real culprit. None of them has so far been arrested. I want to know whether such an application could be allowed or not and if yes, then under which provision or case law

Ans. Kindly refer to your query about DNA profiling of suspected accused of committing rape on a minor girl. In this connection, your attention is drawn towards Sec. 53, 53-A and 54 Cr.PC and your are also advised to go through the following Supreme Court rulings on the point-

1. Smt. Selvi and others v. State of Karnataka, AIR 2010 SC 1974
2. Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women and another, AIR 2010 SC 2851

Q.3 D;k vkns'k&15] fu;e&5] lh0ih0lh0 ds v/khu izfrj{kk vfUre cgl ds Lrj ij Hkh lekIr dh tk ldrh gSA

Ans. Order 15 Rule 5 CPC confer a discretion upon the Civil Court that if Order 15 Rule 5(1) has not been complied with then after adopting the procedure prescribed in sub rule (2) the court may strike off the defence of the defendant. This can be done at any stage of the proceeding. But

the court is not bound to strike off defence and it can refuse to do so far valid reasons. See Vimal Chand v. Gopar Agarwal, AIR 1981 SC 1657, Smt. Leela Devi v. Smt Shanti Devi, AIR 1986 All. 90.

Q.4 Whether an accused can be convicted applying S. 149 I.P.C. if it is not mentioned in the charge?

Ans. "Omission to mention the provision of Section 149 IPC, specially in the charge is only a irregularity and in the absence of prejudice shown to have been cased to accused persons, conviction is not affected." **Ram Kirshan v. State of Rajasthan (1997) 7 SCC 518**

It has also been clarified in Ratan Lal & Dhiraj Lal's Indian Penal Code on page 770, that likewise if charge is framed u/s 302 /149 IPC, no prejudice will be caused if accused is convicted u/s 302 IPC simplicitor so mere imperfection in the charge is not enough by itself for purpose of setting aside the conviction.

Q. 5 ;fn oDQ izkiVhZ jsUVsM gS rks mldk bfofD'ku lwV (Eviction Suit) flfoy dksVZ esa ykbZ (Lie) djsxk fd ugha A ;fn ugh rc dgka ykbZ (Lie) djsxk

Ans. The Eviction suit of rented wakf property will lie in Civil Court –Please see-

1. Suresh Kumar v. Managing Committee, 2009 Indlaw All 1770
2. Ramesh Govindram v. Sugra Humayun Mirza Wakf (2010) 8 SCC 726

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