न्यायिक प्रशिक्षण एवं अनुसंधान संस्थान
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योग कर्मसु कौशलम्

JTRINL

Volume 5 – Issue - 6

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Judge, Allahabad High Court at Lucknow

Hon'ble
Mr. Justice Om Prakash Shukla
Judge, Allahabad High Court at Lucknow

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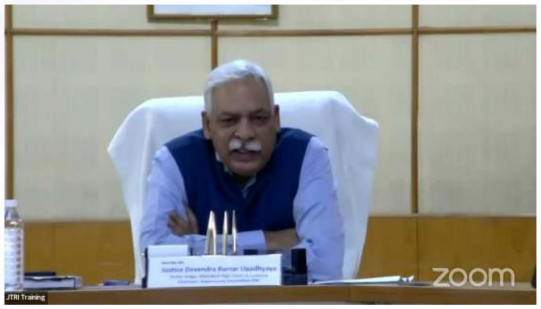
TRAINING ACTIVITIES IN THE INSTITUTE

I. One day Online Sensitization Programme on Disciplinary Proceedings

In compliance of the directions of Hon'ble Allahabad High Court, the institute organized one day online sensitization programme on disciplinary proceedings for all the judicial officers of Uttar Pradesh on 4th June, 2023 from 10.30 am onwards. About 2000 officers participated in this training programme. The First Session of the online training programme was taken by up **Hon'ble Mr. Justice D. K. Upadhyaya, Senior Judge, Allahabad High Court at Lucknow** and Chairman, Supervisory Committee, J.T.R.I.



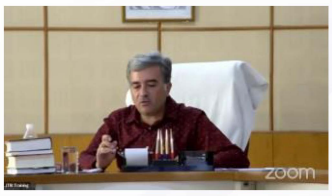
Hon'ble Mr. Justice D. K. Upadhyaya, Senior Judge, Allahabad High Court at Lucknow sensitizing the participants

Participating officers in the One sensitization programme

His Lordship spoke on the constitutional protection and principles of natural justice with reference to disciplinary proceedings. He said that constitution has some privileges as for the government servant are concerned, some of the most important privileges in constitution are Articles 309, 310 and 311 which we use in our day-to-day working. Article 310 is also called 'doctrine of pleasure' which means that every government servant across the state is under the pleasure of the Governor. Governor as we know in our constitutional scheme is not an individual, governor is a state body. There are certain constitutional safeguards provided to government servant whether working under state government or union of India. There are major and minor penalties which are given under the U.P. Government Servant Conduct Rules. The three major penalties as for the State of U.P. is concerned are dismissal, removal and reduction in rank.

Sri Shrish Kumar, Advocate, High Court at Lucknow

Sri A K Awasthi, Former Additional Director, JTRI



Sri Sudeep Seth, Senior Advocate, High Court at Lucknow

The second session of the online training programme was taken up by Sri Shrish Kumar, Advocate, High Court, Lucknow. He spoke on various aspects of disciplinary proceedings. He said that the applications of different laws and rules are related to different set of officers and officials who can be subjected to disciplinary proceedings and can be confined by submissions of the employees working in the state, are primarily the rules applicable to the employees of the State of U.P. He said that there has to be a category of classification of the employees and

officials in state government, the officers working in the registry, officials working in the district or contractual employees, employees working in the corporations, societies etc. can be subjected to disciplinary proceedings.

The third session was taken up by Sri A K Awasthi, Former Additional Director, JTRI. He spoke on the topic of final enquiry and said that disciplinary proceedings are generally laid down in Service Rules and Standing Orders made thereunder. However, the procedure, so laid down, is subordinated to the provisions of the Constitution of India e.g. Article 310, 311 etc. Final order for imposing penalty is passed by the disciplinary authority. It, therefore, requires that the final order, imposing a penalty should be a speaking order, indicating clearly the points for consideration, the decisions and the reasons on which the decisions are based.

The last session was taken up by Sri Sudeep Seth, Senior Advocate, High Court at Lucknow who spoke on various aspects of disciplinary proceedings. He discussed various case laws of Hon'ble Supreme Court and Hon'ble Allahabad High Court relating to disciplinary proceedings. He said that a government servant has to go through various steps in disciplinary proceedings such as lodging of complaint, holding of preliminary inquiry, consideration of the report of the preliminary inquiry by the disciplinary authority, notice to the official, reply of the employee, issuance of charge-sheet, reply of the employee to the charge-sheet, submission of inquiry report, penalty proposed and final order.

II. Refresher Training Programme for Civil Judges (J.D.)

A refresher training programme for Civil Judges (J.D.) was organized from 26.06.2023 to 07.07.2023 in which about 71 officers participated. This refresher training programme was organized in the institute which was inaugurated by Sri Vinod Singh Rawat, Director of the institute.

Participating Officers in the Training Programme

The refresher training programme covered diverse areas of discussion from execution of decrees, execution of injunction decree including mandatory injunction, procedure for seeking police help, application under Order 21 Rule 97 & 99 CPC, various facets of Section 311 CrPC and 313 CrPC, legality of imposition of costs for recall of witness, remand and its practical issues vis-a-vis challenges and precautions, change from Section 167 to Section 209 and Section 309 CrPC, dealing with various applications filed during remand, administrative works of civil judge (J.D.), work and duties of nodal officers, communication with Hon'ble High Court and administration, inspection of office, practical issues with respect to cancellation of instrument, standard of proof in case of will & sale deed, valuation and payment of court fees, protection orders under Domestic Violence Act and Senior Citizens Act, plea-bargaining, compounding, conviction order, principles of sentencing, necessities associated with recording of statement and confession u/S 164 Cr.P.C. etc.

SHORT ARTICLES

Reflections of Reformatory Perspective in Parole and Furlough

By Dr. Humayun Rasheed Khan*

The whole scheme of granting 'parole' and 'furlough' is based on the approach of reformation and furlough is considered as an incentive for maintaining good conduct in the prison after conviction. In the same spirit, there is a suppression of 'punitive' element in parole, and the reflections of reformation in it. In simple words parole is a temporary release of a prisoner for short period so that he may perform his/her social obligations. It may also be granted so that the convict may maintain social relations with his family and the community in order to fulfill his familial and social obligations and responsibilities. The Madras High Court while considering the question of parole to a life convict under Section 302/34 IPC observed that "it is not in dispute that the petitioner has been granted parole on prior occasions and he has complied with the rules of parole properly. It is also seen from the affidavit filed by the wife of the petitioner, who is an advocate, and the medical certificate and the case sheet produced by her that the mother of the petitioner is seriously laid up in the nursing home and his only brother is admitted in the *Jipmer Hospital, Pondicherry* and that the presence of the petitioner is very much required as his mother would like to see him very much before her life comes to an end. This is an extraordinary situation which warrants the Court to exercise the power under section 482, Cr. P.C on humanitarian grounds."

However, the period spent by a prisoner outside the prison while on parole in no way is a concession so far as his sentence is concerned. The prisoner has to spend extra time in prison for the period spent by him outside the jail on parole ***(Rule 1198 of Chapter XIX of the Delhi Prison Rules, 2018)***. In parole, conduct is not a decisive factor as some cause or event predominantly decides the question whether the person is to be admitted to parole or not? When the convict is to undergo the sentence for whole of his natural life, any cause or event may not give him any right to claim parole.

On the other hand 'furlough' is an incentive toward good conduct in prison, even if the convict is otherwise not to get any remission and has to remain in prison for whole of the remainder of his natural life. It means a kind of leave as reward granted to a convicted person who has been sentenced to rigorous imprisonment for five years or more and has undergone three years imprisonment ***(Section 2(h) of the Delhi Prison Act, 2000).*** It is said that the 'parole' and 'furlough' to inmates are progressive measures of correctional services. The release of prisoner on parole not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and community. It also helps him to maintain and develop a sense of self-confidence. In fact, continued contacts with family and the community sustain in him a hope for life. The release of prisoner on 'furlough' motivates him to maintain good conduct and remain disciplined in the prison ***(Rule 1197 of the Delhi Prison Rules, 2018).***

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* Additional Director (Research), JTRI

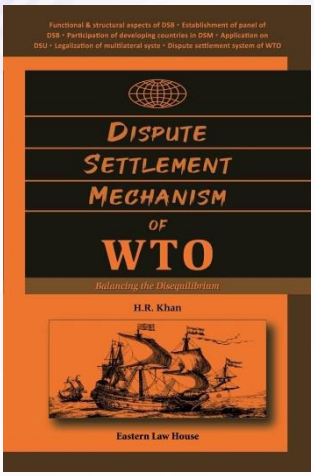
The eligibility requirement to obtain 'furlough' is of 'Three Annual Good Conduct Reports' and not 'Three Good Conduct Remissions.' The expression mean that prisoner ought to maintain 'good conduct' and should have earned rewards in last 'three annual good conduct report' and further that he should continue to 'maintain good conduct.'

The Supreme Court of India observed in ***Atbir v. State of NCT of Delhi, AIR 2022 SC 2911: AIR Online 2022 SC 628*** that "looking to the concept of 'furlough' and the reasons for extending this concession to a prisoner lead us to hold that even if a prisoner like the appellant is not to get any remission in his sentence and has to serve the sentence of imprisonment throughout his natural life, neither the requirements of his maintaining good conduct are whittled down nor the reformative approach and incentive for good conduct cease to exist in his relation. Thus, if the convict maintains good conduct, 'furlough' cannot be denied as a matter of course.

However, the shift in sentencing debate as well as sentencing approach from retribution to reformation does not mean emergence of 'soft attitude' of judges in every case including the offences which have larger and deeper consequences for society at large. The Supreme Court of India cautioned that the Court should not confuse the correctional approach with prison treatment and nominal punishment verging on the decriminalization for serious social and economic offences ***(M. H. Hosket v. State of Maharashtra, AIR 1978 SC 1548).*** The Court that ignores the grave injury to society implicit in economic crimes by the upper birth mafia ill serves social justice. It is, indeed, true that soft-sentence justice is gross error when many innocents are the potential victims.

BOOK REVIEW

By Nishant Dev*



Title of the Book
Dispute Settlement Mechanism of WTO:
Balancing the Disequilibrium

Author
Dr. H. R. Khan

Publisher
Eastern Law House

Year of Publication
2023

Emergence of globalization as a dominant international paradigm has created an interconnected world with trade and commerce across the globe. Multinational trade of goods and services inevitably creates dispute leading to the formation of GATT and WTO as facilitator of world trade. The WTO and its predecessor GATT has been criticized for imposing an asymmetrical global trade regime having negative effect on developing countries.

The book under review is scathing criticism on the Dispute Settlement Mechanism of the WTO and the ways to create equilibrium among the nations of the world. Dr. Humayun Rasheed Khan's latest book on ***Dispute Settlement Mechanism of the WTO: Balancing the Equilibrium*** gives a poignant view of it. Dr. Khan is an officer of the Uttar Pradesh Higher Judicial Service and presently posted as Additional Director in the Judicial Training and Research Institute, Lucknow, U.P. He has a keen interest in World Affairs and his book is a reflection of it.

The book is focused on the tilt of the DSM (Dispute Settlement Mechanism) of the WTO towards global north and how issue of transparency, poor country's accessibility to the DSB (Dispute Settlement Body) System, the cost of litigation for many countries especially developing and least developed countries, poor compliance record of the developed countries with regard to the DSB decisions and finally, the ultimate remedy against non-compliance.

The book is divided into nine chapters. Chapter 1 deals with the historic transformation from power-orientation under GATT to rule orientation of the WTO system. It discusses in detail regarding the process of DSB from GATT to WTO. The Rich man's club under GATT transformed to the present DSB through Tokyo and Uruguay Rounds of the trade talks. The author throws light on the key differences under both the systems.

* Additional District Judge, Lucknow attached to JTRI

Chapter 2 deals with the process of dispute settlement under the WTO. How the disputes are articulated and referred to the panel for resolution. It succinctly highlights the procedure right from the composition of panel to the procedures and rules to be followed. It also deals with the scope of the appellate body.

Chapter 3 talks about the substantive law to be followed in the resolution of the dispute by the DSB. Rules in the Vienna Convention on the Law of the Treaties applicable to the WTO are discussed in detail along with the general doctrines of *Dubio Mitius, Legitimate Expectation, Stare Decisis, State Responsibility* and *Estoppel* forming the applicable law. The chapter highlights the rules regarding the burden of proof and judicial economy in dispute settlement.

Chapter 4 delves upon the North-South divide in Dispute Settlement Mechanism. Principle of equality plays a major role in any dispute resolution. The chapter highlights the problems of developing countries in the DSU. It not only defines the term 'developing country' but also discusses their role since 1947. The chapter highlights dire need of experienced legal, economic and diplomatic staff as well as an engaged stakeholder community including increased role of NGOs and civil society organizations. It elaborates the issue with the example of cases like Brazil Aircraft case and US dispute regarding import prohibition of certain shrimp products.

Chapter 5 deals with participation of South American Countries particularly Brazil, Argentina and Mexico in the DSM. These countries have developed greater co-ordination between public-private sector, civil society organizations and academia providing solid foundations for their involvement in the dispute settlement. The experience of South American countries has been portrayed as fine example for other developing countries to learn and work towards close co-operation of different stakeholders.

Chapter 6 concerns the role of Asian countries in the DSU from 1995 to 2022 with special emphasis on the proactive role of China. The participation of Bangladesh and Thailand shows the way. The export subsidy, sugar dispute and dumping are delved to highlight the development in the Asian Continent. Lack of private law firms, litigation costs, absence of robust civil society and paucity of in-house international experts along with political factors affect the dispute settlement under WTO for both LDCs and developing countries.

Chapter 7 pertains to the position of African Continent in the DSU. It is highlighted that most of the African countries have been non-user of the WTO dispute settlement. South Africa and to some extent Kenya and Egypt have used the facilities of DSU. The Author stresses hard work for the African Countries as way forward to gain out of the DSM. He suggests that the WTO secretariat, WTO Training Institute and the ACWL could be instrumental in addressing some of the capacity constraints.

Chapter 8 concerns the response of Panels and Appellate Body of WTO in cases involving developing countries. The DSU seems to fail due to power play to offset differences in legal capacity in spite of legal provisions specifically intended for developing countries. The lack of sanction in execution of the settlement brings the weak nations on the brink. The author makes suggestions to not only make the process of DSU but also its enforcement a reality.

Chapter 9 specifically deals with the position of India in the DSU. The Author highlights India's active participation in the Dispute Settlement Mechanism of the WTO from 1995 to 2022. The role was assessed in both type of cases in which India is complainant and where she is defendant. Cases like *Wool Shirts* and *Blouse case, Indian Patents* case have been discussed in detail.

The book presents an interesting account of International Comity of Nations with bottlenecks and challenges. The Book is replete with instances of dispute resolution across the globe. The book is not only for the practitioners of International Trade Law but also for anyone interested with the interplay of power and diplomacy of the nations of the World. The Book is filled with facts and figures and is an interesting read.

LEGAL JOTTING

> "The Governor is the titular head of the State Government. He is a constitutional functionary who derives his authority from the constitution. This being the case, the Governor must be cognizant of the constitutional bounds of power vested in him. He cannot exercise a power that is not conferred on him by the constitution or a law made under it."
>
> **Hon'ble Dr. Justice Dhananjaya Y. Chandrachud**
> **Chief Justice of India**
> **Subhash Desai v. Principal Secretary, Governor of Maharashtra & others**
> **AIR 2023 SC 2406: AIR Online 2023 SC 381**

SUPREME COURT

1. Charan Singh @ Charanjit Singh v. State of Uttarakhand, AIR 2023 SC 2095

It has been said that patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

It has been observed that a conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

The legislative premature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be over eased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty".

2. Fedrick Cutinha v. State of Karnataka, AIR 2023 SC 2102

Secs. 302, 326—Murder and grievous hurt—Accused persons acquitted by trial Court were convicted by High Court in appeal

It was held that in Darshan Singh & others v. State of Punjab, (2009) 16 SCC 290 ruled that accused persons have to be convicted on the basis of their individual acts and where an accused inflicted simple injuries with lathis etc., he is ordinarily not to be convicted for the offence of murder.

3. Rakesh Raman v. Smt. Kavita, AIR 2023 SC 2144

Sec. 13(1)(ia), (ib)—Divorce—Cruelty and desertion—

Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a 'human conduct' and 'behavior" in a matrimonial relationship. While dealing in the case of Samar Ghosh (supra) this Court opined that cruelty can be physical as well as mental: "46…If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

Cruelty can be even unintentional:

…The absence of intention should not make any difference in the case, if by ordinary sense in human affairs; the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment."

This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair.

The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital

relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.

4. Harbhajan Singh v. State of Haryana, AIR 2023 SC 2179

Secs. 20, 25, 35—Illegal possession of contraband—Presumption against owner of vehicle—

While dealing with the question of possession in terms of Section 54 of the Act and the presumption raised under Section 35, this Court in Noor Aga v. State of Punjab (2008) 16 SCC 417 while upholding the constitutional validity of Section 35 observed that as this section imposed a heavy reverse burden on an accused, the condition for the applicability of this and other related sections would have to be spelt out on facts and it was only after the prosecution had discharged the initial burden to prove the foundational facts that Section 35 would come into play.

The initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting narcotics still lays on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidence which the prosecution seeks to rely on is the appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana and that the appellant had taken the truck on superdari. Registration of the offending truck cannot by any stretch of imagination fasten him with the knowledge of its misuse by the driver and others**."**

5. Omprakash Sahni v. Jai Shankar Chaudhary, AIR 2023 SC 2202

Secs. 389—Suspension of sentence and grant of bail—Factors to be considered by Court—Discussed

The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.

The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.

The endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal.

However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not re-appreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

ALLAHABAD HIGH COURT

1. Sanjay Kumar Modi and another v. Udairaj and another, 2023(2) ARC 330

CPC, 1908, O. XLI, R. 23 and 23-A – Remand of case – Scope of – Explained

O. XLI, R. 23 and 23-A – Remand of case by LAC – To trial Court for decision afresh – The reasoning of LAC does not reflect conscious application of judicial principles as required to be applied before a remand order is passed. Parties have led their entire evidence and there is no reference made by LAC that any particular issue or on any particular aspect of the matter, the parties have not been able to lead evidence which was imperative which leads the LAC to remand the matter. No reason to why remand is necessary or any justifiable cause mentioned in the impugned order can support the order of remand. The court quashed the Impugned order, LAC was directed to decide the appeals afresh on merits.

2. Praveen Kumar Mishra v. Dr. Gaurav Mishra and another, 2023 (2) ARC 385.

CPC, 1908 O. XXI, R. 10 – Execution proceeding – For execution of order allowing release application – Two execution application filed one by plaintiff No. 2 and another by plaintiff No. 3 – During pendency of execution proceeding, possession of the shop in dispute handed over to plaintiff No. 2, further Executing Court proceeded to pass order directing plaintiff No. 2 to hand over the possession of the shop to plaintiff No. 3 for whom bona fide need was set up – Order of Executing Court challenged on the ground that once the possession is given to any landlord, Execution Court has no authority to proceed with the execution proceeding in absence of collusion between tenant or landlord. It has been held that once the bona fide need is set up in favour of co-plaintiff, Executing Court has full right to proceed with and pass order for possession of property in question in favour of co-landlord for whom bona fide need was set up. The court held that no error was committed in impugned order.

3. Amit Gupta v. Gulab Chandra Kanodia, 2023 (2) ARC 390

CPC, 1908, O. VII, R.11 – Rejection of plaint – Application for – Questioning the maintainability of small cause suit for recovery of rent and ejectment after coming into force of U.P. Regulation of Urban Premises Tenancy Act, 2021. It has been held that the Small Causes Courts are Special Courts constituted under PSCC Act, 1887, which is a central Act and State Amendments brought into it for its application vide Presidential assent in modified form, would continue to be in force in their application to the state until such amendments are repealed with prescribed assent.

On date of enforcement of the new Tenancy Act, 2021–SCC Suits and SCC Revisions, shall not abate notwithstanding the provisions as contained under S. 42 of the New Tenancy Act, 2021 as no such intendment can be drawn inasmuch as S. 6 of General Clauses Act would apply, still further SCC Suits would stand saved as where conceived of under Old Rent Control Act, proceeding whereof have been saved under S. 2 of S. 46 of the New Tenancy Act, 2021.

It has been held that SCC suits would still be maintainable in cases of tenancies not converged by under S. 4 and relating to rights accrued, if any under T.P. Act, 1882 where adamancy is unwritten, and a tenancy is on month to month basis. Overriding effect of S. 42 will give way to Central Act, and there could be no doubt about that if the Central Act has occupied the field to certain extent.

4. Rakesh Kumar and another v. Chhotey Lal and others, 2023 (2) ARC 458

CPC, 1908, S. 151 and O. XXI, R. 10 – Limitation Act, 1963, Art. 136 – Execution Application – For execution of decree passed in suit for specific performance of an agreement to sell – Objection to execution proceeding stating to be barred by time as decree is of date 2.6.1975 and execution application moved on 21.7.2011 also heirs of J.D. not properly impleaded. Objection was rejected so also the revision holding it to be not maintainable. Legality of limitation has to be reckoned from the date of the decree of the Appellate Court, even if the date of order of this Court dismissing the Second Appeal in limine is ignored. The appellate decree was passed on 31.03.2011 by ADJ and execution application made on 21.7.20211, which was well within the limitation of 12 years under Art. 136. The execution was held competent and must proceed.

By –

Dr. Humayun Rasheed Khan,
Additional Director (Research), JTRI

ABOUT US

Judicial Training and Research Institute, U.P., Lucknow

The Institute was established by the Government of Uttar Pradesh in pursuance of a decision taken at All India Conference of the Chief Justices of High Courts in August/September, 1985 in New Delhi. This landmark conference which was also attended by the Chief Ministers and the Law Ministers of the States, mooted the idea of providing institutional induction and in-service training to the judges of the subordinate courts in the country. The initiative of the state government after being readily agreed to by the Hon'ble High Court of Judicature at Allahabad, saw the Institute coming into existence and becoming functional on 25th April, 1987 with Hon'ble Mr. Justice K.N. Goyal as its first honorary Director. Sri Vinod Singh Rawat is its present Director.

The institute has been established with the overall vision of ensuring ceaseless upgradation of skills and appropriate attitudinal reorientation through induction level and in-service training in consonance with the imperatives of national and global environment.

In the training programmes, case studies, discussion sessions, exercises and activity based studies; book review and case law presentation are used extensively. To make the discussion effective, background material is given before discussion. This helps the trainees to develop analytical skills and decision-making power in addition to enable them in writing orders/judgments.

Keeping in view that in a healthy mind rests a healthy body, the institute has established and developed a gymnasium with latest equipments and machines. The physical training is compulsory part of the training programmes organized by the institute. The facilities of gym have been made available to the trainee officers as well as faculty members.

The Institute believes in continuous involvement of officers in sports activities to relieve the stress and keep them healthy. Besides Volley Ball and Carom, the hostel is also having Badminton Court as well as Table-tennis facilities. The hostel is fully furnished and equipped with the best house-keeping and hospitality facilities. The institute has a big air-conditioned Dining Hall with a dining capacity of about 150 persons at a time. The dining Hall is housed with the officers' hostel in one and the same building.

Judicial reasoning, indeed, is both an art and a science to be cultivated by every judge through study, reflection and hard work. The institute has a beautiful and big library housed into two spacious air-conditioned halls in the 'Training Wing' with one being dedicated to law books, law digest, encyclopedia, commentaries and general books including classics, biographies, fictions (Hindi and English both) memoirs, letters, speeches, words and phrases, books of philosophy, religion, history, politics, computer, management, personality development etc. and the other wing is exclusively meant for storing Journals. This centre of knowledge has more than **25000 books**. The institute has been subscribing **15 Law Journals** of varied nature, **seven newspapers** and **four magazines**. The library has All England Law Reports from 1936 to 2014, Halsbury's Laws of India from 2004 to 2008, Halsbury's Laws of England from 1973 to 1987 and Corpus Juris Secundum from Vol. 1 to 101A, Canadian Law reports, American Law Reports Annotated and Law Commission of India Reports. The institute is working on to develop e-knowledge hub and e-library in near future.