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संपादकीय

नवम् वर्ष में पदार्पण

मित्रो, न्यायिक अधिकारी प्रशिक्षण संस्थान 16 अप्रैल 1994 को प्रारंभ हुआ। कुछ समय के लिए श्री बी.के. श्रीवास्तव इस संस्था के निदेशक रहे व तत्पश्चात 13 मई 1996 से मैं सतत् रूप से पदस्थ रहा हूं। अक्टूबर 1995 से 'ज्योति जर्नल' पत्रिका का द्विमासिक प्रकाशन शुरू हुआ एवं जून 1996 से मैं संपादन कर रहा हूं। वर्तमान आकार में आजकल 100 (एक सौ) पृष्ठों की यह पत्रिका की यात्रा रोचक है। वर्तमान आकार के दृष्टिकोण से प्रारंभ में पत्रिका 16 पृष्ठों की थी व धीरे–धीरे बढ़ते–बढ़ते अब सौ पृष्ठों की हुई है। ये पृष्ठ भी मेरे दृष्टिकोण से अत्यंत न्यून हैं क्योंकि इतनी अधिक मात्रा में सामग्री तैयार की जाती है कि लेखों एवं न्यायदृष्टांतों का स्थान नहीं रहता है।

वर्तमान में कम्प्यूटर की कमी बहुत ज्यादा अनुभव हो रही है कम्प्यूटर उपलब्धि हेतु सक्रिय प्रयत्न है लेकिन मूर्तरूप प्राप्त नहीं हो पा रहा है। इस कारण उद्देश्य पूर्ण करने में कठिनाई होती है।

अतिरिक्त निदेशक सौ. मंजू नामजोशी जो 21 मई 2001 से पदस्थापित हुई हैं के सिवाय हमारी स्टेनोग्राफर पी. पद्मा है। शेष स्टाफ औपचारिक है। हम इतना अधिक काम तीव्र गति से कर लेते हैं कि उक्त कार्य भी प्रकाशन के दृष्टिकोण से अत्याधिक होता है लेकिन यह कार्य हमारा नैमित्यिक है व कोई असुविधा नहीं होती है न कोई काम हम पेंडिंग ही रखते हैं।

जब–जब प्रशिक्षण सत्र चलते हैं तब तो हमारा कार्य एकदम शादी घर जैसा हो जाता है। अत्यंत व्यस्तता होती है। प्रशिक्षुगणों की समस्याएं उनके निराकरण हेतु संबंधित विधि एवं न्याय दृष्टांतों का चयन, उनके द्वारा सम्पादित कार्य का परीक्षण आदि इतना हो जाता है कि अन्य कार्यों के लिए समय नहीं मिलता।

प्रशिक्षण शिविर बहुत अच्छा लगता है मजा आ जाता है। ऐसे कार्य हमारे पसंदीदा रहे हैं व बहुत अच्छे लगते हैं। मेरे लिए यह नौकरी नहीं अपितु एक व्यासंग है, शौक (हॉबी) है।

पत्रिका में प्रकाशन हेतु हिन्दी में लेख मैं अपने हाथ से लिखता हूँ व अंग्रेजी लेखों के लिए डिक्टेशन देता हूं। उच्च न्यायालय की लायब्रेरी बहुत ही उच्च कोटि की रही है उसका अधिकतम लाभ लेने का सतत् प्रयत्न रहा है। संदर्भग्रंथ सहायक पुस्तकें, विधि प्रकाशन एवं जर्नल्स् आदि विपुल मात्रा में उपलब्ध हैं जिसका सतत् उपयोग हम कर रहे हैं।

आपके हाथों में अप्रैल 2002 का यह अंक संस्था के 9वें वर्ष में प्रवेश करने के उपलक्ष्य में है। मेरे सम्पादन में यह छत्तीसवां अंक है। प्रयत्न तो यही रहा है कि व्यवहारिक धरातल पर उपयोग में आने वाली सामग्री का अधिकतम उपयोग किया जावे। औसतन 1000–1200 संख्या तक के न्याय दृष्टांत भी इस छोटी पत्रिका में प्रकाशित करने का प्रयत्न होता है। लेखों के लिए विषयों का चयन भी ऐसा करने का प्रयत्न रहा है कि इन लेखों के माध्यम से व्यवहारिक धरातल पर आने वाली समस्याओं का निदान हो सके।

पिछले छह वर्षों में अनुभव ये रहा है कि ऐसा लगता है कि मुझे जब जानने समझने का अवसर

था तब जाना समझा नहीं, सीखा नहीं नौकरी के साढ़े अट्ठाईस वर्ष न्यायालयीन कार्यक्षेत्र में व्यतीत हुए हैं तो छह साल प्रशिक्षण संस्थान में। लेकिन इन छह वर्षों का उपयोग भी मैंने ऐसा किया है कि संतोष प्राप्त होता है।

सुबह 9.15 को ही मैं अपनी संस्था में सतत् रूप से आता रहा हूं व समय के पूर्व कभी कार्यालय नहीं छोडा है। प्रशिक्षण सत्रों में तो 8.30 बजे ही आता रहा हूं।

यह संस्था मेरे लिए मातृतुल्य रही है। मैं जितना प्यार और स्नेह मेरी माताजी से करता हूं उतना ही इस संस्था से भी। माता क्या नहीं देती है। देती है हर चीज पर प्रत्युत्तर में कोई अपेक्षा नहीं होती है। स्नेहवश, प्रेमवश देती है परन्तु फिर भी मौन। यही स्थिति इस संस्था की भी मेरे लिए है।

पूर्णतः की अपेक्षा किसी ने किसी के साथ नहीं करना चाहिए। पूर्णतः जिसने प्राप्त कर ली ऐसा व्यक्ति कोई भी नहीं हो सकता है। संभवतः यही प्रगति का सोपान भी है। सतत् रूप से सफलता के लिए प्रयत्नशील रहना ही बहुत बड़ी बात है। सुपरमैन होना तो संतृप्तता बिंदु (सेचुरेटिंग पाईंट) हो जाएगा और रास्ते के छोर पर 'दी एण्ड' का बोर्ड लगा हुआ होगा। यदि ऐसा हो जावे तो मनुष्य किंकर्तव्य विमूढ हो जावेगा)

'मैं' की यह रट अहं की नहीं है अपितु इस संस्था की उपयोगिता की अभिव्यक्ति है। यह व्यक्तिवाचक होकर भी समूह बोधक है और सामूहिक क्रियाओं का प्रतिनिधित्व है। साहित्यिक विधा से देखें तो कर्ता राम है जो ज्ञान का भंडार है। जो कार्य करने की प्रेरणा देता है। लक्ष्मण निष्काम निरपेक्ष है जो कर्म करता है एवं सीता क्रिया है जो भक्ति की प्रेरणा है। यह संगम जिस दिन संस्था के साथ जुड जाएगा संस्था का अस्तित्व औचित्य एवं उपयोगिता प्रमाणित हो सकेगी। समय के साथ यह भी होगा यह आशा करना चाहिए।

इस संस्था का विस्तार किया जाना है। प्रयत्न हो रहे हैं कि इस संस्था के माध्यम से अनुसंधान विश्लेषण कार्य (Reasearch and analysis work) विधायी–लेखन (Legislative Drafting) एवं विधिक उपयोगिता के दृष्टिकोण से कम्प्यूटरीकरण हो सके। समय हाथ से नहीं निकलने दिया जाना है।

आपका सहयोग सहभाग एवं संस्था के साथ आपका जुड़ना भी अत्यंत आवश्यक है। प्रत्युत्तर में न्यायदान के इस कार्यक्षेत्र में, शिक्षण, प्रशिक्षण का अधिकतम उपयोग व्यवहारिक धरातल पर, यदि होता है तो निश्चित ही प्रसन्नता होगी।

पिछले आठ वर्षों का लेखा जोखा आपके हाथों में है आप ही इस संस्था के नियंता होंगे, आप ही इस संस्था के माध्यम से अधिकतम रूप से ज्ञानवर्धन कर सकेंगे। ययह संस्था तो नदी का प्रवाह है, बहती रहेगी। किनारे पर बैठे लोग उसका क्या व कैसे उपयोग करते हैं यह उनकी दृष्टि एवं सोच है।

आशा है आप हम सब मिलकर इस मातृ–वत संस्था को स्वस्थ हृष्ट–पुष्ट व सशक्त बनाएंगे ताकि संस्था अपनी उपयोगिता सिद्ध कर सके।

पुरूषोत्तम विष्णु नामजोशी

दूसरा पहलू

बसंत का प्रतिनिधि : पलाश गुलमोहर

पतझड खत्म हुआ। बसंत भी अपना रूप निखार कर बिदाई ले चुका है। पेड़ पौधों में नई कोंपले फूल फल रही हैं। पलाश वन भी अपना केशरिया रंगरूप अब समेट रहा है और नई कोपलों पत्तियों फूलों को कह रहा है कि सुनो मैंने तो अपनी दीपशिखा से तुम्हें चेता दिया है अब फूलने फलने का तुमको आशीर्वाद देकर जा रहा हूं। मैं फिर अगले बसंत में आऊँगा तुमसे सुख दुःख की बात करूंगा। कुछ अपनी कहूंगा कुछ तुम्हारी सुनूंगा। मेरे आने तक इस धरती माता की देखभाल सारसंभाल तुम्हें करनी है। ये धरती माता तुम्हारे लिये माता है उसका कहा मानना उसको आदर देना वह तुम्हें अपना प्यार दुलार देगी।

सुना आपने पलाश ने पेड़ पौधों को क्या कहा कि वह झूम रहे हैं लहलहा रहे हैं अपने–अपने रंग फूलों को देने को आतुर हैं। धरती अपनी मिठास फूलों व फलों को देने की तैयारी कर रही है। यद्यपि गरमी के मौसम की शुरूआत हो रही है चैत्र मास भी आ गया है। क्या कहा कि नया साल शुरू हो रहा है जी हां हर जाति का नया वर्ष अलग अलग दिन पर्व या मौसम से शुरू होता है। लेकिन हमारी प्रकृति किसी जाति प्रथा के नियम कानून में कैद होकर अपना नया वर्ष नहीं मनाती।

प्रकृति अपना नया वर्ष नहीं मनाती, वह तो हर मौसम को हर ऋतु का समारोह नियमित रूप से मनाती है वह किसी जांत पांत या रीति रिवाज छूत–अछूत ऊँच नीच से परे है। वह किसी बंधन में न होकर भी अपना कार्य एक लयता से अनुशासनबद्ध होकर करती है। एक ऋतु के बाद दूसरी ऋतु एक मौसम के बाद दूसरा मौसम निरंतर अपने–अपने पदक्रम के अनुसार रंगमंच पर आते हैं। अपना किरदार (पार्ट) सफलता से करते हैं और नीरस होने के पूर्व ही दूसरे को रंगमंच का संचालन करने के लिए देते हैं। है ना प्रकृति का प्रशासन कितना लयबद्ध बिना किसी को नुकसान दुःख पहुंचाये वह अपना शासन करती है। हर ऋतु अपना सर्वश्रेष्ठ अभिनय करके हमें बहुत सारी सौगातें दे जाती है। हर ऋतु व मौसम हमें अपनी खुशी अपनी हंसी में हमें शामिल करते हैं और फिर बिदा भी कितने शानदार तरीके से लेते हैं, वह भी देखने लायक दृश्य होता है। देखिये पतझड़ का मौसम कितना कुछ कह देता है उदास फिर भी अपना मूल नहीं छोड़ता। पीले लाल हरे फूल सूखे पत्तों से धरती माता का आंचल भर जाता है वह भी एक दुलार के साथ कि मां हमें अपने में समेट लो हमें मुक्त कर दो।

मित्रो देखा आपने विधाता प्रकृति के माध्यम से अपना शासन प्रशासन कितनी सफलता से चला रहा है बिना किसी क्लेश कलह के, बिना छीना झपटी के बिना किसी का हक मारे बिना किसी को धोखा दिये प्रत्येक के साथ न्याय हो रहा है। किसी भी ऋतु को किसी ऋतु से कोई शिकायत, गिला–शिकवा नहीं है। एक ऋतु के आते ही पहली ऋतु दूसरी का स्वागत प्रेम से करती है मानो सगे भाई बहन हों। कितना प्यारा प्रेम व्यवहार है।

आपको एक राज की बात बताऊँ ! प्रकृति के ये सुंदर नजारे मुझे हमेशा मेरे न्यायालय कक्ष की खिडकी से देखने को मिले हैं। जहां ये सुविधा नहीं मिली है वहीं मैंने अपने अंदर एक उदासी, एक आलस्य का भाव पाया है। प्रकृति की रूप शिखा दीप शिखा को देखने के लिए मुझे घर की छत या बगीचे में जाना पड़ा है। और पलाश उसकी सुंदरता के तो कहने ही क्या दूर से देखो या पास से, उसे देखने से ऐसी उर्जा उत्साह आता है कि इसका मजा इसे देखने वाला ही ले सकता है, शब्द कम हैं, फिर भरी गर्मी में जब सब दूर उदासी तीखी धूप का साम्राज्य फैला होता है तब गुलमोहर अमलतास जैसे पेड ही तो हमें ठंडक देते हैं आंखों को चमक देते हैं। इस सौंदर्य का कोई मूल्य नहीं है। अनमोल है ये प्रकृति देवी के खजाने के रत्न।

अच्छा तो इस प्रकृति देवी, प्रकृति माता का वर्णन मेरे जैसे अकिंचन के बस की बात नहीं है। मैंने अपनी अल्प बुद्धि से अपने आसपास जो देखा वह बता दिया। इस प्राकृतिक सौंदर्य को देखने के लिए मैंने किसी बडे पर्यटन स्थल की यात्रा नहीं की। मैं छुट्टियों में किसी पहाड़ी स्थान पर घूमने नहीं गई। यहीं जहां रही, वहीं आस–पास जो देख सकी देखा व अनुभव किया कि परिवर्तन के लिए हमें बहुत सारे रूपये समय खर्च कर कहीं बाहर जाने की आवश्यकता नहीं है। सिर्फ अपने घर से निकल कर बाहर आने की जरूरत है चाहे वह घर की छत हो या सामने के हाईकोर्ट का बगीचा हो या सुबह का उगता सूरज हो। शाम का डूबता सूरज हो, बहुत सुख देते हैं, बहुत खुशी देते हैं। वर्षा की पहली फुहार हो या टपकता हुआ हमारा घर हो। सचमुच हवा पानी चांद सूरज सितारे हमें कितना कुछ उपहार में देते रहते हैं, हम ही उन्हें नहीं देख पाते ये प्रकृति का खजाना कितना अनमोल है हम उसका मूल्यांकन चंद रूपयों में नहीं कर सकते। इनको देखने के लिए तो चाहिये सिर्फ एक नजर सिर्फ एक पल क्योंकि ये प्रकृति तो समय–समय पर अपना रंग रूप बदलती है, कहीं इन्द्रधनुष है तो कहीं घने काले बादल कहीं उजली धूप। कहने का अर्थ ये है कि प्रकृति हर पल सुंदर है चाहे वह फूलों का मौसम हो या पतझड का, हर हाल में खुश, हर हाल में प्रसन्न यदि हम इस प्रकृति माता से कुछ सबक लें तो अपने जीवन को संवार लेंगे वर्ना कोई फर्क नहीं पडता सब कुछ जीत लेने में या अंत तक हिम्मत न हारने में। जिंदगी के सफर में गुजर जाते हैं जो मुकाम वो फिर नहीं आते, फिर नहीं आते। तो दोस्तो जो कुछ हमारे पास है, हमारे आस–पास है, उसमें ही हमारी खुशी छुपी है बस एक नजर की बात है

कुछ इस तरह- उजाले अपनी यादों के हमारे पास रहने दो।
न जाने किस गली में जिन्दगी की शाम हो जाये।

सौ. मंजू नामजोशी

अभय बनने के लिए क्रियाशील होना होगा।
जन्म देना है आस्था को, संबल बनाना है विश्वास को।
संघर्ष विकास का आसान व सबसे छोटा रास्ता है।

– राजेन्द्र अवस्थी

न्यायाधीश-न्यायदान का दायित्व

न्यायाधिपति व्ही.के. अग्रवाल

माननीय न्यायाधिपति महोदय एवं अध्यक्ष, न्यायिक अधिकारी प्रशिक्षण संस्थान, उच्च न्यायालय जबलपुर श्रीमान व्ही.के. अग्रवाल साहेब ने दिनांक 12.01.2002 को व्यवहार न्यायाधीश वर्ग 2 के 1999-2002 बैच की अंतिम श्रृंखला के समापन दिन पर समापन भाषण में व्यक्त सहज एवं अनौपचारिक वार्तालाप को यथासंभव अविकल रूप से प्रस्तुत किया जा रहा है। अभिव्यक्ति अनुभवों की है जो किया समझा उसे वार्तालाप के माध्यम से अभिव्यक्त किया है। पढ़ें-समझें व व्यवहार में लावें यह माननीय महोदय की अपेक्षा है।

संपादक

प्रकल्पित भेद (निश्चित सिद्धान्त)

यह अनुभव करें कि आप केवल महत्वपूर्ण पद पर आसीन नहीं हुए हैं अपितु एक महत्वपूर्ण योगदान देते हैं। न्यायाधीश पद के साथ तुलना नहीं है। उसका एक विशेष स्थान है तो दायित्व भी है। Day in and day out you are a Judge. जज की जो संस्था है ईश्वर का अंश है। ईश्वर का प्रतिनिधित्व है अतः वह भार हमें निर्वाहित करना है।

न्यायिक संस्था :

न्यायिक संस्था का नाम रोशन रहा है। नाम ऊंचा हुआ है। हम सब अभी तक इस बात के लिए प्रयत्नशील रहे हैं कि ये ऊंचा नाम कायम रहे। गलत कार्यकलापों से छवि गलत हो जाएगी। अनुभव बांटना चाहता हूं। न्याय क्षेत्र से मेरा संबंध शैशवकाल से रहा है। ऐसी बातें बताना चाहता हूं जिन्हें जीवन में पालन कर सकते हैं। जीवन में ढालना चाहिए।

न्यायाधीश का दायित्व :

उसका कार्य एवं छवि उसके न्यायालयिक क्षेत्र तक सीमित नहीं है। क्षेत्र या क्षेत्र के बाहर है तब भी यह अपेक्षा रहती है कि वह आक्षेपों से दूर रहे। सूचना, खबर वो बनती है जो अपवाद स्वरूप होती है। न्यायाधीश की न्यूनता अपवाद की रूपता रखता है। न्यायाधीशों से यह अपेक्षा की जाती है कि उनका चरित्र, व्यवहार व कार्य उच्च कोटि का हो। विशिष्टता का भान रखना होगा। किसी भी कार्य व्यवहार से धब्बा न लगे। आक्षेप तक लगाने का अवसर न हो। सर्वथा साफ व्यवहार हो। लोहार अस्त्र शस्त्रों को बराबर धार चमकाता है। यही कार्य हमें करना है प्रलोभ मिलना आसान है। हमारा चरित्र तभी बनेगा जब हम स्वयं प्रलोभन से दूर रहेंगे।

एक निष्ठा-सत्यता :

तात्पर्य इस सीमा तक तो होना ही चाहिए कि आपकी आत्मा को तुष्टि करें। आत्मा कहें कि यह

ठीक है। दूसरा आदमी निर्धारित नहीं करता। सामान्य ईमानदारी अपनी जगह है। लेकिन किसी भी प्रलोभन से वास्ता न रखें। लेकिन आप किसी मित्र सम्बन्धी के अनुग्रह से दूर रहें। उनके न्यायिक कार्यों में अनुग्रह करना भी बेईमानी है। आपको हर प्रकार से ऊंचा उठना है। किसी के डर से, दबाब से, प्रयोजन से कार्य न करें। पुलिस–आबकारी विभाग वालों से दूर रहें। अपने हक से अलग अन्य कोई चीज नहीं लेना चाहेंगे। छोटी–छोटी बातें भी प्रलोभन के रूप में स्वीकार करना भी हमें भ्रष्ट किया जाना है।

धीरे–धीरे आप प्रगति करेंगे। आप को पर्याप्त प्रतिदान मिलेगा। आप ऐसे आसन पर बैठे हैं जो किसी और को संभव नहीं हैं। ईमानदारी का पल्ला नहीं छोड़ेंगे। आप आखरी मुकाम तक अवश्य पहुंचेंगे।

समय बद्धता :

कोई कारण नहीं कि आप समय पर न आएं व समय तक कायम न रहेंगे। समय पर पहुंचना कर्तव्य है तथा उससे छवि भी बनती है। बहाना नहीं हो कि हम आकर क्या करेंगे। आपका समय पर बैठने का परिणाम यही होगा कि सभी संबंधित लोग समय पर आएंगे। अगर समय पर आएंगे तो प्रकरणों को सूक्ष्मता से देख सकेंगे। समय हो तो पुरानी आदेशिकाएं भी पढ़ लें। सामान्य रूप से यह उम्मीद की जाती है कि जो कार्य न्यायाधीश को करना है वह समय से ही करे। समयबद्धता से आप बहुत बड़ी उपलब्धि प्राप्त कर सकेंगे। काम तो करना है तो समयबद्धता क्यों नहीं। देरी कोप भाजन का विषय बनेगा। आपकी प्रतीक्षा करने की अपेक्षा वकील पक्षकार से न करवाएं। समय पर बैठना कर्त्तव्य है तो उसका पालन करें। हम समय पर नहीं बैठते यह लांछन है। किसी समय जज की प्रकृति ही ऐसी बन जाती है। self-restraint या self imposed discipline डालिए। असुविधा तब महसूस करेंगे जब आप देर से आएंगे। ऐसी स्थिति में समय का बन्धन रखें। सुविधा निर्भीकता निर्मित होगी। मानसिक शांति मिलेगी। असुविधा पहले लगेगी लेकिन जीवन का अंग है समय पर बैठें, समय पर उठें।

निर्धारित वेशभूषा :

निर्धारित वेशभूषा के कारण गरिमा बढ़ेगी। एक शिष्टाचार व्यवहार प्रणाली की अपेक्षा है, मुंह में कुछ रखें नहीं। न्यायालय की गरिमा बढ़ेगी। काला कोट पहनने का हक बड़ी लगन से प्राप्त होता है। प्रभाव अच्छा पड़ेगा। किसी का व्यवहार किसी के प्रति अनुचित न हो।

हेयता :

न्यायिक संस्था के आप सदस्य हैं। आपकी गरिमा विशेषता यह है कि चाहे आप ऊंचे आसन पर आसीन हो लेकिन दूसरे हेय नहीं है। पक्षकार भी इसी सूत्र की कड़ी है।

अधिवक्ताओं को सुनें :

हमारा कर्तव्य है इसमें नाराजगी या परेशानी का काम न हो। आप उनके तर्कों को सुनें। स्वीकारना न स्वीकारना आपकी इच्छा है अधैर्य के कारण हम समझ नहीं सकते हैं। धीरज, धैर्य से सुनें। जानने की कोशिश करें। विधि एक जटिल विधि है। बारीकियों में जाना बहुत कठिन है। दूसरे के दृष्टि

को परखने जांचने का अवसर नहीं छोड़ना चाहिए। हमारे दृष्टिकोण में परिपक्वता आती है। ज्ञान को भाँजते जाईये। कानून से जुड़ा व्यक्ति आखरी दम तक विधि का विद्यार्थी होता है। अनुभव ऐसी बात है जिसकी कोई सीमा नहीं है।

न्यायालयीन handling न्यायदान किसी भी कारण से प्रभावित नहीं करेगा। समय को कम कराया जा सकता है उचित व्यवहार से। अधिवक्ता को कहें। विधि तथ्यों तक सीमित रहें।

व्यक्तिगत आक्षेप : व्यक्तिगत बातें, आक्षेप से बचे रहेंगे

बोर्ड डायरी : आप बोर्ड डायरी का नियंत्रण आप के पास रखें। कर्मचारी के भरोसे न रहें। बोर्ड का नियंत्रण आपको रखना है। आप स्वयं नियंत्रण रखें Rules and Orders Civil and Criminal के अनुसार रखें। overwork न हो। ज्यादा प्रभावशाली रूप से उसे नियंत्रित करें। (It is personal responsibility) व्यक्तिगत दायित्व है।

आदेशिकाएं : महत्वपूर्ण आदेशिकाएं आप लिखेंगे। यथा संबंध यह कार्य आपको ही करना चाहिए। साक्ष्य हेतु एक ही बार में एक ही लेखन हो। ट्रायल कोर्ट court of facts होता है। साक्षात्कार व्यक्तिगत रूप से होता है। अतः साक्ष्य नियंत्रित रूप से होगी। Trial Court ; Court of facts होता है। लिपिक के भरोसे साक्ष्य न लिखेंगे। संभावना उसका दुरूपयोग अधिवक्ता से किया जा सकेगा। कितना भी work pressure हो out put कम हो लेकिन नियमों का उल्लंघन न हो। गवाहों के बयान स्वयं को ही लिपिबद्ध करना है कोर्ट मैनेजमेंट को ध्यान रखें।

वाद प्रश्न-चार्ज-आदि :

वाद प्रश्न स्वयं ने बनाना है। चार्ज भी बनाना है। सारे मामले का आधार अभिकथन है, वाद प्रश्न है। जब आपने मामले को न तो समझा है तो अच्छे से निर्णय न हो सकेगा। आपकी पूरी सेवाएं मूलभूत सेवा है। विशिष्ट महत्व है। आप झगड़े का वास्तविक मूल्यांकन करें व निष्कर्ष पर आएंगे। आपराधिक प्रकरणों में चार्ज आप बनाएंगे। Prosecution में खामी हो तो बात अलग है लेकिन चार्ज की जो विशिष्टियां है उन्हें चार्ज में सम्मिलित करें।

आरोपी परीक्षा, अंतरिम आवेदन पत्र आदि ऐसी कार्यवाहियां है कि व्यक्तिगत नियंत्रण में रहना चाहिए।

काम के लोड से नहीं लेकिन हम कर्म के प्रति कुछ उपेक्षा कर देते हैं। यदि उपेक्षा लापरवाही नहीं हो तो आपका आचरण किसी को नुकसान दायक नहीं हो सकता है। घर पर चार्ज, इश्यूज आदि तैयार करें। बोर्ड पर बैठकर निर्णय लिखना गलत है। लेकिन ये अनुभव के साथ होगा। निर्णय एवं आदेश के लिए नियत मामले में समय पर निर्णय दिया जाना चाहिए। आसमानी सुल्तानी की बात भिन्न है। आलस, प्रमादवश हम समय पर निर्णय नहीं देते हैं वह आक्षेपों को जन्म देता है कोर्ट handling के लिए Civil Rules, Criminal Rules, Civil Court Act का विशेष रूप से ध्यान रखेंगे। जज का काम अपनी proceedings को conduct कराना है अतः उसका ज्ञान आपको हो। विधि का काम है न्यायाधीश धीरे–धीरे पारंगत होगा। पारंगतता सतत् क्रिया है। यत्न व प्रयत्न सतत् होना है।

दंडादेश एवं डिक्री :

प्रावधानों को पढ़ें। गलती हो जाती है। अपराध की प्रकृति कुछ भी हो। सजा आदि को उस दृष्टिकोण से देखें जैसा अनुभव प्राप्त करे। Avoidable errors से आप बच जाएंगे। ज्यादातर डिक्री का operative portion कैसा बनाया जाना है व्य.प्र.स. एवं नियम आदेश में बताया है। stepwise लिखा जावे। Directions should be explicit. स्पष्ट हो। वाक्यांश स्पष्ट हो। सजाएं स्पष्ट हो।

मकान–भूमि विषय में भी सुनिश्चित करें कि कौन सी निश्चित भूमि है।

कमिश्नर :

Temporary Injunction के विषय में मौका मुआयना करवाईये। यथा स्थिति स्पष्ट हो।

C.C.D., Fine amount के विषय में स्वयं ध्यान रखे। अंध विश्वास व विश्वास इसमें दो बाते हैं। प्रलोभन होना स्वाभाविक है। हो सकता है किसी के मन में लोभ उत्पन्न हो।

मालखाना :

मालखाने में जमा होने वाली संपत्ति के विषय में गंभीर जिम्मेदारी है। आप अपने सामने सम्पत्ति सील करें। Corner of an eye आप अपने सामने करें। Re-payment order में व सी.सी.डी. रजिस्टर में भी इन्द्राज होना चाहिए। जिम्मेदारी हमेशा पीठासीन अधिकारी की है हिसाब verify किया करें। समरी शीट पर हस्ताक्षर करना न भूलें। समरी शीट में मार्जिन में रकम लिख दें। कर्मचारी कितनी रकम वसूल कर रहे हैं व कितनी रकम की रसीद दे रहे हैं देखें। विश्वासघात न हो लेकिन भूल होना स्वाभाविक है।

जीवन भर तपस्या करेंगे तो फल मिलेगा। 'ज्योति जरनल' को अवश्य पढ़ें। न्यायाधीशों से संबंधित बातें लिखी जाती है। अच्छे जज बनने से एक इमेज बनेगी। तय आपको करना। Create a good name.

THINK POSITIVE - LIVE POSITIVE

- Think Positive - Say to yourself every morning.
- Today is going to be a great day.
- I can handle more than I think I can.
- Things don't get better by worrying about them.
- I can be satisfied if I try to do my best.
- There is always something to be happy about.
- I am going to make someone happy today.
- It's not good to be down.
- Life is great, make the most of it.

POWER OF MAGISTRATE TO CONSIDER BAIL APPLICATION ON THE BASIS OF THE OFFENCES REGISTERED BY THE POLICE AGAINST THE ACCUSED

By P.V. Namjoshi

This article is the outcome of a question raised by a Judge in training sessions. He put the question in the following manner "The police produced the case diary and the accused for remand. The case diary reveals that police has registered a case u/s 326 I.P.C. and on perusal of record it appears that offence is made out under Section 324 IPC only, whether the Magistrate can grant bail during investigation of a case? The hidden question is whether the Magistrate can consider the reasonable grounds for believing that the accused is guilty of an offence as alleged by the police and whether the Magistrate has to act under the thumb of the police, as the police has registered the case under S. 326 IPC.

There may be a vis a vis case where police might have registered a case under S. 323 IPC and 379 IPC. Under these sections the Magistrate has jurisdiction to grant bail. Whether the Magistrate can prima facie consider that in reality the offence made out is that under Section 394 IPC and not under 323 and 379 IPC.

The reality is the Magistrate has not to work under the thumb of the police. In fact it is the concerning Court which has to apply the reasoning, i.e. the court has to go through the case diary thoroughly before ordering the release of the accused. It is not for the Magistrate only to consider the sections made applicable for registering the case. It is the Magistrate, who has to consider prima facie what offence is made and whether the Magistrate may grant bail at the time of remand, i.e. before the completion of investigation. The powers are to be exercised under S. 437 Cr.P.C.

Two important phraseologies are being used in that section. The first is "reasonable grounds for believing that he has (accused) been guilty of an offence punishable with death or imprisonment for life" and secondly "release on bail where there are no reasonable grounds for believing that accused has committed a non-bailable offence."

Therefore, when the accused is produced along with the case diary the Magistrate should see that prima facie what offence is made out and whether he is competent to grant bail.

On perusal of case of ***Upendra Ku. Sahu Vs. Giridhari Sahu and others, 1996 (4) Crimes 331 (Orissa***) it will reveal that the mere registration of a case under a particular section by the police is not the end of the matter. Sometimes either due to the ignorance or for some other reasons or even for some ulterior purpose the police may register a case. Apparently under some very serious sections or even less serious section, opinion of the police regarding the nature of offence committed is not conclusive even at the stage of consideration of bail and it is the duty of the Magistrate to find out about the real nature of offence.

The judgment further says that the Magistrate seems to have mechanically acted upon the sections indicated in the F.I.R. by the police, and promptly proceeded to release the accused persons on bail without bothering to find out the real nature of allegations. It is the duty of a Magistrate even at the stage of considering the question of bail to apply judicial mind to find out prima facie the nature of offence alleged to have been committed. mere registration of a case under a particular section does not preclude the Magistrate from dwelling into the matter to find about the real offence. Of course, endeavour at that stage is to find out a prima facie case and not to come to any definite conclusion. Under Section 437 Cr.P.C., while considering the question of bail, the Magistrate is to find out about the offence alleged to have been committed. If it is prima facie found that an offence punishable with death or imprisonment for life has been committed, the Magistrate has no jurisdiction to release the accused on bail. If on the other hand, it is found that though a case has been registered under a section punishable with death or life imprisonment, if there is no material in support of such allegation, the Magistrate has power to consider the question, of bail. The mere registration of a case under a particular section by the police is not the end of the matter. The police may register a case, apparently under some very serious section or even less serious section. The opinion of the police regarding the nature of offence committed is not conclusive even at the stage of consideration of bail and it is the duty of the Magistrate to find out the real nature of offence.

In ***(1983) 2 Crimes 143, Munniswamy Vs. State of Karnataka,*** it was said that the mere fact that it is stated by police or the charge sheet mention, that it is a case under Section 302 IPC is not enough to refuse bail. On an examination under these facts and circumstance of the case and the materials placed before him, if the Magistrate is of the opinion that there are no grounds to believe that the accused has committed an offence punishable with death or imprisonment for life, he can grant bail. This section (S. 437 Cr.P.C.) does not, therefore speak of evidence, it speaks of reasonable grounds. Whether an application for bail is made in the initial stage of the case? The Magistrate may expect the prosecution to specify him that there is a genuine case and that it will be able to produce prima facie evidence in support of charge but he cannot expect at that stage to have evidence establishing the guilt of the accused beyond reasonable doubt.

In ***state of Kerala Vs. M.K. Pyloth, 1973 Ker Lt 88***, it was said that the Magistrate is not to reject the application merely because the police has stated certain things. He must satisfy himself that there are reasonable grounds for believing that the accused is himself in the offence. If there are no reasonable grounds to believe that the accused suspect has been guilty of offence punishable with death or imprisonment for life, the first part of the Section 437 Cr.P.C. will apply and the Court has discretion to release him or not to release. It was held that Court is not absolved from responsibility to examine the petition on merits where the petitioner is or is not entitled to bail.

To conclude, it can be said that the consideration at the time of remand stage (investigation), the bail application is taken up for disposal is different from the consideration to be adopted at the end of the trial for holding the man guilty or not guilty. See ***State Vs. Harbanslal, 1975 Cr.L.J.*** **1705 (J & K)** in which the words "reasonable grounds for believing" explained;

The words "reasonable grounds for believing" means such grounds as are based on reasons and logic and are not bereft of reasons. The grounds should be such as may lead one to believe that the accused is guilty of such an offence. It is not only the probability of the ground being creative of a belief but even the possibility of such a belief which is sufficient to give rise to the interdiction referred to in S. 497 (1) Old Cr.P.C. The angle of consideration to be adopted while finding a man guilty or not guilty. It is the degree of enormity of the consequence of an order finally convicting a person of such an offence and an order under sub-section (1) of S. 497 Old Cr.P.C. which is creative of the corresponding difference in the approach and the angle of consideration in the two cases.

It is in every case therefore the triability of the issue regarding the guilt of the person which provides the touchstone to decide whether a person is entitled to a bail or not. After having examined the material before it if the court unhesitatingly and unmistakably comes to the conclusion that the accused is not guilty of such an offence, it is a case where the court can say that there do not appear any reasonable grounds for believing that the accused is guilty of such offence but if on an examination of the material before the court is put to thought and that thought detains the court even for a while such a situation is one in which it can be said that there are reasonable grounds for believing that the accused is guilty of such an offence. It is not necessary that the court must believe the reasonable grounds to be suggestive of the guilt of the accused. It is sufficient if there is a possibility of believing the accused to be guilty of the offence on that ground.

Therefore, if for whatsoever reason police registers a case under S. 323 and 379 IPC the Magistrate has to see whether the act of accused amounts to an offence under S. 394 IPC or not. Again if a police registers a case under S. 323 only and during investigation of the case, accused is produced for remand the Magistrate has to see whether in fact an offence is made out under S. 323 or under S. 307 for consideration of bail application and vice versa.

Attention is drawn to the citation of ***Munnibai Vs. Nandkishore and others, 1992 JLJ 541***. With the courtesy of JLJ following portion is reproduced for ready reference :

While granting or refusing bail, case of each accused has to be considered on merits. Section mentioned cannot be dominant consideration. Court has to see what offence has been committed.

There cannot be any hard and fast rule in the matter of granting or refusing bail with reference to the offences under which crime is registered. The case of each accused has to be considered on its own merit. Though the sections under which the case is registered may have some bearing that cannot certainly be the dominant consideration. The Court's duty is to see as to what offence has been committed.

However, while doing so, the Court is not required to appreciate and evaluate the evidence. The Judicial Magistrates, while granting bail, are also required to peruse the police case diary and to see as to what offence is made out, but, while doing so, they are neither required to scrutinise the evidence, nor required to evaluate it. They are required to see, only on plain reading of evidence collected, as to what offence is made out. It appears that, in this case learned Magistrate has tried to evaluate the evidence.

In ***State of M.P. Vs. Kailash Chandra, 1971 M.P.L.J. 814***, it was held that :

With the Courtesy of 1971 M.P.L.J. following portion is reproduced :-

"While dealing with any application under section 497 Cr.P.C., the Court must bring its mind to bear upon the various considerations and on that basis grant or refuse bail. When a Magistrate deals with such an application he has first of all to see whether it appears that there are reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life; and, if it so appears, he has no jurisdiction to grant bail. For that purpose, the Magistrate has to apply his mind to the material made available by the prosecution to satisfy him prima facie that it will be able to produce good evidence, which may establish the guilt of the accused of such an offence. At that stage, the Magistrate cannot enter into niceties nor into the details. He cannot go at a tangent in order to find out possible excuses for granting bail. **The mere fact that the charge sheet is for an offence punishable with death or imprisonment for life does not take away the jurisdiction of the Magistrate to grant bail.**

It was held that, on facts that the Magistrate did not exceed his jurisdiction in granting bail. Evidently it was present to his mind that unless there appeared reasonable ground for believing that the petitioner had committed an offence punishable with death or imprisonment for life, he had the power to grant bail, although the challan was going to be put up under section 302 Penal Code.

In this Judgment the High Court referred the following judgments :

AIR 1952 Tr. Co. 227, AIR 1962 SC 253, AIR 1933 Bom 492, AIR 1956 Bom 648, AIR 1952 Raj 149, 1956 NLJ Note 93 relied on. **1966 MPLJ 236 and Misc. Cri. Case No. 337 of 1965 D/-11-11-1965 (M.P.)** Dist. (Bail was granted in the case)

In **(1977) 18 Guj LR 107 (115, 116), the Gujarat High Court** has held that:

"When the Investigating Agency submits to the Court that the accused should not be released on bail on the ground that there are reasonable grounds for believing that he is guilty of offence punishable with death or imprisonment for life the submission has got to be made good before the Court. The Court has to form that opinion, wich opinion should enter the judicial verdict after hearing both the sides before it. It follows therefore that in any case the material collected during investigation on which the Investigating Agency relies to oppose the bail application should be disclosed in some form or the other to the accused."

Further in **1979 Cri LJ 1179 (1181) (J & K),** it was held that :

"If the Court finds that no such grounds exist it may enlarge the accused on bail even if there may be grounds for believing that he is guilty of a non-bailable offence punishable with a lesser sentence."

To conclude the subject, it can very well be said that Magistrate has to consider the bail application independently and should not work under the thumb of the police. It is immaterial under what provisions of law the police has reqistered a case. What is material is the Magistrate has to go through the case diary minutely and has to come to a conclusion independently that whether under the circumstances mentioned in the case diary A Magistrate can grant bail or not. It may be a case registered by police under Section 307 or 394 but the facts may reveal that prima facie, for the purposes of granting bail offence is made out under S. 323-24-25 or under S. 323 or 379 IPC also and vice versa. Let the Magistrate should exercise the jurisdiction independently.

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"FOUR MARKS OF SCIENTIFIC MIND"

GO TO THE ROOT OF WORK SIMPLIFICATION :-

1. **THE SIMPLICITY TO WONDER.**
2. **THE ABILITY TO QUESTION.**
3. **THE POWER TO GENERALISE.**
4. **THE CAPACITY TO APPLY.**

ANIL KAMLE
SAGA OF OWES & FRIENDSHIP

PIN MONEY

PIN-MONEY :- Pin-money is a yearly allowance given by a marriage settlement, made by the husband to the wife, for the purchase of her clothes or ornaments, or for her other **personal** expenditure. Gifts or payments made by the husband to the wife, from time to time, after marriage, for the **same purposes,** are also treated as pin-money. Pin-money resembles the wife's separate estate in one feature, that she uses and disposes of it herself; it differs from her separate estate is not being an absolute gift to her own use, and in not being free from the **jus meriti** (Right of a husband). The only object of pin-money is personal expenditure; the wife is not entitled to have her personal expenses otherwise defrayed by her husband, without drawing upon the pin-money fund, and then to demand payment of its arrears as a debt due to her from him or from his estate.

The leading case upon this subject, in which most of the rules concerning it are laid down, is ***Howard V. Digby,* 8 Bligh, N.S. 224, 245, 265-269; 2 Clark & F. 634; and see 1 Lead, Cas. Eg. 4th Am. ed., 729.**

Pin-money does not include the purchase of jewels, nor the cost of maintaining the house, grounds, carriage and the like, but only the wife's current personal expenses. The wife is not liable to account for its expenditure, and if she fulfils the duty of applying it to her dress and other personal expenses, she is entitled to any surplus remaining out of what has been actually paid to her. ***Jodrell Vs. Jodrell,* 9 Beav. 45; Howard Vs. Digby,** Supra. If the husband has actually paid or provided for all her personal expenses, she cannot claim any arrears from his estate at his death. ***Fowler Vs. Fowler,* 3 P. Wms. 353, 355: *Thames Vs. Bennet,* 2 P. Wms. 347: *Howard Vs. Digby*** supra.

However, when he had not made the stipulated payments, and on her demanding them he had promised to pay them in full, she may claim **all the arrears from his estate. *Ridout Vs. Lewis,* 1 Atk 269; Foss Vs. Foss, 15 Ir, Ch. Rep. 215; *Edgeworth Vs. Edgeworth,* 16 Ir. Ch. Rep. 348.** As a general rule she cannot claim more than the arrears for one year. ***Lord Townshend Vs. Windham,* 2 Ves. Sr. 1, 7:*Peacock Vs. Monk,* 2 Ves. Sr. 190; *Aston Vs. Aston,* 1 Ves, Sr. 264, 267; *Howard Vs. Digby,*** supra.

Finally, her own representatives have no claim for arrears upon the husband or his estate. ***Howard Vs. Digby,*** supra.

THE WIFE'S PARAPHERNALIA : The wife's paraphernalia include the wearing apparel and ornaments given to her by her husband, reasonably suitable to her condition in society, with the express design of being worn by her as clothing, or as her own personal ornaments. Paraphernalia are very different in their legal incidents from the wife's separate estate. While she is entitled to their possession and use, and may under some circumstances have a claim with respect to them in the nature of a debt against her husband's estate, she is not their absolute owner; she cannot dispose of them; on the contrary, her husband **may** dispose of them, and they are liable to the claims of his creditors.

See ***Graham Vs. Londonderry,* 3 Atk. 393, 1 Lead. Cas. Eg. 4th A,**. ed., 730, 731.

Jewels and ornaments in the nature of heir-looms in her husband's family are not paraphernalia. But where the husband markes presents to his wife of jewels, ornaments,

and the like, for the purpose of being worn by her, they are considered as paraphernalia. ***Jervoise Vs. Jervoise,* 17 Beav. 566, 571; *Graham Vs. Londonderry,* 3 Atk. 393, 394.**

Jewels and such articles may be given by the husband to his wife absolutely so as to become part of her separate estate, and presents which become paraphernalia should be distinguished from such gifts. ***Graham Vs. Londonderry,*** supra.

And articles which, if given by her husband, would be paraphernalia, when given by a third person will rather be considered as her separate property. ***Graham Vs. Londonderry,*** supra; **Lucas Vs. Lucase, 1 ATK. 270.**

If the paraphernalia have been used in payment of her husband's debts, she will be a creditor for their value against his personal estate, and the assets will be marshalled in her favour. ***Aldrich Vs. Cooper,* 8 Ves. (Eng) 382, 397; *Snelson Vs. Corbet,* 3 Atk. 369** (against the heir taking land by descent); ***Boyntun Vs. Boyntun,* 1 Cox, 106 (against devises of land); *Incledon Vs. Northcote,* 3. A.K. 430, 436 (same).** But see ***Rigout Vs. Plymouth,* 2 Atk 104; *Probert Vs. Clifford,* Amb. 6.**

If her paraphernalia have been pledged by her husband in his life-time, and there are sufficient assets after payment of his debts, she is entitled to have them redeemed therewith. ***Graham** Vs. **Londonderry,* 3 Atk. 393, 394.**

***Seymore Vs. Tresilian,* 3 Atk. 358.**

It may be added, that as the legal title to the paraphernalia is held by the husband, he is the proper party to bring any legal action for their loss or for injury to them.

The husband cannot bequeath the paraphernalia. ***Tipping Vs. Tipping,* 1 P. Wms. 729; *Seymore Vs. Tresilian,* 3 Atk. 358. *Boyntun Vs. Eoytun,* 1 Cox. 106: *Shelson Vs. Corbet,* 3 Atk 369; *Ridout Vs. Earl of Plymouth,* 2 Atk, 104: *Champion Vs. Cotton.* 17 Ves. 264, 273.**

They are not, however, subject to the claims of his legatees, general or specific. ***Graham Vs. Londonderry,* 3 Atk. 393. 394.**

COURTESY- Pomeroy's Equity Jurisprudence, 5th Edition, Symons, Bancroft Whitney Company.

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दोष निवारण

माह फरवरी 2002 के ज्योति में अक्षर संयोजन एवं विन्यास में जो त्रुटियां त्वरित दृष्टिगोचर हो सकी हैं वे इस प्रकार हैं। कृपया संशोधित कर लें।

1. पृष्ठ क्र. 57 टिट–बिट क्र. 26 में **Cash** के स्थान पर **Case** पढ़े।
2. पृष्ठ क्र. 69 पर टिट–बिट क्र. 59 की नोट में **1989 Cr.L.J.** के आगे **512** लिखें।
3. पृष्ठ क्र. 95 टिट–बिट क्र. 100 के शीर्षक में **RERROSPECTIVE** के स्थान पर **RETROSPECTIVE** पढ़े।
4. पृष्ठ क्र. 100 पर अनुक्रमांक 1 में **इस्टर** के स्थान पर **इस्टर्न** पढ़े।

1.

नट शेल

इस धरा पर कोई भी बात अपने आप में पूर्ण नहीं है न ही अन्तिम सत्य। 'ज्योति' पत्रिका अपवाद नहीं हो सकती। 16 पृष्ठों से 100 पृष्ठों की यात्रा करते हुए भी लक्ष्य से एकदम दूर है। अप्रकाशित सामग्री बड़ी मात्रा में शेष रह जाती है, इस कारण न्यायदृष्टांत भी समय के साथ प्रकाशित होने से रह जाते हैं। ये दृष्टांत 'टिट–बिट' शीर्षक के अंतर्गत प्रकाशित होते हैं। अतः सीमित पृष्ठों में ही कुछ और सामग्री देने के दृष्टिकोण से अब प्रयत्न ये है कि ए.आई.आर. में उल्लेखित 'ट्रॉपिकल इंडेक्स' से चयनित शीर्षक भी टिट–बिट के साथ प्रकाशित होंगे जिससे कि न्यायनिर्णयों का मूल आधार ज्ञात हो सके।

मैं ऐसे न्यायदृष्टांतों के लिए 'अणु दृष्टिकोण' शीर्षक देने वाला था लेकिन अणु शब्द के साथ परमाणु शब्द मुंह में आ जाता है तब हम भाई लोग 'परमाणु दृष्टिकोण' की भी अपेक्षा करेंगे। कैप्सूल जैसा शीर्षक देने का भी सोचा था लेकिन उक्त शब्द कल्पना से ही कड़वा लगता है। दवाई के कैप्सूल ही कोई खाना नहीं चाहता है तो विधि के कैप्सूल तो कोई देखना भी नहीं चाहेगा। इससे बचने के लिए 'नट शेल' शीर्षक का चयन कर रहा हूँ। बादाम की गिरी (गरी) निकाल कर खा ली जाती है। कड़वी हो तब भी खाने के बाद ही पता लगती है। अपनी बात नट शेल में ही बता रहा हूँ।

ए.आई.आर. प्रकाशन नागपुर द्वारा प्रकाशित सामग्री में से विभिन्न सामग्री प्रकाशन का अधिकार प्राप्त है। अतः ए.आई.आर. नागपुर का आभार व्यक्त करते हैं।

आशा करते हैं आद्यतन सामग्री किसी सीमा तक आवश्यकता की पूर्ति कर सकेगी।

NUT SHELL

Anything on earth has its own limits. How 'Joti Journal' can be exception. The magazine runs in one hundred pages yet I feel that I am lagging behind the time to cope up with the up to date reporting of the Tit Bits. Therefore in addition to 'Tit Bits' I am inserting a column as **'Nut Shell'** with the courtesy of the AIR Publications Nagpur so as to enable the Judges to provide up to date case law. This Institute has permission to use the material from AIR Publication for which this Institute is very much obliged.

EDITOR

NUT SHELL

ACQUISITION OF LAND : Compensation - Interest-payable also on solatium. **AIR 2001 SC 3516**

Notification under S. 6 (2) of L.A. Act, Publication of - Time limit.

ADMINISTRATIVE LAW : Administrative order passed but not communicated. Non-existence in the eyes of law. **AIR 2001 SC 3471**

AGE : Accused whether juvenile - Crucial date to determine. **AIR 2001 SC 3576**

ANTICIPATORY BAIL : Finance investment companies cheating millions of people. Bail refused. **AIR 2001 SC 3810.**

ARBITRAL AWARD : Setting aside - Limitation - S. 5 of Limitation Act does not apply. **AIR 2001 SC 4010.**

ARREST AND SEIZURE : Non-Compliance with S. 57 N.D.P.S. Act - prosecution whether vitiated. **AIR 2001 SC 3190.**

CHEQUE : Pay order is cheque. Proceedings for dishonour - Competent. **AIR 2001 SC 3641.**

CHEQUE DISHONOURD : Presumption that cheque was drawn for discharge of liability of drawer. Rebuttal evidence - Nature of. **AIR 2001 SC 3897.**

COMMITTAL OF ACCUSED :- Cr.P.C., S. 209 : POWERS OF THE MAGISTRATE :- AIR 2001 SC 3716

HRIJINDAR KAUR Vs. STATE OF JHARKHAND

Complaint for offence under sections 498-A, 313 IPC and under Dowry Prohibition Act. Order discharging accused for offence under S. 313 IPC not challenged by complainant. Subsequent application by him to proceed with trial of accused under S. 313 Cr.P.C. Dismissal of. Revision against. Directions by High Court that magistrate may commit case if on examination of remaining witnesses and documents, accused found to have committed offence under S. 313, IPC. Not challenged by complainant. Magistrate having already recorded evidence of 2 witnesses, continued with the trial as per said directions and recorded evidence of remaining witnesses. Order passed by Magistrate that committal of accused for trial under S. 313 I.P.C. to Court of Sessions was not necessary. It was held not erroneous. Plea by complainant that Magistrate should not have taken into account evidence of all wintesses examined in passing said order. Not tenable.

COMPENSATION :-Motor accident-Case under M.V. Act. 1998. Goods Vehicle. Owner of goods or his representative travelling. Liability to pay compensation in respect of is on Insurance Company and not owner of vehicle.

Motor Accident - Case under M.V. Act, 1939. Liability of Insurance Company. Goods vehicle qua owner of goods and gratitous passengers. Owners of goods vehicle liable. **AIR 2001 SC 3363.**

CONSTITUTION OF INDIA, ARTICLE 21 : COMPENSATION FOR DEATH : COMPUTATION :- AIR 2001 SC 3218

LATA WADHWA Vs. STATE OF BIHAR

Death of housewife in fire accident. Value of services rendered by her to house. Even on modest estimation is Rs. 3,000/- p.m. in case of housewife is between 34-59 years of age. For elderly housewife of 62-72 yearsw age group. Value of service rendered to house would be 20,000 p.a.

Death of infant child in fire accident. Claim for damages is not totally barred. Children of age group of 5-10 years dying in fire that broke out during function organised by TISCO. Considering fact that parents of deceased children were well placed Officers of TISCO. Held 1.50 lac would be proper compensation in case of each child. Adding conventional figure of Rs. 50,000 total amount of Rs. 2.00 lacs paid to every claimant. Children of age group 10-15 years studying in Class 6 to 10. Dying in fire that broke out in TISCO's function. Tradition in TISCO to employ one child of every employee. Contribution by such child

to his family held to Rs. 24,000/- per year. Proper multiplier held to be 15 instead of 11. Adding conventional figure of Rs. 50,000 total compensation of Rs. 4-10 lacs paid to every claimant.

Compensation for personal injury, factors to be considered. For determining compensation for death of victim, multiplier method is sound and legally acceptable.

CORRUPTION CASE : Public Servant found guilty of corruption cannot hold public office. **AIR 2001 SC 3320.**

CULPABLE HOMICIDE NOT AMOUNTING TO MURDER :-

Land dispute. Attack on deceased in exercise of right of private defence. Attack continued even after accused fell on ground. Right of private defence exceeded. Act is culpable homicide not amounting to murder.

CONSTITUTION OF INDIA, ART. 235 :-
2) MADHYA PRADESH JUDICIAL SERVICE (CLASSIFICATION, RECRUITMENT AND CONDITIONS OF (SERVICE) RULES (1955), R. 24 : DEEMED CONFIRMATION :-
AIR 2001 SC 3234
HIGH COURT OF MADHYA PRADESH THROUGH REGISTRAR Vs. SATYA NARAYAN JHAVAR

Maximum period of probation provided in Service Rules. Rule further conferring right on authority to confirm subject to fitness of probationer and subject to his passing higher standard of Dept. examination. Unsuitable probationer allowed to continue and given further opportunity to improve. Continuance of probationer on expiry of maximum period of probation. Not deemed confirmation. Confirmation by implication also negatived. Termination on the grounds of unsuitability without holding enquiry is valid.

DE NOVO TRIAL : Special Court under SC/ST Act. Taking congnizance of offence without committal order. "No failure of justice occasioned". De novo trial cannot be ordered by Appellate Court. **AIR 2001 SC 3372.**

EASEMENTARY RIGHT :
HIMACHAL PRADESH VILLAGE COMMON LANDS VESTING AND UTILISATION ACT, S. 3
2) PUNJAB VILLAGE COMMON LANDS (REGULATIONS) ACT, S. 4 :-
AIR 2001 SC 3431
STATE OF HIMACHAL PRADESH Vs. TARSEM SINGH

Vesting of panchayat land in State Govt. Words 'Vest in State free from all encumbrances' occurring in S. 3. Means vesting of land in State is without any burden or charge on the land including that of easementary right. Therefore, easementary right of grazing also vest in the State Govt.

M.P. ACCOMMODATION CONTROL ACT, SECTIONS 13(1), (5) (12) (a) - DEFAULT IN PAYMENT OF RENT : PROTECTION AGAINST EVICTION :-
AIR 2001 SC 3806
R.C. TAMRAKAR Vs. NIDI LEKHA

Tenant did not deposit the arrears of rent either prior to filing of the suit or during its pendency before the Trial Court. Eviction decree passed by trial Court. Appeal against

mere depositing amount in Court without filing application for extension of time for payment of all arrears of rent due, is not in compliance with requirement of S. 13(1). Protection under S. 13(5) not available. Tenant can be treated as defaulter and liable to be evicted.

Bonafide requirement of landlord. Landlord is the best judge of his residential requirement. Son of landlady a doctor and has constructed his own house. Landlady wanted to to stay by herself in suit premises because of her health condition and because climate conditions of place suits her. Landlady cannot be compelled to reside with her son. Tenant liable to be evicted. More so, when tenant has left suit permission his transfer to another town, fact that suit premises is required of accommodation of family member of tenant, cannot taken into consideration.

EVIDENCE : (AFFIDAVIT) : Of formal character- Criminal trial - Police Officer playing formal role. His evidence can be tendered by affidavit. **AIR 2001 SC 3955.**

EYE-WITNESS : Non-mention of their names in FIR. Evidence as yet reliable. **AIR 2001 SC 3173.**

GIFT : Property transferred for inadequate consideration may not be gift as per T.P. Act. Document, however, must be registered. **AIR 2001 SC 3648.**

HOUSES AND RENTS : EVICTION : TRANSFER OF PROPERTY ACT, S. 111 :-
2) KARNATAKA RENT CONTROL ACT, SECTION 21 :-
AIR 2001 SC 3738
LAXMIDAS BAPUDAS Vs. SMT. RUDRAVVA

Eviction during subsistence of lease. Permissible only on ground/grounds provided under Rent Act and that too not only if such ground/grounds are made grounds for forfeiture of lease in lease deed. Non-obstante clause in S. 21 of Rent Act does not have effect of obliterating the contract of tenancy in totality. ***Shri Lakshmi Venkateswara Enterprises Vs. Syeda, ILR (1994) Kant 1659 (SC)*** and ***Bombay tyres Vs. K.S. Prakash, AIR 1997 Kant 311 (FB)*** Overruled. **1999 (1) Kant, LJ 216** reversed. ***Shri Ramakrishna Theatres Vs. General Investments, AIR 1993 Kant 90 (FB)*** approved.

BIHAR LAND REFORMS ACT, SECTION 16(3) :- LIMITATION :
2) LIMITATION ACT, SECTIONS 4 TO 14 :- RIGHT OF PRE-EMPTION-COMPUTATION OF 'MONTH' :-
AIR 2001 SC 3596
BIBI SALMA KHATOON Vs. STATE OF BIHAR

Requirement of provisions of sub-section (3) of Section 16 is that application shall be made before Collector within three months of date of registration of document of transfer. Provisions of Ss. 4 to 14 of the Limitation Act apply. Date from which limitation commences has to be excluded. Sale deed was registered on January 30,1988. Application claiming to be raiyat making application on April 30, 1988. Application is within limitation period of three months.

LOSS OF CONFIDENCE : LOSS OF CONFIDENCE IN EMPLOYEE :-

Pleading and proof. **AIR 2001 SC 3645.**

MEDICAL NEGLIGENCE :-
AIR 2001 SC 3914
Smt. VINITHA ASHOK Vs. LAKSHMI HOSPITAL

Patient with ectopic pregnancy. Hysterectomy performed. Uterus and products of conception not sent for Pathological test. Doctor not negligent. Plea of claimant that pregnancy was normal. Ultrasonography test whether necessary. By dilation and curettage method, doctor not negligent. Procedure-use of lamineria test. Doctor not negligent.

MOTOR VEHICLE : Transfer of - Effective date - Depends upon intention of parties as evidenced from contract. **AIR 2001 SC 3367.**

NATURAL JUSTICE : Blacklisting of drug supplier to Govt. Principle of audi alteram partem to be complied with. **AIR 2001 SC 3707.**

PRESUMPTION OF INNOCENCE : Lower Court convicts accused and sentences him. Presumption that accused is innocent comes to an end. **AIR 2001 SC 3435.**

PUBLIC EMPLOYMENT : Local cadres constituted by State under Presidential order - Appointments/promotions made on that basis - challenge after 15 years - Tenability.

Presidential order - Local cadres constituted by State under- And not Zone is area of operation for purposes of recruitment, Promotion etc. **AIR 2001 SC 3424.**

RES JUDICATA : Issue of enforcement of arbitral award. Dealt with in arbitration petition under S. 33 of Arbitration Act. Operate as res judicata in matter of enforcement of foreign award. **AIR 2001 SC 3730.**

SALE CONFIRMATION : Injuncted by Civil Court. Demand reduced to Nil. Sale cannot be confirmed. **AIR 2001 SC 3906.**

SPECIAL RELIEF : Family settlement between estranged spouses. Suit by wife for enforcement of interim order passed. Not interfered. **AIR 2001 SC 3952.**

PART OF CONTRACT : BURDEN OF PROOF : Specific performance of. Relief can be granted in appeal. **AIR 2001 SC 3352.**

Special performance of agreement for sale - Suit for - Defendant raising plea that agreement was executed as security for recovery of loan advanced by him. Defendant must adduce evidence to prove the same. **AIR 2001 SC 3606.**

SUCCESSION : Will executed by husband. Absolute ownership of properties bequeathed to wife. Adopted son only has right over property after death of wife. **AIR 2001 SC 3799.**

SUIT FOR LAND : Specific performance of contract. Suit simplicitor for, without claiming decree for possession of land. Suit is not 'suit for land'. **AIR 2001 SC 3712.**

TERMINATION OF SERVICE : Loss of confidence in employee - proof - Nature. **AIR 2001 SC 3645.**

UNSOUNDNESS OF MIND : Murder - Evidence and proof of plea of insanity. AIR 2001 SC 3828.

ZAMINDARI ABOLITION : Allotment of land forming part of pond. Validity. AIR 2001 SC 3215.

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2. ADMINISTRATIVE LAW : ADMINISTRATIVE ACTION : STATUTORY POWER : MODE OF EXERCISE OF :-

(2001) 2 SCC 118

S. RAMANATHAN Vs. UNION OF INDIA

It involves a duty to comply with the requirements of the law. It transpires from the available records that the Union of India nowhere has even indicated as to how it would be unworkable if a direction is issued by the Supreme Court for reconsideration of the case of promotion to the IPS Cadre on the basis of the additional vacancies which have been found to be available. It would therefore, be not appropriate to deny the relief to the appellants on the ground of apprehended administrative chaos, if the appellants are otherwise entitled to the same. It is no doubt true that while exercising the discretionary jurisdiction, courts examine the question of administrative chaos or unsettling the settled position, but in the absence of any materials on record the Court should not be justified in accepting the apprehension of any administrative chaos or unsettling the settled position.

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3. ADMINISTRATIVE LAW : JUDICIAL REVIEW : DOCTRINE OF FAIRNESS : NATURE OF :-

(2001) 2 SCC 41

TATA IRON & STEEL CO. LTD. Vs. UNION OF INDIA

Paragraph 23 of the judgment is reproduced :-

The contextual facts, therefore in no unambigous language depict that the four JPC price elements have not been paid by the appellant herein. Further, factual score depicts recording of an undertaking to repay in the event of excess payments and in the wake of the findings as noticed hereinbefore, it would neither be fair nor reasonable nor in consonance with the concept of justice, equity and good conscience directing entitlement of the appellant as is being claimed. Doctrine of fairness and the duty to act fairly is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice. It is a principle of good conscience and equity since the law courts are to act fairly and reasonably in accordance with the law. The correspondence unmistakably divulges an obligation to pay certain compensation in the event there is a payment of certain levy by the appellant herein. The appellant admittedly has not made the payment :

Doctrine of unreasonableness is opposed to doctrine of fairness and reasonableness will have its play, if allowed. The happening of an event has not taken place, can it be said irrespective of such an event reimbursement is to be allowed? The answer, however, cannot but be in the negative.

(2) EVIDENCE ACT, SECTION 115 : ESTOPPEL BY CONDUCT :-

Where a price reimbursement scheme, expressly requires claimant to give an undertaking to refund any amount erroneously paid or paid in excess, held, question of estoppel by conduct would not arise.

NOTE :- Judicial Officers are requested to go through the provisions of Section 72 of the Contract Act and Call Tax Vs. Asst. Commissioner of Sales Tax, 1971 JLJ 505. In such cases limitation begins from the date when the mistake becomes known to the plaintiff. Art. 24 of the Limitation Act r/w/s 17(1) (c) is made applicable.

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4. **ADVOCATES ACT, SECTIONS 35 AND 37(2) :-**
2) C.P.C., O. 23 R. 3 : POWERS OF THE COURT TO DIRECT PERSONAL APPEARANCE
3) ADVOCATES ACT : GENERALLY :- ADVOCATES DUTY TO THE COURT :-
(2001) 2 SCC 221
D.P. CHADHA Vs. TRIYUGI NARAIN MISHRA

Advocates are duty bound to state correctly the position of law. It is undisputed even if it does not favour his client. While an Advocate is free to try to the best of his ability and wit to persuade the court of a view of the law which best serves his client, an advocate is not entitled to drag a settled and non-controversial point of law into doubt solely to mislead or confuse court and so gain an unfair advantage for his client.

NOTE :- Please refer O. 3 R. 1 Proviso which says that provided that any such appears shall, if the Court so directs, be made by the party in person.

With the Courtesy of SCC publishers following portion is reporduced :-

G. Civil Procedure Code, 1908. Or. 23 R. 3. Compromise petition. Power of court to direct personal appearance. Held, is inherent and implicit in the jurisdiction vested in the court to take a decision. The power is intimately connected to the obligation of the court to arrive at and record its "satisfaction" that a compromise has indeed been reached. Held, contention of appellant advocate that personal appearance of parties was not a requirement under Or. 23 R. 3 was an utterly misconceived proposition. The crucial issue in the case was of the satisfaction of the court as to whether respondent tenant had in fact entered into a compromise agreement. Miscellaneous appeal against an order directing personal appearance of parties held, is not maintainable under S. 104 or Or. 43 R. 1 CPC. Civil Procedure Code, 1908, S. 104 and Or. 43 R. 1. Practice and Procedure. Appearance of parties. Personal appearance. Directions for

H. Civil Procedure Code, 1908. Or. 23 R. 3 and S. 104 or Or. 43 R. 1. Compromise petition. Order for personal appearance

(2) **PRACTICE AND PROCEDURE. RECORD OF PROCEEDINGS.** Record made by court, held, is sacrosanct and doubt cannot be cast on it casually. Where steps have not been taken for rectification, before the court which made the record, no other court including Supreme Court can entertain a challenge to the correctness of facts recorded in the order-sheet. Explanation offered by appellant advocate that he had not applied for rectification because the Judge concerned had meanwhile been transferred, held, was a ruse.

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5. **ARMS ACT. SECTION 25(1b) : DUTY OF THE COURT :-**
2001 (1) VIDHI BHASVAR 85
KALLU KHAN Vs. STATE OF M.P.

Minimum sentence of one year can be reduced for reasons to be recorded. 8 months RI awarded with reason. Appellate Court cannot enhance sentence on appeal by accused.

PENOLOGY :- 10 years passed. Sentence of undergone imprisonment is sufficient

punishment. In the present case the accused had undergone imprisonment of approximately 6 months R.I.

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6. ARMY ACT AND ARMED FORCES, SECTIONS 19, 122 AND 2) ARMY RULES, 1954 R. 14 :- POWER UNDER S. 19 r/w R. 14(2) WHEN CAN BE EXERCISED :- 3) WORDS AND PHRASES : WORDS IMPRACTICABLE, IMPOSSIBLE AND IMPERMISSIBLE REPORT AND REPORTS EXPLAINED :- (2001) 5 SCC 593

UNION OF INDIA Vs. HARJEET SINGH AND OTHER ALLIED CASE

Sections 19 of the Act and Rule 14 of the Rules are to be read together and as integral parts of one whole scheme.

With the courtesy of Eastern Book Company following portion is reproduced :-

When an officer, subject to the Army Act, is alleged to have committed a misconduct, in view of Section 125 and Section 19 read with Rule 14, the following situation emerges. If the alleged misconduct amounts to an offence including a civil offence, Section 125 vests discretion in the officer commanding the Army, Army Corps Division or independent Brigade in which the accused person is serving or such other officer as may be prescribed, to decide before which court the proceedings shall be instituted i.e. before a Court Martial or a criminal court. If the decision is to have the delinquent officer tried by a criminal court and if he is acquitted by the criminal court, then that is the end of the matter. **The pronouncement of judicial verdict would thereafter exclude any independent disciplinary action being taken against the delinquent officer on the same facts which constituted the misconduct amounting to an offence for which he was charged before the criminal court.** In the event of his being convicted, if some further disciplinary action is still proposed to be taken, then it is the conduct of the officer leading to his conviction (as found by the criminal court) which is capable of being taken into consideration by the Central Government or the COAS under sub-rules (3), (4) and (5) of Rule 14 for the purpose of such action. The facts forming the conduct of the officer leading to his conviction shall alone form the basis of the formation of opinion as to whether his further retention in service is undesirable whereupon he may be dismissed, removed or compulsorily retired from the service in the manner prescribed by the said sub-rules. But, on the other hand, if the initial decision was to have the delinquent officer tried not by a criminal court but by a Court Martial then under sub-rule (2) of Rule 14 it is for the Central Government or the COAS to arrive at a satisfaction whether the trial of the officer by a Court Martial is expedient and practicable whereupon the Court Martial shall be convened. The Central Government or the COAS may arrive at a satisfaction that it is inexpedient or impracticable to have the officer tried by a Court Martial then the Court Martial may not be convened and additionally, subject to formation of the opinion as to undesirability of the officer for further retention in the service, the power under Section 19 read with Rule 14 may be exercised. Such a decision to act under Section 19 read with Rule 14 may be taken either before convening the Court Martial or even after it has been convened and commenced, subject to satisfaction as to the trial by a Court Martial becoming inexpedient or impracticable at which stage the Central Government or the COAS may revert back to Section 19 read with Rule 14. It is not that a decision as to inexpediency or impracticability of trial by a Court

Martial can be taken only once and that too at the initial stage only and once taken cannot be changed inspite of a change in the fact situation and prevailing circumstances.

INTERPIRTATION OF WORDS PRINCIPLE : The two-Judge Bench of the Supreme Court in **Maj. Radha Krishan case** went by the dictionary meaning of the term "impracticable", by placing it in juxtaposition with "impossibility" and assigned it a narrow meaning. It is not possible to assign such a narrow meaning to the term. "Impracticable" is not defined either in the Act or in the Rules. In such a situation, "it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that 'the meanings of words and expressions used in an Act must take their colour from the context in which they appear'. Therefore, when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers". **Words and Phrases, The Law Lexicon and New Oxford Dictionary** have assigned "impossible" as one of the meanings of "impracticable". As the term used in sub-rule (2) of Rule 14 is "impracticable" and not "not reasonably practicable", there is more an element of subjectivity sought to be introduced by this provision in the process of arriving at the satisfaction, obviously because the rule is dealing with the satisfaction arrived at by the Central Government or the Chief of the Army Staff in the matter of disciplinary action on account of misconduct committed by an officer of the Army which decision would have been arrived at by taking into consideration the then prevailing fact situation warranting such decision after considering the reports on the officer's misconduct. **Major Radha Krishan case** lays down propositions too broad to be acceptable to the extent it holds that once the period of limitation for trial by Court Martial is over, the authorities cannot take action under Rule 14(2). It is not possible to agree with the proposition that for the purpose of Rule 14(2), impracticability is a concept different from impossibility (or impermissibility, for that matter). In the scheme of the Act and the purpose sought to be achieved by Section 19 read with Rule 14, there is no reason to place a narrow construction on the term "impracticable" and therefore on availability or happening of such events as render trial by Court Martial impermissible or legally impossible or not practicable, the situation would be covered by the expression - the trial by Court Martial having become "impracticable". The view of the Court in that case should be treated as confined to the facts ad circumstances of that case alone. The case of Dharam Pal Kukrety being a three-Judge Bench decision of the Supreme Court, should have been placed before the two-Judge Bench which heard ad decided **Major Radha Krishan case.**

"Misconduct" as a ground for terminating the service by way of dismissal or removal, is not to be found mentioned in Section 19 of the Act; it is to be read therein by virtue of Rule 14. Misconduct is not defined either in the Act or in the Rules. In the context in which the term 'misconduct' has been used in Rule 14, it is to be given a wider meaning and any wrongful act or any act of delinquency which may or may not involve moral turpitude, would be "misconduct", and certainly so, if it is subversive of army discipline or high traditions of army and/or if it renders the person unworthy of being retained in service. The language of sub-rule (2) of Rule 14 employing the expression "the reports on an officer's misconduct" uses "reports" in plural and misconduct in singular. Here plural would include singular and singular would include plural. A single report on an officer's misconduct may invite an action under section 19 read with Rule 14 and there may be cases where there

may be more reports than one on a singular misconduct or more misconducts than one in which case it will be the cumulative effect of such reports on misconduct or misconducts, which may lead to the formation of requisite satisfaction and opinion within the meaning of sub-rule (2) of Rule 14.

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7. **ARBITRATION ACT, SECTIONS 13 AND 29 : AWARD OF INTEREST FOR PRE-REFERENCE PERIOD :-**
2001 (1) M.P.H.T. 526 (CB)(SC)
EXECUTIVE ENGINEER, DHENKANANL MINOR IRRIGATION DIVISION, ORISSA Vs. N.C. BHUDHARAJ

The question to which this decision relates is about the power of the arbitrator to award interest for pre-reference period in cases that arose prior to the commencement of Interest Act, 1978, i.e. prior to 19-8-1981, when the Interest Act, 1839 was holding the field.

The arbitrator appointed with or without the intervention of the court, has jurisdiction to award interest, on the sums found due and payable, for the preference period, in the absence of any specific stipulation or prohibiton in the contract to claim or grant any such interest. The decision in **Jena's case, (1998)1 SCC 418 : (AIR 1988 SC 1520)** taking a contra view does not lay down the correct position and stands **overruled, prospectively.**

Both logic and reason should counsel Courts to lean more in favour of the arbitrator holding to possess all the powers as are necessary to do complete and full justice between the parties in the same manner in which the Civil Court seized of the same dispute could have done.

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8. **ARBITRATION ACT, SECTIONS 30 AND 33 :- VIEW OF ARBITRATOR NOT TO BE LIGHTLY INTERFERED.**
(2001) 5 SCC 691
INDU ENGINEERING AND TEXTILES LTD. Vs. DELHI DEVELOPMENT AUTHORITY

Arbitrator is a Judge appointed by parties and as such an award passed by him is not to be likely interfered with. Plausible view taken by arbitrator not to be interfered with unless the view of the arbitrator is vitiated by a manifest error on the face of the award or is wholly improbable or perverse. It is not open to the Court within the statutory limitation set out in section 30 to interfere. Where appellant had submitted its offer for supply of hard coke along with an escalation clause and unknown to either party, within two days, a price rise had been notified by Govt. owned supplier company and upon dispute arising arbitrator had found the appellant entitled to receive the escalated price, the view of the arbitrator was plausible one.

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9. **BILLS OF LADING ACT, 1856 : SECTIONS 1 AND 2 :-**
2) CONTRACT ACT, SECTIONS 170 & 171 : BAILEE'S LIEN OVER GOODS FOR UNPAID CHARGES :- THE LAW DISCUSSED WITH CUSTOMS ACT : DEMURRAGE CHARGES :-
(2001) 5 SCC 345
SHIPPING CORPN. OF INDIA LTD. Vs. C.L. JAIN WOOLEN MILLS

If affected by detention order passed by authorities under Customs Act, Customs Authorities confiscating the goods while still in the custody of carriers who had lien on the goods till all the dues were paid. At the instance of importer, in a proceeding to which the carrier was not a party, High Court holding the confiscation order to be illegal and directing the goods to be released to the importer without payment of any detention or demurrage charges and that direction becoming final. In separate proceedings, High Court directed that demurrage or detention charges, if any payable would be paid by Customs Authorities. In such circumstances, held that Customs Authorities could not restrain the carrier from claiming demurrage charges. However, in the peculiar circumstances of the case Supreme Court directed the carrier to waive the demurrage charges if so requested by Customs Authorities.

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10. COURT FEES ACT, SECTIONS 19-H AND 19-I :-
2) INDIAN SUCCESSION ACT, SECTION 276 : WILL : PROBATE
2001 (2) ANJ (M.P.) 550
KALAVATI Vs. BHANUPRAKASH

Revision petition against the order passed by ADJ in probate case was passed before High Court. It was probate case rejecting objections raised on behalf of the applicants under sections 19-H and 19-I of the C.F.A. read with rules of Notice for the assessment and submission of stamps. Notice in this case was not necessary. Since the non-applicant/petitioners failed to submit stamps as required there section 19-I, the case is remanded back to the trial court for directing the petitioner for submitting the same and for producing the original application under section 19(i) in accordance with law.

The judgment being of importance and is appearing in the Law Reports after a long gap of period, this is reproduced as it is with the Courtesy of A.N.J., Jaipur, Rajasthan :-

ORDER

The applicant/objectors have directed this revision against the order dated 23.7.97 passed by Vth ADJ Indore in Probate Case No. 32/96 thereby rejecting objections raised on behalf of the applicants U/S 19-H and (I) of the Court Fees Act.

2. Facts of the case in brief are that non-applicant has filed an application before the trial Court for grant of probate of will executed in his favour U/S. 276 of the Indian Succession Act. In the said application, on publication of the citation, the present applicants filed their objections. During the pendency of the petition, the applicants have also filed an application on 3.4.96, I.A. No. 8 raising objections that a notice of the application is not given to the revenue authorities for assessment of the value of the property left by the deceased as contemplated U/S 19-H of the Court Fees Act. In the same application, an objection was also raised that the petitioner has not submitted the Court fees stamps alongwith the petition as per valuation required on the probate application U/S 19-I of the Court Fees Act. The learned trial Court rejected both the objections and dismissed the applications Aggrieved the applicants have filed this revision against the impugned order of the trial Court.

3. I have heard Shri A.K. Sethi, L.C. for the applicants. No one appeared for the non-applicant though served and despite the SPC was also issued.

4. Considering the submissions of the L.C. for applicants and on perusal of Sec. 19-H and 19-I of the Court fees Act, in my opinion, the notice of the petition for assessment of the value of the claim made in the probate application was not necessary as the property involved for grant of probate does not include immovable property assessed for the payment of revenue. The property for which the probate certificate is prayed includes fixed deposit amount of Rs. 41,700/- and five tolas of gold ornaments and for this property the applicant has valued his claim. As such, the trial Court has not committed any error in disallowing the objections raised on behalf of the applicants U/S. 19-H of the Court Fees Act.

5. So far as the objection raised U/S. 19-I of the Court Fees Act is concerned, in my considered opinion, the non-applicant/petitioner is required to submit the Court fees stamps alongwith the petition on his claim as required under item No. 11 of the 1st schedule of the Court Fees Act, Section 19(I) of the Court Fees Act states that no order entitling the petitioner to the grant of probate or letter of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the IIIrd Schedule and the Court is satisfied that the fee mentioned in No. 11 of the 1st Schedule has been paid on such valuation.

6. The aforesaid provision contained in the court Fees Act makes it clear that the petitioner has to value his claim in the form set forth in the IIIrd Schedule and shall also submit the Court fees stamps alongwith the petition required on the said claim according to Item No. 11 of the 1st Schedule. In the present case, it appears that the petitioner has not submitted the Court fees stamps required on the petition. As such, the objection raised on behalf of the petitioner U/S. 19-I of the Court Fees Act deserves to be accepted directing the non-applicant petitioner to submit the Court fees stamps alongwith the petition according to the valuation of the claim before any order is passed on his application for grant of Probate.

7. Consequently, this revision petition is partly allowed and the case is remanded back to he trial Court to direct non-applicant/petitioner to submit the required Court fees stamps alongwith his petition as per valuation of the claim made in his petition within a specified time. It is further directed that if the petitioner commits default in payment of the Court fees within the time granted by the trial Court, then the trial Court shall proceed to dispose of the original petition in accordance with the law. No orders as to the costs.

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11. COURT FEES ACT, SECTIONS 7, 17 AND 35 AND SCHEDULE I AND II :-
2001 (1) MPWN 14
BIRSINGH Vs. GHANSRAM

Court fees has to be paid in Court where relief is claimed and not in the higher forum at appellate stage. Exemption claimed by virtue of notification under Section 35 if no enquiry is made by the trial Court such direction by lower appellate Court to hold such enquiry is not unjustified. Exemption claimed by virtue of notification under trial Court granting decree without payment of court-fees palpable error committed. Order of remand is wholly unjustified.

The whole judgment is reproduced because of its importance :

This Misc. Appeal is directed against the order dt. 2.8.1999 in Civil Appeal No. 8-A/99 by Additional District Judge, Dindori, whereby the case was remanded for re-trial after the defendant No. 1/appellant pays the necessary court-fee and complies with the mandatory provision of Order 1 Rule 3-B of C.P.C.

The appellant/defendant No. 1 filed a counter claim in the suit filed by plaintiff/respondent No. 1 Ghansram. Though the suit of the plaintiff was dismissed, the counter claim of the appellant/defendant No. 1 was decreed by the trial Court. However, it appears that the appellant/defendant No. 1 had not paid Court fee and sought exemption by virtue of notification of the M.P. State under Section 35 of the Court Fees Act. That application was not decided in accordance with law, and the matter of exemption was not properly considered.

The learned Lower appellate Court by the impugned judgment directed the trial Court to hold due enquiry regarding the prayer of appellant/defendant No. Order 1 for exemption from payment of Court Fee. It also directed that provisions of Order 1 Rule 3-B of C.P.C. be complied with and the State of M.P. be made a party.

Learned counsel for appellant/defendant No. 1 submits that the appellant no longer claims exemption of court fee by virtue of notification under Section 35 of the Court Fees Act. He states that the appellant/defendant No. 1 has paid court fee on the counter claim at the appellant stage.

It is rather strange that the contention as above is being raised by the learned counsel for appellant. Obviously, the court fee has to be paid in the Court where the relief is being claimed and not in the higher forum at the appellate stage. The learned counsel for appellant has submitted that the appellant/defendant No. 1 no longer claims exemption under the said notification and is willing to pay the necessary court fee in the trial Court. He will be free to do so.

However, in view of the fact that the appellant/defendant No. 1 did not pay necessary court fee regarding the counter claim in the trial Court and since due enquiry regarding the prayer for exemption was not made by the trial Court, the direction of learned lower appellate Court to the trial Court for holding such an enquiry is not unjustified. It is also clear that a decree in favour of appellant/defendant No. 1 could not have been granted without his paying the court fee, as was done by the trial Court. Therefore, the trial Court having committed palpable error in the matter, the order of remand with above directions appears to be wholly justified. No interference therein is called for.

However, as the learned counsel for appellant/defendant No. 1 has expressed that he no longer claims exemption from payment of court fee, therefore on the appellant/defendant No. 1 paying the court fee and complying with Order 1 Rule 3-B of C.P.C., his counter claim may be considered by the trial Court on merits without further delay. Needless to say that the evidence already laid by the parties in the trial Court shall form the basic decision afresh. However, the parties shall be at liberty to lead such further evidence as they may be advised.

This appeal is disposed of with the above direction.

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12. CONTEMPT OF COURTS ACT, SECTION 12 :-
2001 (1) MPWN NOTE 141
SANJAY KUMAR KHARE Vs. REWA RAM GANGAREKAR

Disobedience of order not wilful but due to confusion. Contempt not made out.

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13. CONSTITUTION OF INDIA, ARTICLE 226 : COMPENSATION TO WOMAN SUBJECTED TO RAPE :-
2000 (1) M.P.H.T. 256 (DB)
S.P. ANAND Vs. STATE OF M.P.

It is obligatory on the part of the Government to provide a machinery which would be protecting the entire population of India in the nature of female beings from the possibility of violence from other gender. They cannot be put to risk of loosing the virtues an resultantly the interest in life and the soul on account of shame of being the victims of rape or sexual violence. The State Government should be alert and should be more careful in chalking out necessary instructions to Police Department and all the officers functioning for the Government.

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14. CONSTITUTION OF INDIA, ART 31-A (1) (c) :-
2) M.P. CO-OPERATIVE SOCIETIES ACT, SECTION 67(1) :-
3) C.P.C. O. 39 RULE 2(2) (M.P. AMENDMENT) :-
2001 (3) M.P.H.T. 292
SIYA RAM SHARMA Vs. KENDRIYA SAHAKARI BANK MARYADIT, BHIND

No injunction can be granted against the order of suspension since under Section 67 of the M.P. Co-operative Societies Act, there is no power to grant injunction against the order of suspension. 1989 MPLJ 36 relied on and **AIR 1981 SC 1395, S.S. *Dhanoa Vs. Municipal Corporation, Delhi*** followed.

Co-operative Societies registered under the Act are the Corporations and M.P. Amendment is applicable to the Co-operative Societies.

SERVICE LAW :- Suspension :-

The employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the authority concerned and when the management has arrived at the conclusion on the basis of material in their possession that the employee could not be innocent then no conclusion to the contrary would be drawn by the Court at the interlocutory stage.

The order of suspension of a Government servant does not put an end to his service. The real effect of order of suspension is that the employee continue to be a member of service but is not permitted to work and during the period of suspension he is paid only some allowance - generally called subsistence allowance. It is further held that the enquiry should be concluded within a reasonable time, otherwise it will have a penal significance. The long continuation of suspension is depricated.

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15. CONSTITUTION OF INDIA, ARTS. 226 AND 227 : CARELESSNESS ON THE PART OF AUTHORITIES IN ENTERTAINING APPLICATIONS - EFFECT OF :- 2001 (1) MPWN 8

KU. RITUBALA SONI Vs. STATE OF M.P.

Child just entering her teens was compelled to invoke the extraordinary powers of High Court under Arts. 226 and 227 of the Constitution.

"The bureaucracy-self perpetuating Hobbes leviathan - is not just the symptom of the India's ills; it is the disease. It is very structure sabotages innovations, condones lassitude and encourages the attitude that a government job is a sinecure from the day you get it".

Exemplary cost of Rs. 10,000/- was awarded for callous attitude. Enquiry was ordered to ascertain the defaulter. Costs to be realised from him.

Being important Judgment the whole Judgment is reproduced.

RITUBALA SONI (KU.) V. STATE OF M.P. 2001(1) WN 8

Constitution of India - Arts. 226 and 227 - child just entering her teens - compelled to invoke the extraordinary powers of High Court under - "bureaucracy is just the symptom of India's ills; it is the disease" - "sabotages innovations. condones lassitudes"- exemplary costs of Rs. 10,000/- awarded for callous attitude - enquiry ordered to ascertain defaulter -- costs to be realised from him.

भारत का संविधान - अनु. 226 तथा 227 – बालिका का किशोरावस्था में पदार्पण मात्र – अनुच्छेदों के अधीन उच्च न्यायालय की असामान्य शक्तियों का आश्रय लेने को बाध्य – "अधिकारीतंत्र भारत की व्याधि का केवल लक्षण नहीं है, बीमारी है"– "परिवर्तन को बेकार करता है, शिथिलता की अनदेखी करता है"– निर्दय रूख के लिए. 10,000/– का निवारक खर्च अधिनिर्णीत – व्यतिक्रमी अभिनिश्चित करने के लिए जांच आदेशित – खर्च उससे वसूल किया जाएगा।

I begin this order with this prefatory note. Framers of the Constitution, while conferring jurisdiction to this Court to issue prerogative writs and power of superintendence, in their wildest dream would not have thought that a citizen of this country has to invoke the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for getting the marksheet corrected. Bulk of the time of the Courts are wasted on such avoidable litigations and unless this is curtailed, the complain of 'delayed justice' and 'pendency' cannot be overcome; notwithstanding herculean efforts by the Judges and increase of number of Judges.

Circumstances have compelled this child, who has just entered in her teen; to approach this Court *inter alia* praying that the respondents be directed to correct her marksheet. Petitioner appeared in the Primary School Certificate Examination held by respondent No. 2 in the year 1998. She was provided with the marksheet which shows that she has passed the examination in third division having secured 292 marks. Petitioner being sanguine about her performance in the examination, filed application before respondents for correction of her marksheet on 5.5.1998. Nothing was done. Petitioner thereafter gave legal notice to the respondents but that also did not bring any succour to her. Petitioner made further attempt and gave legal notices dated 23.6.1998 and 17.7.1998. All these representations and legal notices did not move the respondents and ultimately left with no option, she has filed this writ petition.

By order dated 7.2.2000 this Court directed for issuance of a show cause notice to the respondents. Thereafter the matter was taken up on 22.3.2000 and at the request of counsel for the respondents, three week's time was granted to file the reply. Respondents did not carry out their commitment. Thereafter, the matter was taken up on 5.5.2000 and this Court directed the respondents to file the return by 26th June, 2000 and it further observed that in case no return is filed, respondent No. 3 shall be present before this Court on 26th June, 2000. When the matter was taken up on 26.6.2000, at the request of counsel for the respondents, the case has been adjourned for today.

Today, when the matter is taken up, Mr. Ajay Raizada, G.A. states that the marksheet of the petitioner has been corrected and instead of 41% marks shown earlier, she has secured 64.5% marks. He further states that the petitioner was earlier shown to have passed the examination in IIIrd Division and on verification it has been found that she has passed the examination in 1st Division. He further states that necessary corrections have been made and the certificate has been made available to her.

I wonder as to why the petitioner has been forced to file this writ petition. Had the respondents given due attention to the representations made by her, a young girl who has just entered into her teen could not have come to this Court and had to undergo the trauma for all these years. When the marksheet could be corrected after filing of the writ petition, why it cannot be corrected without that. The editorial in India Today (July 10,2000) flashes in my mind.

"The bureaucracy - self perpetuating Hobbesian leviathan - is not just the symptom of the India's ills; it is the disease. Its very structure sabotages innovations, condones lassitude and encourages the attitude that a government job is a sinecure from the day you get it." As the marksheet has already been corrected, the direction sought for by the petitioner is of no consequence.

However, in view of the callous attitude of the respondents and in order to curtail this tendency, and to avoid uncalled for litigation, I am inclined to award an exemplary cost. Respondents shall pay to the petitioner a sum of Rs. 10,000/- as a cost of this litigation. Further, Principal Secretary in the department of Education of the Government of Madhya Pradesh is hereby directed to hold an enquiry and ascertain who is responsible for not correcting the marksheet within a reasonable period. The State Govt. shall be well advised to realise the amount of cost which I have awarded to the petitioner from the person held responsible and may take further disciplinary action against him. Principal Secretary of the department shall ensure compliance of this order and inform to the Registry of this Court the action taken by it within 3 months.

Courtesy - MPWN Law Journals Publications Gwalior.

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16. CONSTITUTION OF INDIA : ART. 154 AND 162 :
2001 (1) M.P.H.T. 445
SMT. SAKINA BAI Vs. STATE OF M.P.

The expression 'executive power' is very wide and connotes the residue of governmental functions that remain after the legislative and judicial functions are taken away. It includes acts necessary for carrying out the administration of the State. These powers of

the State executive are however, co-extensive with the legislative power of the State legislature.

Limitation in exercise of executive power is contained in Art. 162 which provides that 'subject to the provisions of the Constitution, the executive power of the State shall extend to the matters in respect of which the State Legislature of the State has power to make laws'. Thus the power extend to the matters with respect to which the Legislature of a State has authority to make laws i.e. the subjects enumerated in list-I State List and List-II Concurrent List of the VIIth Schedule of the Constitution.

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17. CONSUMER PROTECTION ACT, SECTIONS 2(c), (d) & (b) : COMPLAINT BY CONSUMER'S ASSIGNEE : MAINTAINABILITY EXPLAINED :-
(2001) 5 SCC 625
SAVANI ROADLINES Vs. SUNDARAM TEXTILES LTD.

Non-delivery of goods by carrier. Complaint filed by insurer against the carrier although impleading the consignor also not maintainable. However, it was open to the insurer to seek his remedy before a civil court.

Paragraphs 2 to 9 of the judgments are reproduced :-

2. Briefly stated the facts are as follows :

The 1st respondent had entrusted to the appellant 125 cartons of goods, of the value of Rs. 9,30,188 for transport from Nanguneri to Itchalkaranji. The goods were not delivered. The 1st respondent had insured the goods with the 2nd respondent. The 1st respondent lodged a claim with the 2nd respondent for loss of goods. The 2nd respondent settled the claim of the 1st respondent by paying a sum of Rs. 9,30,188. The 2nd respondent took a letter, which is termed as a "letter of subrogation, and a special power of attorney". On the basis of this letter the 2nd respondent filed a complaint before the State Consumer Redressal Forum. The 1st respondent was also a party to this complaint. The State Consumer Redressal Forum by its order dated 16-12-1998 directed the appellant to pay a sum of Rs. 9,30,188 with interest at 12% per annum.

3. The appellant filed a revision before the National Consumer Redressal Commission which has been dismissed by the impugned order dated 11-3-1999. Hence this appeal.

4. The only question raised before us is whether an insurance company is a consumer vis-a-vis the appellant and as such consumer can file a complaint before the Consumer Forum.

5. In the case of ***New India Assurance Co. Ltd. v. G.N. Sainani (1997) 6 SCC 383*** this Court has held that the assignee of a mere right to sue for the loss on account of short-landing of goods cannot be regarded as any beneficiary of any service within the meaning of the definition of "consumer". It has been held that such assignee cannot file a complaint under the Act, but can file a suit in a civil court for recovery of the loss. It has been held that the complaint by such assignee would not be maintainable.

6. In the case of ***Oberai Forwarding Agency v. New India Assurance Co. Ltd. (2000) 2 SCC 407*** it has been held that an insurer compensating the consignor for loss of goods during transit and having an assignment was not a beneficiary of the services hired by the consignor from the carrier. It is held that an insurer was not a consumer and could not, therefore, maintain a complaint against the carriers of the goods. It is held that even the addition of the consignor as a co-complainant would not enable the insurer to maintain such a complaint. In this judgment the terms of "letter of subrogation" (in that case) are also set out. The main terms are more or less, identical to the terms of the "letter of subrogation" in the present case. On an interpretation of those terms this Court has held that such a "letter of subrogation" was in effect an assignment. This Court has held that the assignee was not a beneficiary of the service and was not a consumer. It is held that a complaint by the Insurance Company was not maintainable.

SUBROGATION AND ASSIGNMENT

7. Faced with this situation, Mr. Raina submitted that in both cases i.e. ***New India Assurance Co. Ltd. case*** and **Oberai Forwarding Agency** the decisions were based on the fact that there was an assignment. He submitted that if there was no assignment but a mere subrogation then the principles laid down in these two cases would not apply. He submitted that on subrogation the Insurance Company would merely step into the shoes of the consumer and would be filing the complaint on behalf of the consumer. He showed to this Court the various terms of the letter of subrogation and submitted, in this case, there was no assignment, but a mere subrogation. He submitted that the complaint was thus maintainable.

8. In our view, it is not necessary to decide whether a complaint would be maintainable if there was merely subrogation. The main terms of the letter of subrogation in this case are identical to the letter of subrogation in ***Oberai Forwarding Agency case.*** On such terms it has been held that it is an assignment. As it is an assignment the principles laid down in the above mentioned cases apply and the complaint would not be maintainable. We, however, clarify that it will be open for the Insurance Company to file a claim for recovery of the amounts in a civil court.

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18. CO-OPERATIVE SOCIETIES ACT, SECTIONS 64 AND 82 :-
2) C.P.C., O. 7 R. 11 :- JURISDICTION OF THE COURT :-
2001 RN 257 (HC)
V.K. MUNSHI Vs. RAIPUR CO-OP. HOUSING SOCIETY

Cancellation of allotment of plot challenged on the ground of arbitrariness, lack of jurisdiction and against principles of natural justice. Plot also allotted to another person by housing society. Civil suit is maintainable and not hit by section 82. **1970 JLJ SN 3, (1979) 3 SCC 123, 1991 RN 91 and 1997 (2) MPLJ 253** referred to. **1970 JLJ 256 and Civil Revision No. 100/77** relied on.

NOTE :- Judicial Officers are requested to go through 1987 MPWN **Note 249,** ***Madhyamvargiya Griha Nirman Sahakari Sanstha Vs. Vasanta Rao.***

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19. **C.P.C., SECTIONS 98(2) : WORDS "CONSISTING OF" EXPLAINED :- STRENGTH OF HIGH COURT JUDGES :-**
(2001) 5 SCC 629
SIKKIM SUBBA ASSOCIATES Vs. STATE OF SIKKIM

Where the sanctioned strength of Judges was three but only two Judges were in position who differed from each other and referred the matter to a third judge, held, the matter should await till the arrival of a third Judge.

ARBITRATION ACT : WORD "MISCONDUCT" EXPLAINED :-

Paragraph 14 of the judgment is reproduced :-

14. It is also, by now, well settled that an arbitrator is not a conciliator and his duty is to decide the disputes submitted to him according to the legal rights of the parties and not according to what he may consider to be fair and reasonable. An arbitrator was held not entitled to ignore the law or misapply it and he cannot also act arbitrarily, irrationally, capriciously or independently of the contract (see ***Rajasthan State Mines and Minerals Ltd. v. Eastern Engg. Enterprises (1999) 9 SCC 283***). If there are two equally possible or plausible views or interpretations, it was considered to be legitimate for the arbitrator to accept one or the other of the available interpretations. It would be difficult for the courts to either exhaustively define the word "misconduct" or likewise enumerate the line of cases in which alone interference either could or could not be made. Courts of law have a duty and obligation in order to maintain purity of standards and preserve full faith and credit as well as to inspire confidence in alternate dispute redressal method of arbitration, when on the face of the award it is shown to be based upon a proposition of law which is unsound or findings recorded which are absurd or so unreasonable and irrational that no reasonable or right-thinking person or authority could have reasonably come to such a conclusion on the basis of the materials on record or the governing position of law to interfere. So far as the case before us is concerned, the reference to the arbitrator is found to be a general reference to adjudicate upon the disputes relating to the alleged termination of the agreement by the State and not a specific reference on any particular question and consequently, if it is shown or substantiated to be erroneous of the face of it, the award must be set aside.

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20. **C.P.C., O. 16 R. 6 O. 18 R. 2 AND O. 41 R. 27**
2) INSURANCE ACT, SECTION 39 : DOCUMENT NOT PRODUCED IN TRIAL COURT - EFFECT OF :-
2001 (1) VIBHA 108
L.I.C. Vs. SMT. KAMLA VERMA

Documents not produced in trial Court despite of Court's order. Such documents cannot be produced as additional evidence in appeal. Defendant not producing evidence despite of several opportunities. Order closing his evidence is proper. Double accident benefit policy. Insured died in motor accident. Wife-nominee is entitled to the policy amount. Benefit cannot be denied on the ground of illness of insured at the time of proposal.

NOTE :- Please refer to ***(2001) 2 SCC 160 L.I.C. Vs. Asha Goel*** which is being edited separately.

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21. **C.P.C., O. 37, Rr. 3 AND 7 : CONDONATION OF DELAY :-**
2001 (2) ANJ (M.P.) 567
RAJ KUMAR Vs. PARASMAL

Applicant not conversant with the relevant provisions. Dealy condoned.

Paragraph 5 and 7 of the judgment are reproduced :-

5. On perusal of the record, it emerged that after passing the impugned order, the trial Court listed the case for the evidence of the plaintiff without complying with the provisions of Order 37 Rule 3(4) of the CPC. On perusal of the facts stated in the application, filed on behalf of the applicant under Order 37 Rule 7 CPC, in my considered opinion, a sufficient cause for the condonation of the delay caused in entering appearance before the trial Court in compliance of the provisions of Order 37 Rule 3(3) of the CPC is made out because the summons served on the applicant, the date of hearing of the suit was mentioned as 11.1.99. It is stated in the application that the applicant was not conversant with the provisions of Order 37 Rule 3(3) of the CPC. As such, failed to record his appearance before the trial Court within 10 days of the service of the summons.

6. In my considered opinion, in the aforesaid circumstances, the trial Court should have allowed the application filed on behalf of the applicant under Order 37 Rule 7 CPC and should have condoned the delay. However, by rejecting the prayer for the condonation of delay, the trial Court has committed an illegality by depriving the applicant of his right to defend the suit filed against him by the non-applicant/plaintiff and on this count the impugned order of the trial Court deserves to be set aside.

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22. **C.P.C., SECTION 9 :-**
2) M.P. CO-OPERATIVE SOCIETIES ACT, SECTIONS 64, 82 AND 84 :-
3) M.P. CO-OPERATIVE SOCIETIES RULES, 1962, RULE 69(3) :-
MAINTAINABILITY OF SUIT AND OTHER SUBJECT MATTERS RELATING TO PROPERTY JURISDICTION HOW TO BE DETERMINED :-
2001 (3) M.P.H.T. 363
BRUHTAKAR SAHAKARI SAKH SANSTHA MARYADIT, MANDSAUR Vs. BHERULAL

Independent suit for declaration of title on land in dispute is maintainable, in Civil Court. **1993 RN 183** (***Krishna Lal Vs. Registrar, Co-operative Societies)*** relied on.

Question regarding whether any amount is due to Society suit for enforcement of charge or for recovery of loan or dispute relating to outstanding dues and the charge on the land would be touching the business of the Society and would be barred under S. 82 of the Co-operative Societies Act. Such case is in the exclusive domain of the Authorities empowered to decide under section 84.

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23. **C.P.C., SECTIONS 2(2), AND 100 : TIME BARRED APPEAL (FIRST APPEAL) :-**
2) C.P.C. O. 9 R. 13 AND S. 96 (2) :-
3) WORDS & PHARSES : AUDI ALTERAM PARTEM :-
2001 (1) VIBHA 121
TRILOCK SINGH Vs. KARTAR SINGH

First appeal dismissed as barred by time. Dismissing application for **condonation of delay amount to decree. Second appeal is maintainable.**

Procedure detailed under is based on the principles of Natural Justice. **AIR 1955 SC 425** followed.

One of the two pillar of principle is 'audi alteram Parten', i.e. no man should be condemned unheard. This principle is so important that it should be treated as part of substantive as well as of procedural law.

SCOPE OF APPEAL :- Appeal against ex-parte decree. Applicant can establish that he has been wrongly denied right of hearing by the trial Court. He can show that in order proceeding ex-parte there is error, defect or irregularity but he cannot show that he was prevented by sufficient reason from appearing. For this he has to take recourse of provisions under O. 9 R. 13. If the trial Court passing exparte decree under wrong assumption such decree is appealable under Section 96(2) as indicated under O. 43 R. 1A(1), **O. 9 R. 13 Explanation and Section 96(2)** obliged the defendant to decide whether he would prefer adjudication by appellate Court on merits of the decree or have the decree set aside by the trial Court. Explanation discourages two pronged attack on decree.

The party filed an application under O. 9 r. 13. There was no stay of execution of exparte decree granted. Appellant cannot file appeal under S. 96(2). He is estopped to take such course by his conduct.

LIMITATION ACT : SECTION 5 :-

Condonation of delay in filing first appeal. Court after relying various decision exercised its discretion in refusing to condone delay. No question of substantial question of law arises.

NOTE :- Judicial Officers are requested to go through **AIR 2001 SC 279** ***Ratan Singh Vs. Vijay Singh, Maniram Vs. Mst. Fuleshwar 1996 JW 328 and other*** marerial referred to on page **92 of JOTI Journal 2001 April issue.**

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24. C.P.C., O. 8 R. 6A : CAUSE OF ACTION AFTER FILING W/S.
2001 (1) MPWN NOTE 140
AMANULLA KHAN Vs. ZAHEER KHAN

Cause of action arose after filing of written statement. No counter-claim on such cause of action can be filed. Different case law discussed in the judgment.

Judges are requested to go through the said judgment which is reported in toto :-

Invoking the revisional jurisdiction of this Court under section 115 of the Code of Civil Procedure (hereinafter referred to as 'the Code') the plaintiff-applicant has called in question the propriety of the order dated 31.8.99 passed by the learned First Civil Judge Class-I, Satna in Civil Suit No. 34-A/98.

The facts as have been unfolded are that the petitioner as plaintiff instituted the aforesaid civil suit (the suit was re-numbered from time to time and the last number being C.S. No. 34-A/98) seeking declaration of right, title and interest over the suit land and for issuance of permanent injunction restraining the defendants from interfering with his possession. The defendants entered contest and filed separate written statements. It is worth

noting here that the learned trial Judge passed an order of temporary injunction on 2.12.1992 in favour of the plaintiff. The said order was assailed in Misc. Civil Appeal which was dismissed on 8.10.98. Thereafter, as alleged by the defendants the plaintiff forcibly took over possession on 1.1.99. After this development the defendants filed an application for amendment of the written statement. It was stated in the application for amendment of written statement that apart from taking over forcibly possession the other facts which had come to the knowledge are that the suit land was evacuee property which was allotted to one Tarachand and it was purchased by Kadir Khan from Tarachand on 3.1.88. On the aforesaid basis a counter-claim was advanced that the defendants No. 1 and 2 were in possession of the suit land from the very beginning but they are dispossessed on 1.1.99 and hence, there should be declaration that the defendants No. 1 and 2 are the owners of the land and are further entitled to recover possession. The said application was resisted by the plaintiff on the ground that the cause of action for the counter claim had arisen on 1.1.99 and therefore, the same is not entertainable as per the provisions enshrined uner Order VIII Rule 6A of the Code.

The learned trial Judge appreciating the facts and circumstances of the case opined that the counter-claim can be filed in respect of cause of action which had accrued before filing of the written statement, and in the case at hand the defendants had pleaded possession and ownership from the very beginning though they were dispossessed after dismissal of Misc. Civil Appeal and. therefore, the amendment putting forth the counter-claim was entertainable. The learned trial Judge placed reliance on the decision rendered in the case of ***Chaturbhuj Savariya v. Natwar lal*** **[1992(2) MPWN 80].**

I have heared Mr. Sanjay Agrawal, learned counsel for the applicant, and Mr. Sanjay S. Agarwal, learned counsel for the non-applicants. Criticising the impugned order it is submitted by Mr. Sanjay Agrawal, that the amendment pertaining to counter-claim could not have been allowed as it is plain as noon day that the cause of action had arisen much after the filing of the written statement. Submission of the learned counsel for the petitioner is that the provision enshrined under Order VIII Rule 6-A has to be strictly construed but the learned trial Judge had fallen into error by not applying the true import of the aforesaid provision. The learned counsel has also submitted that the decision rendered in the case of **Chaturbhuj Savariya** (supra) has not been properly understood by the Court below. Mr. Sanjay S. Agrawal, learned counsel for the non-applicants has supported the order passed by the Court below.

To appreciate the rival submissions raised at the Bar, I have carefully perused the impugned order. If the facts are analysed in proper perspective it becomes perceptible that the cause of action for the counter claim arose on 1.1.99 after the appeal was disposed of. The moot question that falls for consideration is whether a counter-claim can be entertained in respect of a cause of action that arises after filing of the written statement. In the case of ***Mahendra Kumar v. State of M.P.*** **AIR 1987 SC 1395** the Apex Court observed that if cause of action arises for counter-claim before filing of the written statement the counter-claim is maintainable although made after the defendant has filed his written statement. In the case of ***Prem Narayan v. Ram Vilash*** **AIR 1992 MP 29. B.C. Varma, J.** (as his Lordship then was) after referring to order 8 Rule 6-A and scrutinising the factual matrix held as under :

"In the instant case, the written statement was filed on 16.1.1987, while the counter-claim was filed on 16.10.1989. However, the cause of action was stated to have accrued on 14.10.1988 and thereafter, i.e. apparently after the filing of the written statement. That being the position, the counter-claim could not have been entertained because the cause of action for that counter-claim arose after the filing of the written statement."

In this context, I may also usefully refer to the case of ***Chaturbhuj Sawaria v. Natwarlal*** **1992 (II) MPWN 80,** wherein it was observed as under :

"What is laid down under Rule 6-A (1) is that a counter-claim can be filed provided the cause of action had accrued to the defendant before the defendant had delivered his defence or before the time limited for delivery his defence has expired, whether such counter-claim is in the nature of claim for damages or not."

At this juncture I may profitably refer to the decision rendered in the case of ***Jagdish Prasad Chowdhary v. Nirsu Singh and others*** **AIR 1981 Patna, 68,** wherein L.M. Sharma, J. (as his Lordship then was) held as under :

"Words, "either before or after the filing of the suit, but before the defendant has delivered his defence or beore the time limited for delivering his defence has expired" occuring in sub-rule (1) of R. 6A of O. 8 are important and the defendant cannot be allowed to set up by way of counter-claim in respect of a cause of action which arose after he delivered his defence or after the expiry of the date for filing his defence. This restriction is intended to avoid the risk of the disposal of the suit getting indefinitely delayed. Additional written statement with counter-claim in respect of cause of action which arose long after the filing of the defence was not entertained." (quoted from the placitum)

In view of the language used in Order B Rule 6-A and the decisions in the field, I am of the considered view that the learned Trial Judge has fallen into error by accepting the amedment and the counter-claim. It is worthwhile to note here that though an effort has been made to show that the cause of action had arisen on 8.10.88 as well as on 1.1.99, I am of the considered view, the cause of action arose on 1.1.99 and not earlier than that.

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25. C.P.C. : O. 9 R. 9 : DISPOSAL OF CLAIM CASE IN ABSENCE OF PARTY : PROPRIETY OF :-
2) MOTOR VEHICLES RULES (M.P.) NO. 224, 230, 231, 234, 238 AND 240 R/W ORISSA MOTOR VEHICLE (ACCIDENTS CLAIMS TRIBUNAL) RULES, 1960 :-
2001 (1) M.P.H.T. 449
SHIVSHANKAR Vs. SARJEET SINGH AND OTHERS

The case was posted for adducing evidence after framing of issues Tribunal dismissed the case in default. Applicant No. 1 filed an application under O. 9 R. 9 CPC but could not support that application by medical certificate. Tribunal rejected the application solely on the ground that a medical certificate was not filed and the claimants had not instructed their counsel. The High Court ordered that it is obligatory on the part of the Tribunal to pass an award after settlement of issues. Out of the claimants one was minor and the other two were women. Tribunal has no jurisdiction to dismiss the claim case for default or to refuse to make an award. Tribunal should not have been hypertechnical on insisting on production of the medical certificate.

Now the rejection of the application preferred under O. 9 R. 9 of the Code. The Tribunal rejected the application solely on the ground that a medical certificate was not filed and the claimants had not instructed their counsel. It is noticed that out of the claimants one is minor and other two are women. Judicial notice can be taken of the fact that ordinarily in certain cases one person looks after the case. In view of this the Tribunal should not have taken exception to that. That apart, the Tribunal should not have been hypertechnical on insisting on production of the medical certificate. In my considered view, the analysis made by the Tribunal is not justified and it should have restored the application in the interest of justice. Accordingly, the impugned order is set aside and claim case is directed to be restored to file in its original number.

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26. C.P.C., O. 6 R. 2 AND O. 6 R. 9 - PLEADINGS GENERALLY
2) O. 26 R. 1 : COST OF COMMISSION :
3) ARBITRATION ACT, SECTION 17 : WHICH DOCUMENT IS COMPULSORY DREGISTRABLE :-
4) DOCUMENT NATURE OF
2001 (1) M.P.H.T. 321
ANAND SINGHAL Vs. SMT. RAMKATORI DEVI

The plaintiff filed a suit for declaration of title of the disputed house. Plaintiff wanted to put an exhibit on the document alleged to be memorandum of partition. The defendants objected it on the ground that it was not formed part of the pleadings in the plaint. The trial Court held that the document was admissible in evidence. The High Court held that the parties are alive to the document evincing partition. Memorandum of partition was evidence of factum of partition which had taken place between the parties. No inconsistency of the pleadings with the evidence adduced in the shape of memorandum of partition. The date of the partition shown in the plaint and the document is the same. It cannot be said that evidence is at variance from the pleading. Document is admissible.

To determine true nature of document its contents have to be read as whole. Entire reading of the document shows that it is memorandum of partition and it did not create a right in praesenti in immovable property. It records what was agreed upon between parties and what rights were created under the oral partition. Hence it does not requires registration, and the document is admissible in evidence. ***Tek Bahadur Vs. Debi Singh Bhujil and others,*** **AIR 1966 SC 292,** ***Dr. Nilkanth Vs. Krishnarao Apte Vs. Ramchandra Krishnarao Apte and another, AIR 1991 Bom. 10 and Bhoop Singh Vs. Ram Singh Major and others, (1995) 5 SCC 709.***

The Commission was issued at the instance of the plaintiff during execution of decree (Examination of witnesses). The defendant objected the admissibility of the document. Commissioner stopped the cross-examination and referred the matter to the Court. It was held that commission fee cannot be shared equally between the parties. It has to be borne by plaintiff only. However, the High Court further directed that if there is any further protraction of the commission is not allowed to be completed, it would be open to the Trial Court to impose further costs to be incurred on account of commission fee on the defendant petitioner.

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27. C.P.C., SECTION 115 : JURISDICTION OF THE HIGH COURT IN REVISION :-
2001 (1) MPWN NOTE 3
BHAROSILAL Vs. STATE OF M.P.

Courts below acted with manifest illegality in not protecting settled possession by interim injunction. Ground for inference made out.

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28. C.P.C., SECTION 151 r/w/ O. 43 R. 1 (r) AND O. 41 R. 5(1) : PRAYER FOR RELIEF : NOT NECESSARY :-
2001 (1) MPWN 4
RAJENDRA SINGH Vs. NANDRAM

Miscellaneous appeal admitted. Appellate court may pass any order which may be necessary for ends of justice. No specific prayer necessary. Question of stay of Proceedings or execution does not arise.

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29. C.P.C., O. 26 R. 9 : COMMISSION - ADMISSIBILITY OF REPORT :-
2001 (1) MPWN 6
RAJINDER & CO. Vs. UNION OF INDIA

Commission was appointed by trial Court. The question is whether report is acceptable ? It would be decided by Court de'hors order of concerned authority. In such innocuous position High Court need not have altered trial Court's order.

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30. C.P.C., O. 39 R. 12 : AD INTERIM INJUNCTION :-
2001 (1) MPWN 3
BHAROSILAL Vs. STATE OF M.P.

Settled possession of tresspassers can be protected till eviction by due course of law is made.

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31. C.P.C., O. 47 R. 1 : REVIEW WHEN PERMISSIBLE :-
2001 (1) MPWN 9
STATE OF M.P. Vs. S.S. BHADAURIA

Error should be apparent on the face of record, if not self evident and has to be detected by process of reasoning. It is no error apparent on the face of record.

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32. C.P.C., O. 6 R. 17 : AMENDMENT - NATURE OF :-
2) SPECIFIC RELIEF ACT, SECTION 21 :- PLEADING RELATING TO ALTERNATIVE RELIEF - POWER TO AWARD COMPENSATION IN CERTAIN CASES :-
2001 (1) M.P.H.T. 249
ABHAY KUMAR Vs. ARUN KUMAR

The non-applicant/plaintiff filed a suit for specific performance of contract for sale of house. Later on he filed an application seeking amendment on the ground that applicant/defendant had removed lot of article from the house. Hence, the value of items removed had to be adjusted towards the agreed price. Trial Court allowed the application of amend-

ment but the defendant/applicant filed a revision. In revision it was held that plaintiff can ask for damages for breach of contract.

NOTE :- (Please see sections 21 and 8 of the Transfer of Property Act regarding incidence of transfer, i.e. operation of the transfer so that the subject may be properly understood.)The plaintiff is also at liberty to pray for grant of compensation for loss suffered for non-performance of contract by the defendant. It is also well settled in law that the Court in a given case may not allow the specific performance for contract and direct payment for damages to the plaintiff. The concept of compensation or damages as envisaged under Section 21 of the Act lies in a different spectrum and this kind of adjustment cannot be inferred from the language employed under Section 21 of the Act.

Part of paragraph 8 of the judgment is reproduced here :

On perusal of the aforesaid provision of Section 21, it is quite clear that the plaintiff can ask for damages for breach of contract. The plaintiff is also at liberty to pray for grant of compensation for the loss he has suffered for non-performance of the contract by the defendant. It is also well settled in law the Court in a given case may not allow the specific performance for contract and direct for payment of damages to the plaintiff. But in the present case the amendment sought for has its own peculiarity. The plaintiff has averred that the defendant has impaired the value of the property agreed to be sold, and therefore, the said price has to be adjusted towards the agreed price. By virtue of this amendment the plaintiff has made an effort to change the basic nature and spirit of the agreement. Mr. Tiwari, learned counsel, has laboured hard while contending that the amendment sought to reduce the agreed sale price can be construed as damages. In my considered opinion the concept of compensation or damage as envisaged under section 21 of the Act lies in a different spectrum and this kind of adjustment cannot be inferred from the language employed under Section 21 of the Act. As the basic character of the agreement is sought to be changed by way of the amendment of the plaint I am of the considered opinion that the same should not have been allowed by the learned Trial Judge. Accordingly, the impugned order allowing the amendment is set aside. However, it would be open to the plaintiff to seek amendment of the plaint by claiming damages, if so advised.

Accordingly the revision was allowed.

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33. C.P.C., SECTION 151 : INHERENT POWERS
2) C.P.C., SECTION 152 AND O. 47 R. 1 : REVIEW UNDER : ERROR :-
2001 (1) VIBHA 95
DEVKINANDAN Vs. STATE BANK OF INDORE

Error not by accidental slip or omission. No correction is permissible under. Powers of review may be invoked if error is apparent, on the record. ***Dwarka Das Vs. State of M.P.*, 1999 (20 JLJ 83 (SC)** followed.

Inherent powers can only be exercised when there is no other provision under the Code. Finding with due application of mind cannot be set aside. Court cannot alter or add to the terms of original judgment.

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34. C.P.C., O. 39 Rr. 1 AND 2 : INTERIM INJUNCTION, MANDATORY NATURE : STATUS QUO ANTE :-
2001 (1) C.G.W.N. NOTE 35
GURDWARA Vs. DR. RADHESHYAM MAURYA

Interim injunction in the nature of mandatory form may be granted when right of way etc. of the plaintiff is adversely affected.

The two Courts have found that the defendant/applicant has constructed the wall on a particular piece of land and the said construction is adversely affecting the right available to the plaintiffs. Though, learned counsel for the applicant submits at the interim stage an injuction in mandatory form should not be granted, but, in the opinion of this Court this argument should not detain this Court because the Law is settled that if the Court taking into consideration the attending circumstances and the mischief which the plaintiff is likely to suffer, records a finding that **ad-interim** mandatory injunction must be granted, then no bar is imposed against the Court in granting **ad-interim** mandatory injunction. The law of prudence simply requires that where under the interim mandatory injunction certain properties are to be demolished and the certain constructions are to be removed the Court may require the plaintiff to furnish the security to the satisfaction of the said Court so that in the event of suit being dismissed the defendant can properly be compensated.

In the present case the Court below has simply required the defendants to open the gate and is not asking them to demolish the construction raised by them.

On going through the records and hearing the parties at length I am unable to hold that the Courts below were unjustified in granting the petition filed by the plaintiffs. The Revision deserves to and is accordingly dismissed.

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35. C.P.C., O. 6 R. 4-A AND O. 1 R. 3B (M.P. AMENDMENT) READ WITH O. 9 R. 3 :-
2001 (1) MPWN NOTE 129
RAM SINGH Vs.GULAB RANI

Provisions under do not create jurisdictional incompetence in Court hearing suit or appeal. Decree passed in non-compliance of the provisions under cannot be set aside unless State shows that jurisdiction has been affected.

Second appeal pending. Suit cannot be dismissed in default of appearance.

The subject being of general importance the whole judgment is reproduced as it is :-

This second appeal has been preferred by the plaintiff. The suit filed by him was decreed by the trial Court for declaration of title and permanent injunction. The suit was filed with respect to agricultural land. First appeal was preferred and the first appellate Court set aside the judgment and decree passed by the trial Court and the case was remanded to the trial Court allowing the application under Order 6 Rule 17 CPC. Against the said decision of the first appellate Court, Second Appeal No. 88/91 came to be filed before this Court which was decided on March 7, 1991. The decree passed by the first appellate Court was set aside and the matter was remanded to first appellate Court to implead the State of M.P. as a party. It was also directed that compliance of order 6 Rule 4-A CPC be also made and appeal may be decided by the first appellate Court afresh. It

appears that thereafter the government was impleaded. However, Order 6 Rule 4-A does not appear to have been complied. In the meantime, before the remand of the matter in the miscellaneous appeal by this Court, as the first appellate Court had remanded the case to the trial Court, the original case was dismissed on 18.7.1984 for default of appearance of the counsel for the plaintiff. Considering the fact that the suit has been dismissed in default, the plaintiff's counsel stated that he was having no instructions in the matter, hence the appellate Court proceeded to decide the appeal ex-parte. The appellate Court has dismissed the appeal on the ground of non-compliance of the provisions of Order 6 Rule 4-A. CPC by the impugned judgment and decree.

This second appeal has been admitted by this Court on 29.1.1997 on the following substantial question of law :

> "Whether the suit of the plaintiff can be dismissed for non-compliance of the provisions of Order 6 Rule 4(A) of the Code of Civil Procedure (as amended in Madhya Pradesh)?"

The learned counsel for the appellant has submitted that it is a case where the appeal could not be dismissed for non-compliance of the provisions of Order 6 Rule 4-A. He placed reliance on a Division Bench decision of this Court in ***Brijraj Singh v. Smt. Bitto Devi*, 1991 (2) MPJR 279**, in which the following three proportions have been laid down by Shri R.C. Lahoti, J. (as he then was):

(1) The non-compliance with the provisions containing in Order 1 Rule 3-B CPC, does not create jurisdictional incompetence in the Court hearing the suit or appeal solely on account of non-compliance therewith;

(2) The defect as to non-compliance with the provisions contained in Order 1, Rule 3-B CPC, can be rectified by joining the State as party to the proceedings and noticing it at the very stage at which the defect is detected or pointed out to the Court.

(3) The party on whom lay the primary duty of impleading the State as party to the case having defaulted in doing so, cannot plead the defect at subsequent stage of the proceedings to its own advantage so as to get rid of a decree against it, otherwise well merited. No such decree shall be set aside unless the State be in a position to point out that merits of the case or jurisdiction of the Court has been affected on account of non-compliance with the provisions contained in Order 1, Rule 3-B and Order 6, Rule 4-A CPC."

The learned counsel for the respondent supported the reasons given by the appellate Court and urged that inspite of direction of the High Court in the remand order, the provisions of Order 6 Rule 4-A have not been complied with hence the appellant is not entitled to any indulgence in the present appeal.

In the case of **Brijraj Singh** (supra), the Division Bench of this Court has laid down that provisions of Order 6 Rule 4-A CPC, should not be construed in such a manner as to cause injustice. No decree passed shall be set aside unless the State be in a position to point out that merits of the case or jurisdiction of the Court has been affected on account of non-compliance with the provisions contained in Order 1, Rule 3-B and Order 6, Rule 4-A CPC.

The learned Court below has not found that merits of the case and jurisdiction of the Court have been affected on account of non-compliance of the provision of Order 6 Rule 4-A CPC. The purpose of Order 6 Rule 4-A is that information regarding the entire agricultural holding should be furnished so that subject to outcome of the decision, State may ascertain how much land is owned by the holder for the purpose of Ceiling on Agricultural Act.

In the instant case there is yet another reason to interfere and set aside the judgment and decree passed by the first appellate Court. It appears that the trial Court had dismissed the suit even when the second appeal was pending before this Court. It was not open to the trial Court to dismiss the suit for default of appearance of the plaintiff when second appeal was pending before this Court and the judgment and decree pursuant to which the matter was remanded to the trial Court was itself set aside by this Court. It is under this impression that the counsel for the plaintiff appellant pleaded no instructions as found by the learned first appellate Court. Thus, it was incumbent upon the appellate Court to have issued notice to the plaintiff who was respondent before the first appellate Court. No such notice was issued to the plaintiff by the first appellate Court. In any point of view, the non-compliance of the provision cannot be said to be fatal as per the Division Bench decision of this Court in the case of **Brijraj Singh** (supra).

The learned counsel for the appellant has submitted that compliance shall be made in the first appellate Court.

In the result, the appeal is allowed. The judgment and decree passed by the Court below are set aside. The first appeal is remanded to the Court below for decision afresh and parties are directed to appear before the first appellate Court on 27-11-2000.

No further notice shall be necessary to be issued. Parties shall bear their own costs as incurred.

NOTE :- Judicial Officers are requested to go through ***1986 MPLJ 539 Mahila Bashiran Bai Vs. Fatimabi.***

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36. Cr.P.C., SECTIONS 195 AND 340 :-
2) ARBITRATION ACT : GENERALLY : ARBITRATION "WHETHER HE IS A COURT" WITHIN THE MEANING F SECTION 195 :-
(2001) 5 SCC 407
MANOHARLAL Vs. VINESH

With the courtesy of Eastern Book Company and SCC publishers paragraphs 6, 7, 9, 10 and 16 in part are reproduced :-

6. Another redeeming feature is the inclusion of an explanatory provision by way of sub-section (3). The body of sub-section (1)(b) refers to the expression "court" and the same stands explained in sub-section (3). Without a reading of sub-section (3), "court" may be interpreted in a narrow context, but with the inclusion of sub-section (3), widest possible connotation is to be made available provided however, the statute declares it to be so !! The language "if declared by that Act" seems to be very significant.

7. A plain look thus at the provisions above depicts that inclusion of sub-section (3)

under Section 195 cannot but be taken to be an explanatory provision. The body of Section 195(1)(b) refers to the expression "court" and the same stands thus explained in sub-section (3). The restriction imposed is easily ascertainable by reason of the inclusion of the words ***"if declared by that Act to be a court for the purposes of this section"*** (emphasis supplied)-the user of the words seems to be very significant. One of the golden canons of interpretation is that the legislature always avoids surplusage and attributes a definite meaning to each of the words mentioned in the statute. By the very inclusion of sub-section (3) and the language as noticed hereinbefore in this paragraph, the intent of the legislature cannot thus be far to seek-it is connotative of a definite meaning.

9. The main thrust of the submission in support of the appeal however rests on a simple proposition that court means and implies authority to decide controversy between the parties authoritatively and the decision being binding amongst the parties. Strong reliance was placed on the decision of this Court in the case of ***Brajnandan Sinha v. Jyoti Narain AIR 1956 SC 66*** wherein this Court observed that the pronouncement of a definitive judgment is thus considered the essential "sine qua non" of a court and unless and until a binding and authoritative judgment can be produced by a person or body of persons, it cannot be predicated that he or they constitute a court. It is on the basis of the observations as above that the learned Senior Advocate in support of the appeal contended that a mere look at the new enactment would reveal the total exclusion of courts in the matter of interference with the arbitral awards - there cannot be any manner of dispute that awards are not to be interfered with and the same, as per the provisions of the statute have the status of a decree of a court and court and thus executable forthwith - but does that mean and imply total ouster of jurisdiction of courts or one need not approach the court at all in an arbitral proceeding, the answer may not be in the affirmative by reason of different statutory provisions with which we shall presently deal though not in detail since the issue is a little different from the usual discussion on a question as to whether an Arbitrator is a court or not. But before so doing another decision of this Court on which strong reliance was placed ought to be noticed. This Court in ***Virindar Kumar Satyawadi v. State of Punjab AIR 1956 SC 153*** in para 5 of the Report observed: (AIR pp. 156-57)

> "5. The first question that arises for our decision is whether the order of the District Magistrate passed on 17-9-1952 as Returning Officer is open to appeal. The statutory provisions bearing on this point are Sections 195, 476 and 476-B of the Code of Criminal Procedure. Section 195(1)(a) provides that no court shall take cognizance of any offence punishable under Sections 172 to 188 of the Indian Penal Code except on the complaint in writing of the public officer concerned or of his superior.

Section 195(1)(b) enacts that no court shall take cognizance of the offences mentioned therein, where such offence is committed in, or in relation to, any proceeding in any 'court', except on the complaint in writing of such court or a court to which it is subordinate. The offence under Section 193 is one of those mentioned in Section 195(1)(b). Section 476 prescribes the procedure to be followed where a court is moved to lay a complaint, and that applies only to offences mentioned in Section 195(1)(b) and 195(1)(c) and not to those mentioned in Section 195(1)(a).

Section 476-B provides for an appeal from an order passed under Section 476 to the appropriate court. The result then is that if the complaint relates to offences mentioned in Section 195(1)(b) and 195(1)(c), an appeal would be competent, but not if it relates to offences mentioned in Section 195(1)(a). Now, the order of the Magistrate dated 17-9-1952 directs that the appellant should be prosecuted for offences under Sections 181, 182 and 193. There is no dispute that the order insofar as it relates to offences under Sections 181 and 182 is not appealable, as they fall directly under Section 195(1)(a).

The controversy is only as regards the charge under Section 193. Section 193 makes it an offence to give false evidence whether it be in a judicial proceeding or not, and it likewise makes it an offence to fabricate false evidence for use in a judicial proceeding or elsewhere. If the offence is not committed in a judicial proceeding, then it will fall outside Section 195(1)(b), which applies only when it is committed in or in relation to a proceeding in court, and there is in consequence no bar to a complaint being made in respect thereof unaffected by the restrictions contained in Section 195(1)(b).

But if the offence under Section 193 is committed in or in relation to a proceeding in court, then it will fall under Section 195(1)(b), and the order directing prosecution under Section 476 will be appealable under Section 476-B. The point for decision therefore is whether the Returning Officer in deciding on the validity of a nomination paper under Section 36 of the Act can be held to act as a court. The question thus raised does not appear to be covered by authority, and has to be decided on the true character of the functions of the Returning Officer and the nature and the extent of his powers."

10. In our view, however, the observation made in **Virindar Kumar case** do not, in fact, assist us in any way in the present context. Two decisions of the Calcutta High Court have also been relied upon. The first being the case of ***Sailaja Kanta Mitra v. State of W.B. AIR 1971 Cal. 137*** and the second being the case of ***H.C. Ganti v. F.L. Harcourt, A.I.R 1931 Cal. 436.***

Section 195 itself provides for assistance in taking evidence. Sub-section (3), (4) and (5) have been strongly relied upon so as to conclude that even though the general trend of legislation is party autonomy but that does not mean and imply total exclusion of jurisdiction of the court or the conferment of such a power of court on the Arbitrator. In any event Mr. Singh contended that the issue in the instant appeal in rather restrictive and the general principle of an Arbitrator being identified as a court need not be gone, into by reason of this issue under consideration. The clear language of Section 195(3) of the Code of Criminal Procedure unmistakably depicts the restrictive intent of the legislature and if the intent was otherwise to include an Arbitral Tribunal within the fold of Section 195(3) of the Code, that is to say, if the legislature wanted to confer such a status there was no difficulty as such in incorporating there under a provision as is contained in the Debt Recovery Act (vide Section 22); Income Tax Act (vide Section 136); Motor Vehicles act (vide section 169 (2); Administrative Tribunals Act (vide section 22(3); Consumer Protection Act; MRTP Act; and Companies Act, etc. etc. since these statutes have definitely included and declared the Tribunal being ascribed to be a court within the meaning of Section 195 of the Criminal

Procedure Code. The inclusion of explanatory provision by way of sub-section (3) makes the situation abundantly clear and we need not dilate thereon.

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37. Cr.P.C., SECTION 438 : CONDITIONS TO BE IMPOSED :-
2001(1) MPWN 64
GOPAL Vs. STATE OF M.P.

Application for anticipatory bail was made. Charges were under Section 376, 506 and 342 IPC. Report was lodged after five weeks. No medical report. Applicant was a student. Bail was granted.

Court should lean against imposition of unencessary restrictions on the scope of. It is a procedural provision. Benificient provision must be saved, not jettisoned. Person seeking anticipatory bail is still a free man entitled to presumption of innocence.

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38. C.P.C., O. 13 R. 2 AND EVIDENCE ACT, SECTION 65(c) R/W/O 7 R. 16 C.P.C.
2001 (1) MPWN 54
TAWAR SINGH Vs. RANJIT SINGH

Original Document lost. Photocopies may be allowed to be filed. The original promissory notes was lost due to lapse of time. Photocopies thereof should be allowed to be adduced as evidence.

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39. Cr.P.C., SECTIONS 154, 203 AND 482 : QUASHING OF FIR
2001 (1) VIBHA 90
NIRMAL SURYAJI MORE Vs. STATE OF M.P.

Quashing of FIR or complaint on ground that FIR or Complaint disclosed commercial or money transaction is not justified. Many a cheating is committed in course of commercial or money transaction. ***Rajesh Baja Vs. State of Delhi,* (1999) 3 SCC 259** followed.

Averments prima facie make out a case for investigation. High Court cannot quash complaint merely because one or two ingredients of offence have not been stated in detail.

CHEATING CIVIL AND CRIMINAL PROCEEDINGS:- Prosecution cannot thwarted merely because civil proceedings are also maintainable. ***Trisuns Chemical Industry Vs. Rajesh Agrawal,* (1999) 8 SCC 686** followed.

In the present case there was a contract for supply of goods. There was an allegation for supply of goods but there was a reference for arbitration in case of dispute arises. This itself is not sufficient ground for quashing of complaint.

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40. Cr.P.C., SECTIONS 155 (2) AND 2 (D) EXPLANATION : COMPLAINT :-
2001 (3) M.P.H.T. 299 (DB)
P.N. RAMAKRISHNAN Vs. STATE OF M.P.

In a case where at the very commencement, it is apparent that the offence was non-cognizable, the report made by police officer after investigation contrary to S. 155(2) i.e., without the order of the Magistrate, cannot be treated as 'Complaint' with the aid of the Explanation to Section 2 (d) of the Code.

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41. Cr.P.C., SECTION 482 : QUASHING OF CRIMINAL COMPLAINT : CIVIL AND CRIMINAL PROCEEDINGS
(2001) 2 SCC 17
LALMUNI Vs. STATE OF BIHAR

Quashing of criminal complaint merely because the complaint spelt out a civil wrong also, not justified if the alleged acts make out an offence. On the basis of the complaint that Respondents 2 to 10 had fradulently got the father of the complainant to execute the gift deed, process issued by Magistrate against the said respondents to face trial under Ss. 419, 420, 467 and 120-B IPC. Petition filed under S. 482 by the said respondents for quashing the complaint. Complaint quashed on ground that it spelled out civil wrong and continuance of criminal prosecution would be an abuse of process of the Court.

It was held that it is true that if the complaint does not make an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed.

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42. Cr.P.C., SECTION 154 :-
2) EVIDENCE ACT, SECTION 25 :- F.I.R. BY ACCUSED EFFECT OF : ADMISSIONS NOT CONFESSION CAN BE TAKEN INTO ACCOUNT
2001 (1) VIBHA 102
VISHNURATH Vs. STATE OF M.P.

FIR lodged by accused person. Statements made in F.I.R., such statements (confession) cannot be relied on. **Admissions which are not confessions can only be taken into consideration.** ***Faddi Vs. State of M.P., 1964 SC 1850*** followed.

(2) EVIDENCE ACT, SECTION 3 : CIRCUMSTANTIAL EVIDENCE : APPRECIATION OF:

Wife and husband all alone in house. Wife found dead with so many incised injuries. Incident not explained by husband accused. It is an added incriminating circumstance, ***Manik Rao Vs. State of M.P., 1998 (II) MPWN 18*** relied on.

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43. Cr.P.C., SECTION 228 : FRAMING OF CHARGE : CONSIDERATIONS, PRINCIPLES LAID DOWN :-
2001 (1) M.P.H.T. 30 (C.G.)
ABDUL KADIR SIDDIQUI Vs. STATE OF CHHATTISGARH

Appreciation of evidence. Stage of framing of charge. Question as to whether the evidence available in the case diary and filed with the challan, if is taken as it is, would it make out a case for trial of the accused. It was held that considering the question of charge, it is not required to marshall the evidence available in the case diary but is simply required to see whether a prima facie office is made out or not. Every case depends upon its own facts. **2000 (3) M.P.H.T. 164 (SC)=2000 AIR SCW 189** and **AIR 1990 SC 1962** followed.

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44. Cr.P.C., SECTION 195 r/w/s 340 : OFFENCES UNDER SECTIONS 466, 467, 468 AND 471 IPC :-
2001(1) M.P.H.T. 522
RAJENDRA KUMAR JAIN Vs. SHRIKANT NIGAM

Order of sanction was passed without giving notice to show-cause to the petitioner and without holding proper enquiry. It was held that prosecution cannot be sanctioned without issuing notice to show-cause to the person concerned and without holding an enquiry. Writ petition allowed, **1992 MPLJ 15** relied on. **AIR 1996 SC 509, UJ(SC) 829** and **AIR 1998 SC 2023** followed.

If a sanction for prosecution is granted without notice, the order of sanction is unsustainable.

It is expedient in the interest of justice that an enquiry should be made in accordance with sub-section (1) of Section 340 Cr.P.C., into commission of offences.

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45. Cr.P.C., SECTIONS 173 AND 2(d) :-
(2001) 2 SCC 245
STATE OF BIHAR Vs. GANESH CHODHARY

Even if proceedings instituted before Magistrate after investigation by a police officer having no power to investigate a case involving non-cognizable offence held, Magistrate cannot be said to have no jurisdiction to take action. Where SI, police concerned of Railway Protection Force investigated the cases and submitted charge-sheet, objection that no action could be taken by the Magistrate taking cognizance of offence as the SI of RPF had no power to investigate a case, held, cannot be sustained.

The scheme of the Code of Criminal Procedure on the subjective reflective form Section 2 (d) defining "complaint" encompasses a police report also as a "deemed complaint" if the matter has been investigated by a police officer regarding a case involving commission of a non-coginzable offence. It obviously means that the proceedings before the Magistrate could not be viewed as without jurisdiction merely because proceedings were instituted by the police officer after investigation when he had no power to investigate. The police officer here cognizant of his limitations had according to the appellant State undertaken an inquiry and not an investigation and had submitted before the Court not a police report, but a complaint. Thus in either view of the matter, the interference of the High Court is uncalled for. Proceedings had to be allowed to be continued as if on a complaint.

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46. Cr.P.C., SECTION 154 : FIR LODGED BY KOTWAR - HOW TO BE INTERPRETED
2001(1) MPWN 5
STATE OF M.P. Vs. RAMBAGAS

FIR lodged by Kotwar may be presumed to have been lodged after collecting all relevant information from all concerned persons.

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47. Cr.P.C., SECTION 195 (2) : REQUIREMENT OF SANCTION :-
2) I.P.C., SECTIONS 468, 463, 464, 418 AND 420 :-
2001 (1) M.P.H.T. 243
RAJESH SHARMA Vs. AATIK AHMED

The applicant/complainant alleged that non-applicant No. 1 placed forged documents before Naib-Tahsildar to grab the property which belonged to applicant. Trial Court registered complaint against non-applicants. Revision was filed by non-applicants before A.D.J. It was allowed. Against it this criminal revision was filed. Offence of forgery is defined in Section 463 of IPC. Making of false document is dealt with under Section 464. Both these sections have to be read together. To prove an offence under Section 468 ingredients of Section 463 and 464 have to be proved. Applicant was not cheated within the meaning of Section 415 IPC. Ingredients of section 418 and 420 IPC also not attracted. Making a false document with an intent to cause damage or injury to public or any person or to support any claim or title or to cause a person to part with property or to enter into express or implied contract or with a view to commit fraud or that it may be committed is the essence of the offence of forgery. Accordingly the revision was dismissed. Since offence under Section 468 IPC is not specifically mentioned in Section 195 (2) Cr.P.C., compliance of procedure under section 195 is not necessary.

NOTE :- Judges are requested to go through **(1998) 6 SCC 352, *Arvinder Singh Vs. State of Punjab,* 1999 (1) Vidhi Bhasvar 291, *Ranjit Singh Vs. State of M.P.*** for further studies on the subject. These cases are reported in **'JOTI JOURNAL' 1999 February** issue **Tit bit No. 13 page 28** and in **December issue 1999 Tib bit No. 4 at page 524.** Also refer to ***State of Punjab Vs. Rajsing* (1998) 2 SCC 391** which was harmonished by Supreme **Court in Arbinder Singh's Case, (1998) 6 SCC 352**. Also refer to **AIR 1997 Sc 1 *State of Orissa Vs. Sharat Chandra Sahu*** which refers to Section 155(4), 198(1) Proviso to Cl. (e) regarding sanction.

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48. EASEMENTS ACT, SECTION 15 :- EASEMENT Vs. OWNERSHIP :-
2001 (3) M.P.H.T. 358
POORAN Vs. GHASITA

Whether the right claimed as "easement" or "as rights of ownership" depends upon what the plaintiff intended to do. Merely by non-mentioning the word "easement" in the plaint, necessary relief cannot be denied. **1998 (2) JLJ 89** relied on.

The words "as an easement and as of right" as used under the provisions of Section 15 of the Easement Act clearly indicate that it is a restriction in favour of the owner or occupier of the immovable property of the rights of ownership of the immovable property of another owner. The restriction cannot be built up or asserted without consciousness of the rights which are restricted. If the right that a person is exercising not with the consciousness that he is restricting another person's right of ownership, he cannot be said to be enjoying a right of easement. Whether the right claimed as "easement" or "as rights of ownership" depends upon what the plaintiff intended to do. The question of the animum of plaintiff, therefore, requires determination in each case.

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49. ESSENTIAL COMMODITIES ACT, SECTIONS 3/7 r/w/ M.P. FOOD STUFF CONTROL ORDER, 1960, PART II(d) AND M.P. KHADYA PADARTH SARVAJANIK NAGRIK PURTI VITARAN SCHEMES, 1981 :-
2001 (2) ANJ (MP) 495
MAHARAJ SINGH Vs. STATE OF M.P.

Reliance placed on certain decisions of the court taking the view that the scheme is executive in nature and was made in exercise of executive power of the State, therefore the conviction u/s 3/7 of the ECA cannot be sustained. The said decisions and Apex Court's decision discussed. Appeal allowed and the conviction and sentence imposed set aside.

Paragraphs 2 and 3 of the judgment are reproduced :-

2. As per prosecution case, accused was posted as Samiti Sewak in May, 1985 at Co-operative Society, Tada and his duty was to distribute sugar at fair price shop. On 29.5.85 physical verification was done and 17 quintals 15 kilograms sugar was found less. Complaint was also received that sugar was sold as elsewhere and was not distributed. On having been found guilty, the trial Court has convicted the appellant u/s 3/7 of the Essential Commodities Act for violation of M.P. Khadya Padarth Sarvajanik Nagrik Purti Vitaran Scheme. 1981 which was framed under the M.P. Food Stuffs Control order 1960.

3. Learned counsel for the Shri S.L. Kochar has placed reliance on a decision of this Court in case of ***Sukhram V. State of M.P., [2000(4) MPHT 363]*** in which reliance was placed on other decisions of this Court in case of ***Mohan V. State of M.P. [1990 JLJ 348], Santosh Kumar V. State of M.P. [195 (1) MPWN 29], Phoolchand v. State of M.P. [1994(1) MPWN 17], Vishnu Prasad v. State of M.P., [1993(1) MPWN 120]*** and ***M.P. Ration Vikreta Sangh and ors. v. State of M.P. and another, [1981 JLJ 564].*** View has been consistently taken that this scheme is executive in nature and was made only in exercise of executive powers of the State. Thus, conviction u/s 3/7 of the Essential Commodities Act cannot be sustained and the question also came to be considered about the said scheme by the apex Court in case of ***M.P. Ration Vikreta Sangh Vs. State of M.P., (AIR 1981 SC 2001)*** in which it has been held that the scheme was not made in exercise of powers conferred by Section 3 read with section 5 of the Essential Commodities Act and was made only in exercise of the Executive powers of the State.

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50. EVIDENCE ACT, SECTION 121 AND COURT : CONCLUSIVENESS :
2001 (1) MPWN 9
STATE OF M.P. Vs. S.S. BHADAURIA

Statement of the facts recorded in judgment is conclusive. If there is any error same Court should be approached early. There is no other remedy available. Such conclusiveness cannot be rebutted by affidavit or other remedy available.

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51. EVIDENCE ACT, SECTION 32 : DYING DECLARATION TO RELATION : HERE DAUGHTER : EFFECT OF :-
2001 (1) MPWN 7
BHELKA Vs. STATE OF M.P.

Statement of daughter not unimpeachable and also not corroborated by any other evidence. Not relating to cause of death and not admissible.

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52. EVIDENCE ACT, SECTIONS 114 AND 50 :- PRESUMPTION REGARDING VALIDITY OF MARRIAGE :-
2001 (1) M.P.H.T. 494
MST. LOLI Vs. MST. DURGHATIYA

It is true that Radhika Singh and Mst. Loli lived together and a number of children were born out the so-called wedlock. But, it has not been proved that any king of marriage was performed either in customary form or in a regular form. The question is whether a woman living with another person continuously for a long time and giving birth to children, by itself, shall prove the fact that the marriage was valid. So far as the question of living together is concerned, a mistress may live with the person in adultery and lead an adulterous life with the consent of her paramour. This fact of living together, by itself, would not be sufficient for proving a valid marriage between the parties. This fact would be less effective in the case where the wife is already married with a previous husband. In order to prove a valid marriage, she must also prove that there was a divorce with her previous husband. There may be a case of drawing presumption in cases where the facts are drowned in the mists of time and either party is not in a position to lead any evidence. The Court is however, entitled to draw a contrary inference, when the marriage and divorce was performed within the living memory and refuse to draw presumption of validity of marriage under the given facts and circumstances of the case.

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53. EVIDENCE ACT, SECTION 45 : EXPERT'S EVIDENCE : BULLETS, EXAMINATION BY F.S.L. DEPARTMENT :-
2001 (1) VIDHI BHASVAR 259(SC)
STATE OF M.P. Vs. SUPRA

Bullets found in the body of the deceased. Gun recovered from the accused. Both should be sent for expert examination to connect gun of the accused with the crime. **1950 SCR 821** relied on.

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54. EVIDENCE ACT, SECTION 24 : EXTRA JUDICIAL CONFESSION : VALUE OF :-
(2001) 2 SCC 205
GURUSINGH Vs. STATE OF RAJASTHAN

With the courtesy of SCC publishers the following portion is reproduced with reference to criminal trial :

If voluntary, being not obtained by coercion, inducement or promise of favour, held can form sole basis of conviction. Corroboration is required only by way of abundant caution. Retraction of such confession would not, by itself, weaken the prosecution case. Confession regarding commission of murder (patricide) made by accused-appellant immediately after the incident to his near relations, without any undue influence, coercion or pressure. No suggestion made that the confession was tainted and non-voluntary. Even though one of the PWs was declared hostile and by the time the other PW had reached the place of occurence, accused had already been arrested and therefore, their statement

regarding the confession made to them was inadmissible in evidence but evidence of another PW in that regard was believed by the Courts below and the same was reliable. In the circumstances, held, conviction can be based on such confession.

(2) EVIDENCE ACT, SECTION 45 : BLOODMARK : SEROLOGIST'S REPORT :-

Non-mention of diameter of stains of blood on chadar (sheet). Effect on prosecution case. Adverse effect and not mere doubt on the prosecution case due to the non-mention has to be shown. Mention of extent of dimension in seizure memo but non-mention of details there in, would not be fatal to the prosecution case.

Failure of serologist to detect origin of blood. Serologist and Chemical Examiner finding that the chadar (sheet) seized in consequence of the disclosure statement made by accused-appellant was stained with human blood. With the lapse of time classification of the blood could not be determined. In the circumstances held, accused cannot claim any benefit on the strength of a belated and stale argument that in absence of report regarding the origin of the blood, accused cannot be convicted.

(2) HOSTILE WITNESS

Merely because a witness is declared hostile, his entire testimony cannot be excluded from consideration. By giving permission to cross-examine a witness, nothing adverse to the credit of the witness is decided. Court has to exercise its discretion in granting permission to cross-examine in a judicious manner. It is for the court of fact to decide whether by virtue of cross-examination testomony of the witness stood discredited or not. Where PW differed from the prosecution case only in respect of the post-incident details (time of lodging FIR), held, trial court erred in granting permission to cross-examine the PW on the ground of his being hostile.

(4) CIRCUMSTANTIAL EVIDENCE : PATRICIDE :-

Smashing skull of the deceased with a kassi. Accused-appellant making confessional statement to PWs and voluntary disclosure statements leading to recovery of the weapon of offence and chadar (sheet) concealed in his house and hair which was found studded with the kassi when compared with the hair taken from the body of the deceased, found to be human hair and his chadar (sheet) found to be stained with human blood. It was held that, these circumstances were sufficient to connect the accused with the commission of crime for which he was rightly held guilty, convicted and sentenced by the trial court which was confirmed by the High Court.

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55. EVIDENCE ACT, SECTION 3 : NON-EXAMINATION OF WITNESS - APPRECIATION OF EVIDENCE :-
2) CRIMINAL TRIAL : APPRECIATION OF EVIDENCE :-
3) I.P.C., SECTION 307 :-
2000(1) M.P.H.T. 263
RAJDHAR Vs. STATE OF M.P.

The accused and victim were neighbourers. The accused/appellant was found guilty of causing injury by a service gun and was sentenced to 4 years R.I. It is alleged that on night accused called his neighbour and fired from his gun 303 bore which hit victim on his ieft ribs. Injury was proved to be dangerous to life. The circumstances proved that ac-

cused took away his service gun and was missing from duty. Plea put by defence that injured tried to commit rape on accused's wife so as to justify the cause of firing. The plea could not be substantiated. The accused had fired out of 50 service cartridges. Two shots and one other was missing. Accused was in uniform when he was arrested along with service rifle and cartridges, accused was absconding with them which also goes to show that it was accused only who was involved in the offence and was not found on duty at the relevant time when he had fired on the victim. Guilt of appellant/accused was not shaken by non-examination of witness. Lapses on the part of prosecution were deliberate. It was not a case of negligence. Question of adverse inference is rule of prudence and not automatic. Hence no adverse inference can be drawn against prosecution.

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56. FLASH

Cr.P.C., Ss. 125 and 125(3) PROVISO : RECOVERY PROCEEDINGS:LIMITATION 2001 (1) MPWN NOTE 146

KANCHANBAI Vs. RAVINDRA KUMAR

Application for recovery of maintenance amount pending. Limitation of one year not applicable. No separate application need be filed when recovery application is already pending.

The judgment being of general importance is reproduced here :

This revision is directed by the wife/applicant against the order passed by Judicial Magistrate. First Class, Ratlam in Criminal Case No. 2 of 1996 on 3.7.1999 whereby he dismissed the application on the ground that she may claim the **pendente lite** maintenance from 20.1.1996 to 20.1.1997 by filing a separate application.

The facts of the case, in brief, are that in Criminal Case No. 29 of 1992 by order dated 8.1.1996 the application of the applicant under section 125 of the Code of Criminal Procedure for grant of maintenance was allowed and it was directed that the applicant is entitled for maintenance at the rate of Rs. 300.00 per month from 20.11.1989. Thereafter on 6.1.1997, within a period of one year, the applicant/wife filed an application under section 125(3) of the Code of Criminal Procedure for recovery of the aforesaid amount . It was contended in the application that the amount of Rs. 22,200.00 with effect from 20.11.1989 to 20.1.1996 at the rate of Rs. 300.00 per month became due on the Non-applicant and he be ordered to deposit the same. On this application notices were issued to the Non-applicant/husband and he deposited an amount of Rs. 22,000.00 during 2 years period but has not deposited any amount of maintenance during the pendency of petition whereas a sum of Rs. 12,300/- had become due with effect from 20.1.1996 to 30.6.1999 but the trial Court has not given any direction for the payment of this amount and dismissed the main application on the ground that the Non-applicant has already deposited Rs. 22,000.00 and for **pendente lite** amount the applicant may file another application. Being aggrieved by the aforesaid order, the applicant/wife has filed this revision under section 397 read with section 482 of the Code of Criminal Procedure.

I have heard the learned counsel for the parties and perused the record.

From the order it is clear that the learned Judicial Magistrate, First Class, Ratlam has not properly considered the application of the applicant when the application was pending from 6.1.1997 then why an order was not given for the payment of that amount to the

applicant. It is not necessary for the applicant to file a separate application for the recovery of the amount which became due during the pendency of application for recovery. The limitation prescribed in first proviso of section 125(3) of the Code shall not be applicable in the cases when the application for recovery is pending. This limitation of one year is applicable for filing application for the amout which became due under this section. The Court cannot compel to any party to file a separate application when recovery application is already pending for the amount which became due during pendency of such an application. The order passed by the learned trial Court on 3.7.1999 does not seem to be proper and legal. The learned Judicial Magistrate ought to have ordered for depositing the amount which also became due during the pendency of the application under section 125(3) of the Code for recovery of the amount and this direction of the learned Magistrate is absolutely against the provisions of law that since the Non-applicant/husband has already deposited an amount of Rs. 22,000.00, therefore, case is closed and for **pendente lite** maintenance amount she may file a separate application.

In view of the aforesaid discussion, this revision is allowed. The impugned order passed by the learned Magistrate dated 3.7.1999 is hereby set-aside and the case is remanded with the direction that the learned trial Court shall decide the application which was filed on behalf of the applicant on 3.7.1999 for the recovery of the amount which became due during the pendency of application and shall dispose of the same in accordance with law as early as possible. It is further directed that the learned counsel for the parties shall appear before the trial Court on 25.9.2000 for further hearing in the matter.

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57. GRAMIN RIN VIMUKTI ADHINIYAM, 1982 (M.P.), SECTIONS 7, 3(a), 2(e), 2(i), 2(k) AND S. 22(g) :-
2001 (1) MPWN 16
WAMAN Vs. BALDEVDAS

Objections pertaining to provisions under the above sections not taken by filing written statement in civil suit. Such objections cannot be raised in execution of exparte decree.

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58. HINDU MARRIAGE ACT, SECTION 13(1) (i-a) AND 13(1) (i-b) :- DESERTION :-
2001 (3) M.P.H.T. 335
GAJENDRA Vs. SMT. MADHU MATI

In the instant case the demand of the respondent/wife and her father that the petitioner should live as her 'Ghar Jamaee' was unreasonable and it cannot be said that the petitioner/husband was not justified in not yielding to such a demand. In the circumstances, the blame for the differences between the parties in the instant case squarely lies on the shoulders of the respondent/wife and her father. As noticed above, it is also clear that the respondent/wife not only continued to live separately for a long period right from the year 1984, but she had intention to put an end to the marital relations. Thus there was animus deserendi on her part. Therefore the foregoing facts and circumstances of the case and conduct of the respondent, lead to an irresistible conclusion that it was the respondent/wife who deserted her husband the petitioner.

Section 13(1)(i-a) of the 'Act' provides that a decree of divorce can be granted on the

ground that the other party had treated the petitioner with cruelty. It is also well established that cruelty could be either physical or mental. The cruelty may be inferred from all the facts and matrimonial relations of the parties and interaction between them in their daily life, as disclosed by the evidence. The question as to whether the petitioner was treated with cruelty, can be answered only after all the facts have been taken into account, and the Court has to ascertain whether or not the treatment or conduct of the offending party would amount to cruelty. What is a cruel treatment to large extent would depend on the facts and circumstances of each case.

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59. HINDU SUCCESSION ACT, 1956, SECTIONS 8, 14(2), (1), 30 AND SCHEDULE :-
2) INDIAN SUCCESSION ACT, SECTION 74 :-
3) TRANSFER OF PROPERTY ACT, SECTION 7 : PERSON COMPETENT TO TRANSFER - WIDOW'S RIGHT :-
(2001) 5 SCC 363
MUNINANJAPPA Vs. R. MANUAL

With the courtesy of Eastern Book Company and SCC Publishers paragraphs 12, 13, 14 and 17 of the judgment are reproduced for ready reference :-

12. The principle laid down in the aforesaid decisions cannot be disputed. This will depend on the facts of each case and the language of the will. It may be, in a given case the court may supply the missing words and in some other the court may read down the language of the will in order to implement the intention of a testator. However, where the language and the words of a will are clear, there is no ambiguity which could be understood clearly without any doubt then it would not be proper to either supplement the words or read it down to give benefit to either of the contesting parties. In the present case we find that the language of the will is clear and unambiguous. Thus to find out intentions of the testatrix, no supplementing or **reading down any word is necessary.** The testatrix bequeathed her property to her brother's sons, namely, one from the first wife, the plaintiff and the other to Guruswamy, from the second wife. To both, she clearly records in no uncertain words that they would have limited right with no right to alienate. She also clearly records that in case a son is born to them they would get absolute right including the right to alienate. The language in the will is :

> "After my death Schedule Item 1 (which is Item 2 in the schedule to the plaint) house shall go to Guruswami....My adopted son, the said Muninanjappa (plaintiff) shall only enjoy Schedule Item 1 house and he shall not have any right to alienate... His male child may enjoy the same as he desires. Schedule Item 2 house may be enjoyed by the said...Guruswamy and the male child to be born to Vellamma and they shall not have any right to alienate...The male child shall have every right to enjoy the same as he desires.•"

13. The aforesaid language in the will is clear that the testatrix intended to give limited right to both the plaintiff and Guruswamy and absolute right only to the sons born to them. If that be so, the only point which requires our consideration is what right Sevamma, widow of Guruswamy gets after the death of Guruswamy? We have no hesitation to hold that the limited right of Guruswamy cannot be interpreted by any

stretch of language that the testatrix intended to give absolute right to Guruswamy or to his widow. They were to hold the property for delivery to the son, in case, born out of their wedlock. In no case Sevamma's right over the property would mature into absolute right by virtue of Section 14(1) of the Hindu Succession Act. Her right could only mature as such, if her claim could be based on any of her pre-existing rights including right in lieu of maintenance out of her husband's property. But in no case it would mature where the property is held by her husband either in trust for the benefit of others or as limited and restricted owner with no right to alienate. Hence even if Sevamma continued to enjoy the property after the death of her husband, she held the property at the most, in the same capacity as her husband but not to claim it towards her right of maintenance. If the husband had any other property apart from what was gifted by Poovamma, she could claim her above right under Section 14(1) but not over the property given to her husband Guruswamy as a limited owner. The High Court fell into error while construing Section 14(1) of the Hindu Succession Act by extending its width so wide which spills over its permissible boundary when it held, a Hindu wife will acquire absolute right in the property of her husband and then applying it to the facts of this case. It seems the High Court was not apprised of the settled law, in respect of the field of Section 14(1) as declared by this Court as far back as in ***V. Tulasamma v. Sesha Reddy (1997) 3 SCC 99*** and also reiterated in ***Velamuri Venkata Sivaprasad v. Kothuri Venkateshwarlu (2000) 2 SCC 139*** which holds that benefit to a female could be given under Section 14(1) where her claim is based on her pre-existing right over her husband's property. **V. Tulasamma** holds that Section 14(2) is in the nature of a proviso to section 14(1). Section 14(1) applies to property granted to a female Hindu by virtue of a pre-existing right of maintenance. The decision while carrying out the field of Section 14(2) held: (SCC Headnote)

> "[S]ub-section (2) must be confined to cases where property is acquired by a Hindu female for the first time as a grant, without any pre-existing right...the terms of which prescribe a restricted estate in the property...Where, however, property is acquired by a Hindu female at a partition or in lieu of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope of sub-section (2), but within the scope of sub-section (1)"

14. Applying the said principle, it has to be seen whether Sevamma is possessed of the property of her deceased husband based on her pre-existing right or is holding such property under any instrument prescribing restrictive estate in such property. By no stretch of interpretation it could be said, Sewamma was possessed of the suit property in lieu of her any pre-existing right. When a widow claims her right under sub-section (1) of Section 14 in the hand of either the coparcener or male issue of her deceased husband, it is because of her pre-existing right of maintenance to the extent of her husband's share in a joint family property. She cannot claim any such right out of the share of the other coparcener in which there is no trace of her husband's share. So when limited right as spoken with reference to the husband's right in a joint Hindu family property, it only means limited to the extent of the husband's share.

This was a case of joint Hindu family property where the husband had a right in the property being a member of the joint Hindu family, even though limited, which is distinguishable from the limited right which the testatrix granted to Guruswamy. In the aforesaid

case the husband's limited right is referred as limited to the extent of his share, but there existed in the property the right of the husband independently to the extent of his share while the right to Guruswamy in the suit property, was no other right except what is conferred under the will, which restricts for its enjoyment only but no independent right to transfer. The distinguishing feature between these two types of limited rights is, in the case of the husband's right in the joint family property even though limited, he has a right to seek partition or right to transfer to the extent of his share which Guruswamy could not enjoy in the restrictive right under the said will. In other words, Guruswamy could neither seek right of partition nor transfer his such right to anyone else.

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60. I.P.C., SECTION 304-A : NON-HOLDING OF DRIVING LICENCE AND RASH AND NEGLIGENT ACT CONSIDERED :- SPEED CONSIDERATIONS FOR :-
2) LEGAL MAXIMS : RES IPSA LOQUITUR :-
2001 (3) M.P.H.T. 57 (C.G.)
SMT. MANJU BARADIA Vs. STATE OF CHHATTISGARH

Unavailability or non-availability of a driving licence in itself would not be sufficient to hold that the accused was rash or negligent. **AIR 1968 SC 829** referred to. Non-availability of driving licence cannot be positively inferred that he was guilty of rashness or negligence in driving a vehicle. **AIR 1958 MP 200** relied on.

From the mere fact that the accused did not possess a driving licence, it cannot be positively inferred that he was guilty of rashness or negligence in driving a heavy vehicle like a truck. Whether he drives a vehicle with a licence or without licence, the law expects the driver to be neither rash nor negligent in the performance of his task and the Court will judge his conduct in the matter as if he were the most qualified driver who brings to his task the ordinary reasonable competency of persons driving heavy motor vehicles. Though speed is not criterion to decide that the applicant was rash and negligent, but the speed is one of the considerations. **AIR 1975 SC 1324** referred to.

The Maxim 'res ipsa loquitur' operaters as an exception to the general rule that the burden of proof of the alleged negligence is in the first instance, on the plaintiff. It cannot be invoked in criminal trials. **AIR 1979 SC 1848** followed. The Supreme Court has clearly observed that principles of resipsa loquitur are not special rule of substantive law, but it is only an aid in the evaluation of evidence. According to the Supreme Court, this principle allows the drawing of a permissive inference of facts as distinguished from a mandatory presumption properly so called, having regard to the totality of circumstances and probabilities of the case.

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61. I.P.C., SECTIONS 191 & 193 : PERJURY : DUTY OF THE COURT :
(2001) 5 SCC 289
IN RE : SUO MOTU PROCEEDINGS AGAINST R. KURUPPAN, ADVOCATE

Giving false evidence has become general practice. Courts should take stern and effective action against such offence and stop taking evasive recourse. Affidavit is evidence within the meaning of section 191.

Para 16 of the judgment is reproduced for ready reference :-

Keeping in view the facts and circumstances of this case, the record of proceedings in Suo Motu Contempt Petition (Criminal) No. 5 of 2000 and Writ Petition No. 77 of 2001, we are prima facie satisfied that the respondent herein, in his affidavit filed in support of the writ petition (for the purpose of being used in the judicial proceedings i.e. writ petition), has wrongly made a statement that the age of Dr. Justice A.S. Anand has not been determined by the President of India in terms of Art. 217 of the Constitution. We are satisfied that such a statement supported by an affidavit of the respondent was known to him to be false, which he believed to be false and/or at least did not believe to be true. It is not disputed that an affidavit is evidence within the meaning of section 191 of the Indian Penal Code and a person swearing to a false affidavit is guilty of perjury punishable under section 193 IPC. The respondent herein, being legally bound by an oath to state the truth in his affidavit accompanying the petition is prima facie held to have made a false statement which constitutes an offence of giving false evidence as defined under section 191 IPC, punishable under section 193 IPC.

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62. I.P.C., SECTION 306 r/w/s 34 :-
2001 (2) ANJ (M.P.) 521
PARAM LOHAR Vs. STATE OF M.P.

With the Courtesy of A.N.J., Jaipur, Rajasthan the paragraph 2 of the judgment is reproduced :-

2. It is alleged by the prosecution that one Kumari Hirabai daughter of Manpyare committed suicide on 12.6.94 in her village Khargapur. Tehsil and District Tikamgarh. She committed suicide hanging herself by means of a rope. Thereafter, a First Information report was lodged by K.N. Sharma, the station House Officer of Police Station Baldeogarh. It was alleged in the First Information Report that the accused persons/applicants had called the deceased bad names and, therefore, she was forced to commit suicide. Accordingly, the act of suicide by the deceased was abetted by the applicants. It appears that the case of the prosecution was that a suicide-note alleged to have been written by the deceased was recovered after her death. In that suicide-note it was said that the applicants had made filthy allegations against her and had given her beatings. In the latter, it appears that the deceased had resisted the statements alleged to have been made by the applicants, and stated you could discover what kind of I am from the papers. In my room and in the room of Rachna. "It was further alleged that Param used to say something at Tikamgarh against her and she was unable to bear it; and, therefore, she was committing suicide. She said that the applicants used to tease and harass her. However, nothing can be inferred from this letter, how the deceased was being harassed except that some filthy allegations regarding her character have been made. However, at least for one incident there could be evidence on record which could be elaborately dealt with and the investigation could found out what was uttered by the applicants because whatever was uttered by the applicants must have been before the witnesses. There are three witnesses to that event. It is alleged by the witnesses that Pavan Soni, the applicant No. 2 had gone to their houses and had stated that he had quarrelled with the mother of the deceased and given the deceased Hirabai a slap. Thereafter, the mother of the applicant No. 2 Pawan Soni took him away from the spot. At that time the other

applicants namely Saligram, Balmukund Soni and Param Lohar were also present. No role has been ascribed to think except that the applicants were abusing the deceased Hirabai. This is the statement of Ku. Rachna daughter of Manpyare. She is the sister of the deceased. Jayantibai, who is the sister-in-law (Bhabhi) of the deceased, had also stated that Pawan Soni had abused Hirabai and had given her a slap. At that time other accused persons were present and the mother of Pawan had come there and took Pawan back, the statement of Manpyare, the father of the deceased is not of any consequence except that he saw the letter of Hirabai recovered from has clothings.

Following cases were referred to in which facts not proved :

1. ***Deepak Vs. State of M.P.,*** **1993 MPLJ 729.**
2. ***Ved Prakash Vs. State of M.P.,*** **1995 M.P. 458.**

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63. INTEREST R/W/S 34 CPC :-
2001 (1) MPWN 17
GAUTAM CONSTRUCTIONS AND FISHERIES LTD. Vs. NATIONAL BANK FOR AGRICULTURE AND RURAL DEVELOPMENT

Mutually agreed rate of interest is binding on parties not permissible for arbitrator or Court to award a higher rate.

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64. INDIAN SUCCESSION ACT, 1925, SECTIONS 213(1)(2) AND 57(A) AND (B) :-
PROBATE : REQUIREMENT OF WHEN NOT NECESSARY :-
2001 (1) MPWN NOTE 143
MUNNA KHAN Vs. SMT. KAMLA BAI

Will executed in the State of M.P. Property also situating in M.P. Probate not necessary.

NOTE :- Please refer to ***Ram Charan Lal Vs. Madhav Lal, 1978 (2) MPWN 86*** and ***Sunder Bai Vs. Hazari Bai, 1976 JLJ 23.***

C.P.C., O. 22 Rr. 3 AND 11 :-

The appellant dying. His widow and person having registered will of deceased may be substituted in his place.

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65. INDIAN REGISTRATION ACT, SECTION 49, PROVISO :-
2001 (3) M.P.H.T. 309
BHANWARLAL Vs. HIRALAL

Unregistered document is admissible as evidence of the nature or character of a person's possession for collateral purpose. The date on which possession began is a collateral purpose.

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66. INSURANCE ACT, SECTION 45 :-
2) CONSTITUTION OF INDIA, ARTICLE 226 :-
(2001) 2 SCC 160
L.I.C. Vs. ASHA GOEL

Whether or not a claim can be enforced in writ jurisdiction depends on the answers to questions like : Is the petitioner only trying to enforce his contractual rights? Has he raised important questions of law or constitutional issues? What is the true nature of the dispute? What sort of inquiry is necessary to resolve the matter? Each case has to be dealt with on its own facts and circumstances.

Repudiation of contract of life insurance. Approach of LIC towards repudiation of a policy on the ground of misstatement, held, should be one of extreme caution and care. Such a matter should not be dealt within a mechanical routine manner.

Calling into question policy on ground of misstatement. It was held that Section 45 is restrictive in nature. Burden of proof lies on insurer to establish the circumstances mentioned in the section. However duty of the insured to disclose material facts continues up to the execution of the contract of insurance. Insured remains duty-bound to disclose any material alteration in the character of the risk, which might occur in the period between the proposal and its acceptance.

Paragraphs 11, 12, 16 and 17 are reproduced

11. The position that emerges from the discussions in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Art. 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed, the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long-drawn litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact-situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a bonafide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised, then a writ petition is not an appropriate remedy.

12. Coming to the question of scope of repudiation of claim of the insured or nominee by the Corporation, the provisions of Section 45 of the Insurance Act is of relevance in the matter. The section provides, inter alia, that no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or reference, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was

on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose. The proviso which dealt with proof of age of the insured is not relevant for the purpose of the present proceeding. On a fair reading of the section it is clear that it is restrictive in nature. It lays down three conditions for applicability of the second part of the section namely: (a) the statement must be on a material matter or must suppress facts which it was material to disclose; (b) the suppression must be fraudulently made by the policy-holer; and (c) the policy-holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose. Mere inaccuracy or falsity in respect of some recitals or items in the proposal is not sufficient. The burden of proof is on the insurer to establish these cirmcumstances and unless the insurer is able to do so there is no question of the policy being avoided on ground of misstatement of facts. The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person.

In course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in general and crores of policy-holders in particular, look forward to prompt and efficient service from the Corporation. Therefore, the authorities in charge of management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it, should be one of extreme care and caution. It should not be dealt within a mechanical and routine manner. With the above discussions and observations regarding the questions raised before us, we dispose of the appeals with the direction that the sum, as directed by the learned single Judge in favour of the claimant, will be paid by the Corporation expeditiously, if it has not already been paid. In view of the above order/ direction, it is not necessary to proceed with the case pending before the High Court any further.

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67. JUDGMENT :-
2001 (1) C.G.W.N. NOTE NO. 34 (SC)
EMPLOYER IN RELATION TO MANAGEMENT OF CENTRAL MINES PLANNING *AND DESIGN INSTITUTE Ltd. Vs. UNION OF INDIA*

Judgments are of 3 kinds. Firstly final judgment, secondly preliminary judgment and thirdly intermediary or interlocutory judgments.

The next question which needs to be considered is, what does the expression 'judgment' means ? That expression is not defined in Letters Patent. It is now well settled that the definition of 'judgment' in section 2(9) of Code of Civil Procedure has no application to Letters Patent. That expression was interpreted by different High Courts of India for purposes of Letters Patent. In ***Asrumati Devi v. Kumar Rupendra Deb Raikot and others*** **[1953 SCR 1159],** a four Judge Bench of this Court considered the pronouncements of the High Court of Calcutta in ***Justices of the Peace for Calcutta v. Oriental Gas Co.*** **[8 Beng. L.R. 433],** the High Court of Rangoon in ***Dayabhai v. Murugappa Chettiar*** **[ILR 13 Rang. 457],** the High Court of Madras in ***Tulijaram v. Alagappa*** **[ILR 35 Mad. 1],** the High Court at Bombay in ***Sonebai v. Ahmedbhai*** **[9 Bombay HCR 398]** as also the High Court at Nagpur, the High Court at Allahabad and lahore High Court and observed as follows :

> "In view of the wide divergence of judicial opinion, it may be necessary for this Court, at some time or other, to examine carefully the principles upon which the different views mentioned above purport to be based and attempt to determined with as much definiteness as possible, the true meaning and scope of the word 'judgment' as it occurs in Clause 15 of the Letters Patent of the Calcutta High Court and in the corresponding Clauses of the Letters Patent of the other High Courts."

Such as exercise was undertaken by a three Judge Bench of this Court in ***Shah Babulal Khimji v. Jayaben D. Kania and another*** [1981(4) SCC 8] Fazal Ali, J. speaking for himself and Varadarajan, J. after analysing the views of different High Courts, referred to above, observed as follows :

> "The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense."

It was pointed out that 'judgment' could be of three kinds :

(1) **A final judgment -** In this category falls a judgment by which suit or action brought by the plaintiff is dismissed or decreed in part of full;

(2) **A preliminary judgment -** This category is sub-divided into two classes :

  (a) where the trial Judge by an order dismisses the suit, without going into the merits of the suit, only on a preliminary objection raised by the defendant-respondent on the ground of maintainability;

  (b) where maintainability of the suit is objected on the ground of bar of jurisdiction, e.g., res judicata, a manifest defect in the suit, absence of notice under section 80 and the like; and

(3) **Intermediary or interlocutory judgment -** In this category falls orders referred to in Clauses (a) to (w) of Order 43 Rule 1 and also such other orders which posses the characteristics and trappings of finality and may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding.

Elucidating the third category, it is observed :

"Every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned."

In the instant case, we are concerned with the last mentioned category. From the above discussion, it follows that to determine the question whether an interlocutory order passed by one Judge of a High Court falls within the meaning of 'judgment' for purposes of Letters Patent the test is whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case.

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68. LAND ACQUISITION ACT, SECTIONS 3(c), 3(e), 48(1), 48 AND CHAP. 7 :-
2001(1) MPWN 15
UJJAIN VIKAS PRADHIKARAN Vs. STATE OF M.P.

"Company" does not include a Government Company; much less a "Corporation owned and controlled by the State". Section 48 confers absolute right on State Government to withdraw from acquisition of any land of which possession has not been taken. Provisions of Chapter 7 do not apply to acquisition made for Corporation. Notice not required before taking action u/s 48(1).

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69. LAND ACQUISITION, SECTION 30 :-
2001 (1) M.P.H.T. 26(CG)
KAMLESH KUMAR Vs. STATE OF M.P.

Petitioner's land was acquired by the State Government. Dispute as to payment of compensation. Reference to the civil Court under section 30 of the Act. Payment of compensation to one party or the other would not affect the jurisdiction of the Land Acquisition Officer, to refer the matter to Civil Court.

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70. LAND ACQUISITION ACT, SECTIONS 52, 23 AND 18 : ACQUISITION OF LAND FOR LOCAL AUTHORITY :-
2001 (1) MPWN NOTE 137
M.P. HOUSING BOARD Vs. STATE OF M.P.

Acquisition of land for local authority. Reference Court should give an opportunity to such authority to oppose enhancement of the compensation.

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71. LAND ACQUISITION ACT, SECTION 30 : REFERENCE UNDER THIS SECTION :-
2001 (1) C.G.W.N. NOTE NO. 33
KAMLESH KUMAR Vs. STATE OF M.P.

There should be a dispute regarding appointment or best entitlement. Payment of compensation to one party or other is immaterial.

Writ petition against order of reference. Reference correctly made to civil Court. No jurisdiction error committed. No interference can be made.

Section 30 of the Land Acquisition Act says that a reference would be made by the Land Acquisition Officer to the Civil Court, if there is a dispute relating to the person to whom the compensation is to be paid. Section 30 does not say that simply because the amount has been paid to one party or the other, the Land Acquisition Officer would be denuded of his power and would not be able to make a reference u/s/ 30 of the Act. The pre-condition for making a reference u/s 30 of the Act is that either there is a dispute regarding apportionment or there is a dispute as to who is best entitled to receive the compensation. The payment of compensation to one party or the other would in any case not affect the jurisdiction of the Land Acquisition Officer.

From the order Annexure p-3, it does not appear that the authority had no jurisdiction to make reference to the Civil Court.

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72. LAND REVENUE CODE, SECTION 248
2001 (1) MPWN 13
GANDHI ASHRAM Vs. HARI PRASAD AGRAWAL

Power to eject encoracher vests in Tehsildar. Sub-Divisional Officer has no right to proceed under.

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73. LAND REVENUE CODE : SECTIONS 170-B(3) AND 155 (6) : LAND OF ABORIGINAL TRIBE PURCHASED AFTER DUE PERMISSION UNDER SECTION 165 (6) :-
2001 RN 279 (HC)
AMRITLAL KESHARWANI Vs. COMMISSIONER, BILASPUR

Land of aboriginal tribe purchased after due permission under S. 165(6). Enquiry under S. 170-B(3) is to be made as to whether such tribe has been defrauded of his legitimate right.

As per the tenor of language of sub-section (3) of section 170-B it is clear that on receipt of such information the competent authority shall make such enquiry and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction as null and void. The competent authority after enquiry held that there was 'Benami' transaction in favour of Siddharth Singh. Needless to emphasize, the petitioner has purchased the land from Siddharth Singh after obtaining prior permission from the competent authority under Section 165(6) of the Code. **1995 RN 124** relied on.

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74. (1) LIMITATION ACT, ARTICLE 119 (b) (2) ARBITRATION ACT, SECTION 14(2) AND 17 :-
2001 (1) M.P.H.T. 476
NEPA LIMITED Vs. RANA TIMBER TRADERS

Period of limitation for filing an objection to an award is provided under Art. 119(b) of the Act. It is not stipulated that an aggrieved party cannot file objection before the period of limitation starts to commence. Hence, one can file an objection from the date he receives notice from the arbitrator in relation to passing of the award. **AIR 1986 Pat.** 19 relied on.

●

75. **LIMITATION ACT : GENERALLY :- ORDER PASSED WITHOUT JURISDICTION : ILLUSTRATION FOR :-**
(2001) 5 SCC 700
SINGAM CHETTY ATTENDROOLOO Vs. STATE OF T.N.

An order can be challenged after expiry of period provided there for only if order was without jurisdiction.

Paragraph 14 of the judgment is reproduced :

The challenge to order dated 10-12-1947, made at such a belated stage, could only be sustained provided the order was without jurisdiction. The question whether the order was without jurisdiction had already been decided against the appellants by order dated 5-8-1969. The first portion of section 77 undoubtedly talks about an endowment made or property given for support of an institution. But that is not the only provision. Section 77 also applies when an endowment is made or property given partly for religious and partly for secular uses. Clause 7 of the trust deed and List E show that endowments have been made and property given partly for religious and partly for secular uses. It, therefore, could not be said with absolute certainty that section 77 did not apply. If there was a dispute as to whether section 77 applied or not then the Board could decide the question and pass an order. It did so on 10-12-1947. Such an order would be one which was passed with jurisdiction. As the same was not challenged within the time provided it became final as against the appellants.

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76. **LOK PARISAR (BEDAKHALI) ADHINIYAM, 1974 (M.P.), SECTION 2(e) :-**
2001 (1) MPWN NOTE 147
DURGA PRASAD VERMA Vs. MUNICIPAL CORPORATION, GWALIOR

Premises belonging to municipality are not 'Public premises' as defined.

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77. **M.B. LAND REVENUE AND TENANCY ACT, 1950, SECTIONS 69(1) AND 69(2) :-**
2) EVIDENCE ACT, SECTIONS 74, 75 AND 92 :-
3) C.P.C., O. 41 R. 27
HINDU LAW : PARTITION :-
2001 RN 76 (HC)
BHAVARJI Vs. AYODHYABAI

The word 'only' (used under clearly shows that pucca tenants) holding could only be partitioned in accordance with this provision, contained in Section 69(1) of M.B. Land Revenue and Tenancy Act. Despite order of partition under S. 69(1) any person could claim right in holding before Civil Court under sub section (2) of Section 69. Sub-Section (2) does not prescribed any other mode of partition than one prescribed under sub-section (1). Property must be proved to be belonging to Hindu undivided family for partition purposes. One person alone recorded as pucca tenant/Bhoomiswami of agricultural land, case would be governed by Tenancy Law and not by Hindu Law. Alleged partition admitted to be in writing. Document should be proved. Additional evidence of certified copies of khasras and khatonis filed. Application allowed as documents were public documents.

Such certified copies are public documents and may be admitted as additional evidence in appeal.

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78. M.V. ACT, 1988, SECTIONS 161, 163 AND 166 :-
2) SOLATIUM SCHEME, 1989, RULE 20 :-
2001 (1) VIDHI BHASVAR 283
NEW INDIA ASSURANCE CO. LTD. Vs. RAJENDRA PRASAD BHATT

Forum for claim in case of hit and run accident is not the Motor Accident Claims Tribunal. Application can be made to the Claims Enquiry Officer of Sub-Division or Taluka in which accident takes place.

Part of paragraph 5 is reproduced :-

A plain reading of Rule 20 of the Solatium Scheme, 1989 makes it clear that an application seeking compensation under Scheme is to be filed in Form I before the Claims Enquiry Officer of Sub-Division in which the accident had taken place. Thus, under the Scheme a particular forum has been provided for claiming compensation in case of hit and run motor accident. Tribunal having no jurisdiction in the matter ought to have upheld the objection of the petitioner. In that view of the matter, his order cannot be allowed to stand.

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79. MOTOR VEHICLES ACT, 1939, SECTIONS 95(2) AND 94 : UNLIMITED PERSONAL INJURY : STAND TAKEN BY PARTY :-
2001 (1) MPWN 50 (SC)
CHIMAJIRAO KANHOJIRAO Vs. ORIENTAL FIRE & GENERAL INSURANCE CO. LTD.

Words "unlimited personal injury" in Insurance policy. Specific plea in written statement that these words typed due to oversight/mistake. Submission by counsel that in terms of policy liability is limited to third party. Submission cannot be sustained.

The fact cannot be controverted by any legal proposition. Neither evidence led to dissolve stand taken in written statement nor application made for amendment. It is not correct to decide issue through legal inferences dehors of and without adverting to glaring facts on record.

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80. MOTOR VEHICLES ACT, SECTIONS 95 AND 110D :-
2001 (1) MPWN 61 (SC)
NATIONAL INSURANCE Co. LTD. Vs. SMT. CHINTO DEVI

Policy would be operative in terms of any special contract mentioned in it, where time of issue is mentioned. Liability commences only from the time of issue and not from previous midnight.

Correctness of time of issuing insurance policy is a question of fact. Adjudication of time necessary to decide consequential liability. Case remanded for decision on this limited question.

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81. MOTOR VEHICLES ACT, SECTION 149(2)(a)(ii) :- ISSUANCE OF DRIVING LICENCE
2001 (1) MPWN 62
NEW INDIA ASSURANCE Co. LTD. Vs PRITILATA

Driving licence verified to be valid by RTO who issued it and also renewed time and again cannot be treated to be fake one.

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82. M.P. ACCOMMODATION AND CONTROL ACT : SECTIONS 12(1)(f), 12(1)(h), 12(7) AND 18 :
2001 (1) MPWN 56
BHAIYALAL Vs. SMT. BASANTI BAI

Landlord filing suit for starting business after reconstruction. It is a suit under Section 12(1)(f). No Provisions of S. 12(1)(h) are attracted.

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83. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 12(1)(e), 12(1)(f)/AND COMPARISON OF CLAUSES (e) & (f) EXPLAINED
2) 12(1) (i) : WORD 'RESIDENCE USED IN CLAUSE (i) EXPLAINED :-
2001 (3) M.P.H.T. 87 (C.G.)
SHRI GURUCHARAN SINGH Vs. PREMBAI

Under clause (e) the need of family member is considered to be the need of landlord. But, under clause (f) the need of family member cannot be considered to be the need of landlord.

Section 12(1)(i) would apply to a case where the accommodation was let out to the tenant for residence. Application of it to a case where premises were let out for non-residential purposes would not be only contrary to law, but would be violating the law itself.

When section 12(1)(i) clearly speaks that the provisions would apply to a residential accommodation, where the tenant has built, acquired vacant possession of, or, been allotted an accommodation suitable for his residence, then to say that because the tenant has acquired some non-residential accommodation which is suitable for his business, therefore, he is liable to be evicted, would be contrary to law. The very language of section 12(1)(i) leaves no doubt that it would not apply to non-residential accommodation. The two Courts below did not try to appreciate the distinction contained under Section 12(1)(e) and 12(1)(f) nor the true spirit of section 12(1)(i) of the M.P. Accommodation Control Act.

●

84. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 2(B), 23-A(a) AND (b), SECTION 12 (1) (f) AND 23-A(b), 23-J AND 23-A :- DEFINITION OF 'LANDLORD'
2001(1) VIDHI BHASVAR 66
NARENDRA KUMAR VAISH Vs. SMT. SHYAMA AGARWAL

Landlord need not be owner of property in every case. Question of eviction in special proceedings as envisaged under S. 23-A(a) and (b). Ownership of property should be proved to justify need for eviction. In the eviction suit landlord is not required to plead and prove that he is owner of the premises. Premises let out by landlady when she was not

widow, need arosen when she became widow. Cause of action accrues when need arises and not when premises are let out.

●

85. M.P. ACCOMODATION CONTROL ACT, SECTION 12(1)(C) : TENANT'S RIGHT TO CHALLENG PARTITION, DISCLAMER
2001 (1) M.P.H.T. 501
SARDAR HARBANS SINGH Vs. SHAILESH CHAND GUPTA

Section 12 (1) (c) of the Act on its own terms does not say in so many words that the denial of title of the landlord shall furnish a ground for eviction. What is said is that the denial of title is an act "which is likely affect adversely and substantially the interest of the landlord". However, the right to deny the derivative title of a person who is stranger to the contract of tenancy cannot be held to be covered by those words. It is the landlord who comes to the Court with a plea that he became the landlord by virtue of the operation of Statute having purchased the let out accomodation. By denying these facts the tenant is challenging the very basic fact on which the landlord founded his right to file the suit. To say that the tenant cannot challenge the elementary fact because of language of Section 12(1) (c) of the Act would be doing violence to the language. In the opinion of this Court, it would be too much to say the interest of the subsequent landlord is affected by such denial. The landlord is not at all adversely affected because he has not proved that he is the landlord. There is no question of affecting his substantial interest as he is required to prove it.

Attornment means acknowledgment of title either by express words or implied conduct on the part of the tenant. After a person derives derivative title to a tenanted property, the tenant may say in express words that he accepts the transfer and new landlord as his landlord instead of the original landlord. This is attornment in words indeed. He may pay rent or otherwise acknowledge the right of landlord by his conduct. This can be implied. In all these matters, the estoppel stated in Section 115 of Evidence Act shall be operative because the tenant has allowed the landlord to believe that by virtue of the dead of transfer the relationship of landlord and tenant was established, and the landlord and the tenant acted upon it. Under these circumstance, a tenant could not deny the relationship of landlord and tenant.

A tenant cannot challenge which portion went to which party in deed of partition amongst the members of the joint Hindu family. The plea of the appellant is altogether different. He has stated that the right on which the respondent based his claim does not exist at all. The deed of partition is not a deed of partition at all but a sham document. It appears to this Court that the ruling aforesaid is distinguishable on facts. In the opinion of this Court, it is one thing to say that the partition was sham. It is another thing to say that though the partition had taken place but the property was not divided as claimed by the parties to the partition.

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86. M.P. CO-OPERATIVE SOCIETIES ACT. SECTIONS 64 AND 82 : JURISDICTION OF THE COURT, EXPLAINED :-
2001 (1) M.P.H.T. 514
V.K. MUNSHI Vs. RAIPUR CO-OPERATIVE HOUSING SOCIETY LTD.

Non-appellant No. 2 plaintiff is the member of the society. After cancellation of the sale-deed of the non-applicant No. 2/plaintiff the land in question was alloted to the petitioner. Civil Suit was filed. Prayer was made in the plaint regarding declaration of cancellation of an allotment as a nullity on the ground of arbitrariness and violation of principles of natural justice. Question as to Civil Court's jurisdiction to entertain the suit, the trial Court held that the suit is barred in the Civil Court under Section 82 of the Act. In appeal the Additional District Judge allowed the appeal and remanded the matter. No illegality committed. High Court referred **Rao *Bhupendra Singh Vs. Smt. Gopal*, 1970 MPLJ 16 *Keshav Narayan Vs. Mandal* Co-operatives, 1970 MPLJ 770, *Madhav Rao Vs. 9th ADJ, 1991 R.N. 81 and Baldeo Kumar Vs. Managing Director,* 1997 (2) M.P.L.J. 253.**

NOTE :- Judges are further requested to go through ***Pramila Vs. K.B. Babu Rao, 1987 (1) M.P.W.N. 91.*** This ruling relates to O. 7 R. 11 C.P.C. and the Co-operative Societies Act.

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87. N.D.P.S. ACT, SECTIONS 41, 42, 43, 50, 52 AND 57 : SEARCH AND ARREST OF A PERSON CARRYING CONTRABAND : GUIDELINES ISSUED :-
2001 (3) M.P.H.T. 72 (C.G.)
SOLOMAN Vs. STATE OF M.P.

If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of Cr.P.C. and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements there under would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.

Cases of ***State of Punjab Vs. Balbir Singh,* (1994) 3 SCC 299** and ***State of Punjab Vs. Baldev Singh,* (1999) 6 SCC 172** followed.

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88. N.D.P.S. ACT, OFFENCE UNDER : GENERALLY :- PRIVATE COMPLAINT BY NARCOTICS DEPARTMENT :-
2001 (3) M.P.H.T. 317
RAM SINGH Vs. STATE OF M.P.

Officers from the Narcotic Department are not Police Officers. Complaint under S. 200 Cr.P.C. should be filed.

Officers of the Narcotic Department are not police officers under section 173 of the Code. They are required to file complaint under S. 200 Cr.P.C. Offence under section 8/18 of the Act is exclusively triable by the Court of Sessions. Court of Sessions can take cognizance under S. 193 of the Code on commitment of the case by the Magistrate. Magistrate is bound to examine witnesses under section 202 (2) of the Code before passing the order of committal. **(1990) 1 SCC 409** followed. **1991 MPLJ 271** relied on.

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89. N.I. ACT, SECTIONS 138 AND 142 :-
2) POWERS OF ATTORNEY ACT, SECTION 2 : COMPLAINT THROUGH POWER OF ATTORNEY PERMISSIBLE :-
2001 (3) M.P.H.T. 325
DR. ANIL KUMAR HARITWAL Vs. SANT PRAKASH GUPTA

Dishonour of cheques on account of insufficient amount. Complaint was made through power of attorney holder. Whether power of attorney holder is competent to make a complaint under S. 138 N.I. Act and such complaint is maintainable. It was held that 'Yes'. Section 142 of the N.I. Act does not specifically say that the complaint must be lodged by the complainant personally. Power of attorney agent is virtually a payee himself or the holder in due course for the purposes of section 142(a) of the N.I. Act and he is competent to make a complaint in writing under S. 138 of the N.I. Act.

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90. PRACTICE AND PROCEDURE : AMICUS CURIAE :-
2) WORDS AND PHRASES : 'GOOD FAITH' EXPLAINED : I.P.C. S. 52 :-
3) CONTEMPT OF COURTS ACT, SECTION 2(C), I.P.C. SECTION 499 :- STANDING MESSAGE BY TELEGRAM :-
(2001) 2 SCC 171
K. SUNDARAM : IN RE

Power of the Court to appoint amicus curiae to assist it in the course of proceedings. held, is plenary and cannot be objected to.

Contention that sending a telegram does not amount to publication, held, not acceptable. Both before and after transmission message is read by telegraph office staff. It cannot be compared to a sealed letter.

Paragraph 28 and 29 reproduced :-

The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. Good faith is defined in section 52 of the Indian Penal Code thus :

> "52. Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention."

See the language of the law in this regard. It starts in the negative tone excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. In Black's Law Dictionary, "reasonable care" is explained as

> "such a degree of care, precaution, or deligence as may fairly and properly be expected or required, having regard to the nature of the action, or the subject-matter and the circumstances surrounding the transaction. It is such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act."

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91. PRACTICE AND PROCEDURE :- HEARING OPPORTUNITY WHEN NEED NOT BE GIVEN :-
(2001) 2 SCC 186
E.S.P. RAJARAM Vs. UNION OF INDIA

Hearing each individual concerned when not necessary for Supreme Court while exercising its powers under Art. 142 of the Constitution.

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92. PRACTICE AND PROCEDURE : ORDER : WRITING OF :-
2001(1) CHHATTISGARH WEEKLY NOTE 29
RAMHARAKH Vs. SUB-DIVISIONAL OFFICER

Order passed by judicial or quasi-judicial authority should be based on foundation of certain logic and reasons. No reasons contained are liable to be quashed.

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93. PRACTICE AND PROCEDURE : PRECEDENTS - BINDING EFFECT OF JUDGMENTS :-
(2001) 2 SCC 135
DISTT. MANAGER, APSRTC, VIJAYAWADA Vs. K. SIVAJI

Decision of a concurrent Bench is binding on a Single Judge Bench. Judicial discipline requires the Single Judge either to follow that decision or refer the matter to a larger Bench. Sitting singly he cannot take a different view on the specious ground that the decision is based on facts.

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94. PREVENTION OF CORRUPTION ACT, SECTION 7 : POWER OF M.P. POLICE ESTABLISHMENT TO INVESTIGATE INTO THE OFFENCE UNDER PREVENTION OF CORRUPTION ACT AGAINST THE EMPLOYEES OF THE CENTRAL GOVERNMENT :-
2001 (3) M.P.H.T. 286 (DB)
ASHOK KUMAR Vs. STATE OF M.P.

It was held that the regular police force or the Special Police Establishment has jurisdiction to investigate the offence of bribery and corruption against the Central Government Employees posted in the State of Madhya Pradesh. **1995 JLJ 225** relied on and decision in criminal Appeal No. 865/96 in ***Harmohindra Singh Vs. State of M.P.*** decided on 12-5-2000 declared per incuriam.

Following portion is reproduced from ***Khem Chand Vs. S.P.*** (M.Cr.C. No. 1494/93 decided on 20-7-1994) :

"The word 'superintendence' would imply administrative control enabling the authority enjoying such power to give directions to the subordinate to discharge its administrative duties and functions in the manner indicated in the order. But while investigation the offence the police officer should exercise the power as vested in him under the statute and the Cr.P.C. and to that extent, he enjoys statutory power."

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95. PREVENTION OF FOOD ADULTERATION ACT, SECTION 13 (2-C) PROVISO :- SEIZURE OF SAMPLE OF MILK : THE POWER OF THE COURT :- THIRD SAMPLE

2001 (1) M.P.H.T. 237

MUNNALAL Vs. STATE OF M.P.

If the sample sent by the Court to the Director of the Central Food Laboratory is lost or damaged, third part of sample of milk may be sent for analysis.

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96. RAILWAY PROPERTY (UNLAWFUL) POSSESSION ACT, 1966, SECTIONS 3 & 7:- (2001) 2 SCC 241

STATE OF BIHAR Vs. CHANDRA BHUSAN SINGH

Enquiry report of the officer of the Force in respect of non-cognizance offence is in the nature of a complaint under S. 200 Cr.P.C. and not a report under S. 173 Cr.P.C. High Court wrongly quashed the proceedings.

NOTE :- Please see the Expln. of Section 2(d) Cr.P.C.

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97. RECOVERY OF DEBTS ..... ACT, 1993, SECTIONS 2(g), 17, 18, 31 AND 34 : DEBTS AND PROCEEDINGS EXPLAINED : CAUSE OF ACTION ALSO EXPLAINED :-

2001 (1) MPWN 55 (SC)

PUNJAB NATIONAL BANK Vs. CHHAJJU RAM

Under the Act 'debt' means any liability due to a bank and payable under a decree or order of a civil Court. Decretal amount being debt u/s 2(g) provisions of Ss. 17 and 18 clearly attracted. Tribunals constituted thereunder have exclusive jurisdiction to decide questions regarding recovery of debts due to banks and financial institutions.

'cause of action' preceded by words "being a suit or proceedings" not only suit but proceedings other than suit also contemplated. Decree for more than Rs. 10 lakhs in case of execution application, that is cause of action or reason for application for execution being filed before Tribunal.

"proceedings" would include execution proceedings pending before civil Court prior to commencement of the Act. Suits and proceedings so pending would stand transferred to Tribunal constituted under the Act.

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98. SAMAJ KE KAMJOR VARGON.....ADHINIYAM, 1976, SECTIONS 2(c), 2(d), 3, 4, 6(4), 7(i)(ii)(b), S. 11 AND 14 : LENDER OF MONEY DEFINED AND JURISDICTION OF THE COURT EXPLAINED :-

2001 RN 64 (HC)(DB)

SETH RATILAL Vs. SMT. GANGA BAI

Lender of Money means a person advancing money to "a holder of agricultural land" as defined under Section 2(c) of the Act. Single transaction of advancing loan makes the transaction 'a Prohibited transaction of loan'. The two rulings of **1985 JLJ 437** and **1989 JLJ 245** were overruled by **1991 JLJ 23 (FB)**

The present Bench relied 1991 JLJ 23 (FB). The aims and objectives of the Act. The Act aims to better economic condition of holders of agricultural land and provides further relief from agricultural indebtedness. The intendment of the Act is to nullify past transactions of loan and to put a stop to further transactions.

Sections 3, 11 and 14 contains non-obstante clause. Act overrides all other laws and Section 14 excludes the jurisdiction of the Civil Court saving the cases falling under S. 11 and therefore, no proceeding can be instituted in Civil Court after commencement of the Act. Transactions of loan existing on appointed date, i.e. 1-1-1971. All such prohibited transactions of loan are subject to protection and relief under the Act as per S. 4. Section 4 excludes application of M.P. Land Revenue Code or any other enactment. A civil suit filed after commencement of the Act, the Civil Court has no jurisdiction to entertain it. A decree passed in civil suit does not operate as res judicata for application under Section 5 of the Act. Once a finding as to inadequacy of consideration recorded, prohibited transaction of loan within prohibited period found proved. No further finding under need be recorded.

●

99. STAMP ACT, SECTION 27 R/W/S 64 : OFFENCE UNDER :-
2001 (1) MPWN 11
STATE OF M.P. Vs. VIRENDRA SINGH

No evidence on record indicating disputed land not properly described with intention to evade stamp duty. Accused cannot be held guilty.

●

100. STAMPS ACT, SECTION 36 : DOCUMENT :-
2001 (1) MPWN NOTE 135
BASANTI BAI Vs. ABHAY KUMAR

Document admitted in trial court not challenged cannot be challenged in appeal.

HINDU LAW : PIOUS OBLIGATION OF SON :-

Sons inheriting property from deceased father is liable to pay his father's debts.

NOTE :- Judges are requested to go through the following rulings on Section 36 of the Stamps Act. ***Javerchand Vs. Pukhraj, AIR 1961 SC 1655, Ramratan Vs. Bajrang, AIR 1978 SC 1393*** and ***Munnalal Vs. Jagannath Pd., MPLJ 592***. Judges are also requested to go through an article written in **'JOTI JOURNAL' 1997 Vol. III Part II at page 27 under the head "Stamp Act Principle Relating to".**

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101. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989, SECTION 18 :-
2) Cr. P.C., SECTION 438 : ANTICIPATORY BAIL :-
2001 (1) MPWN NOTE 134
SURENDRA KUMAR AGRAWAL Vs. STATE OF M.P.

Provisions of Anticipatory Bail not applicable in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

(2) **DUTY OF ADVOCATES :-** A perusal of the record and the orders passed goes to show that the counsel for the parties failed to assist the Court properly. An Advocate appearing for the defence or a Prosecutor is an officer of the Court; he is required to give due assistance. Heavy duty lies on the Public Prosecutor appointed under section 24 of the Code of Criminal Procedure appearing for the State in the High Court. To inform that the bail application is not maintainable in case of the specified offence was a duty of both the counsel especially Public Prosecutor.

(3) **DOCTRINE OF PARITY :-** Counsel for the applicant vehemently contended that he is entitled to bail on the basis of doctrine of parity. Doctrine of parity would not be applicable in the present case where the provisions of section 18 of the aforesaid Act specifically declares that section 438 Cr.P.C. will not apply to persons committing an offence under this Act. The Apex Court also considered and has held so in the case of ***State of M.P. and another Vs. Ram Krishna Balothia and another 1995 JLJ 172*** and the anticipatory bail order in the situation like this is against the provisions of section 18 of the said Act and the decision of the Apex Court and as such, the said order is per incuriam.

DUTY OF PUBLIC PROSECUTOR :- So far as the role of Public Prosecutor is concerned, their appointment is made under section 24 of the CrPC and under the facts and circumstances, the matter being serious one, needs to be examined by the Advocate General of the State. The Advocate General would look into the matter and take appropriate steps in accordance with the law.

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102. S.C. AND S.T. (PREVENTION OF ATROCITIES) ACT, 1989, SECTION 3(1)(ii) :-
2) Cr.P.C., SECTION 193 :-
2001 (2) ANJ (M.P.) 497
SATYANARAYAN Vs. STATE OF M.P.

Procedure under Section 193 Cr.P.C. should be followed. In view of the Apex Court's decision in ***2000 Cr.L.R. (SC) 274, Gangula Ashok Vs. State of M.P.*** that the Session Court/Spl. Judge cannot take cognizance of the offence or charge-sheet filed by Investigating Officer directly to this Court. A.S.J. cannot take cognizance of the offences arising out of the Act unless the case is committed to it by Magistrate i/a with the provisions of the Code. The impugned judgment and the conviction and sentence imposed on the appellant set aside. JMFC directed to pass committal order after hearing both parties. Appeal disposed of accordingly. (See subsequent decision alos)

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103. SERVICE LAW : TERMINATION FROM SERVICE : WHEN EFFECTIVE : "COMMUNICATION" MEANING OF :
2001 (1) M.P.H.T. 484
UNION OF INDIA Vs. RAJEEV PATHAK

Communication of the order which is essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned, the authority making such order would be in a position to change its mind and modify it if it is thought fit. But once such an order is sent out, it goes out of the control of such authority, and therefore, there would be

no chance whatsoever of its changing its mind and modifying it. Once an order is issued and it is sent out to the concerned Government servance, it must be held to be communicated to him. No matter when he actually received it. **AIR 1970 SC 214** followed.

Meaning of the word "communicated" as indicative of that it is only from the date of the actual receipt by the delinquent official that the said order becomes effective ought not to be given, unless the provision in question expressly so provides. An order will have to be taken as duly communication in case the order went out of the control of the authority which had passed the order and it was duly despatched from the office **(1976) 3 SCC 242** followed.

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104. SERVICE LAW :- ADMINISTRATIVE INSTRUCTIONS/CIRCULARS/ORDERS : EFFECTIVENESS : ADMINISTRATIVE LAW :-
(2001) 5 SCC 327
ANIL RATAN SARKAR Vs. STATE OF W.B.

They cannot infiltrate on to an arena covered by judicial orders.

●

105. SERVICE LAW : SALARY :-
(2001) 5 SCC 358
M.S. CHAWALA VS. STATE OF PUNJAB

President of District Forum under Consumer Protection Act appointed as such after retirement as District Judge. Fixation of salary. The orders of the Government directing deduction of the pension amount was held valid.

HELD :

The appointment of a District Judge, after his superannuation, as the President of the District Consumer Forum under the Consumer Protection Act, cannot but be held to be a case of re-employment of a pensioner in as much as the said District Judge is in receipt of a pension for the services rendered as a District Judge in accordance with the provisions contained in the Punjab Civil Services (Pension) Rules, Vol. II. Since Rule 2.1 of Chapter II Vol. II unequivocally states that every pension shall be held to have been granted subject to the conditions contained in Chapter VII and Chapter VII contains Rule 7.18 as well as Note 3(a)(i), the appropriate authority will have to decide the pay and allowances, which the retired District Judge is entitled to receive on being appointed as the President of the District Forum notwithstanding the fixation of such pay under the Rules framed under the Consumer Protection Act and while fixing the same, the principle underlined in Note 3(a)(i) has to be followed. Therefore, there is no infirmity with the GO dated 25-1-1996 and under the said notification the salary of re-employed District Judges as President of the District Consumer Forum, has rightly been fixed taking into account the pension, which they are in receipt of, as retired District Judges. The appellant's contention is of no force in view of the said legal provisions and in fact, it is the provision of the Punjab Civil Services (Pension) Rules, dealing with the salary of re-employed pensioners, which governs the field.

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106. SERVICE LAW : TRANSFER : TRANSFER ORDER : SCOPE OF JUDICIAL REVIEW :-

(2001) 5 SCC 508

STATE BANK OF INDIA Vs. ANJAN SANYAL

Unless mala fide, or prohibited by service rules, or passed by an incompetent authority, it was held should not be lightly interfered with, in exercise of a court's discretionary jurisdiction. Merely temporarily accommodating at the existing place an employee who was not willing to joint at the new place, held, could not lead to an inference of nonexistence of the transfer order.

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107. SERVICE LAW : RECRUITMENT PROCESS : PUBLIC SERVICE COMMISSION : DETERMINATION OF ELIGIBILITY :-

2) CONSTITUTION OF INDIA, ARTS. 14 AND 16 :-

(2001) 5 SCC 419

K.G. ASHOK Vs. KERALA PUBLIC SERVICE COMMISSION

Vacancies notified for several districts. Restricting the choice of the candidate to apply in only one of such districts was held not violative of Arts. 14 and 16.

***"READING DOWN A PROVISION"*, WORDS EXPLAINED (THAT IS DILUTING THE PROVISION) :-**

With the courtesy of the Eastern Book Company and SCC following portion is reproduced for ready reference :-

Though a candidate is prohibited from applying in more than one district, he is free to choose any district of his choice. Here, the right of the candidate is not curtailed as he/she is not prevented from choosing the district. At the same time, if every person is permitted to apply for all districts the number of applications received by the Commission will be 14 times the number of applications now being received with the result that the commission will be doing a futile exercise of selection work in the other 13 districts, as a candidate can afterall accept appointment in only one district. The restriction in question does not tantamount to denial of opportunity to a candidate for applying to any post. After holding that the restriction in question is not violative of Art. 14, the question of reading down the same does not arise.

Seeing the conduct of the appellants in making false declaration and applying in more than one district in contravention of the gazette notification, it is not possible to accede to the last submission of the appellants even on equitable grounds.

Paragraphs 19 and 23 of the judgment are reproduced :-

19. Learned counsel for the appellants next submitted that as in these appeals one advertisement was issued for making selection in 14 districts and though the candidates had applied in more than one district but they could appear only in one district in view of the fact that test was conducted in all the districts on one day, the rule restricting filing of application for one district incorporated in Note(2) of the notification should be read down in its application to the cases like the appellants'. The submission has been made only to be rejected as in the present case we have already held that the aforesaid restriction contained in Note (2) is not violative of Arti-

cle 14 of the Constitution, therefore, the question of reading down the same does not arise. Reference in this connection may be made to the decision of this Court in the case of ***Electronics Corpn. of India Ltd. v. Secy., Revenue Deptt., Govt. of A.P. (1999) 4 SCC 458*** in which case it was submitted that Article 285 of the Constitution was intended to protect public revenue, the shares of the appellant Companies, in those appeals, being fully owned by the Central Government, their funds were public revenue. As such it was found not necessary to read down the provisions of Sections 2(j) and 12 of the Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 (14 of 1963) to exclude there from all but private owners and lessees of land.

23. Learned counsel for the appellants lastly submitted that as number of appellants had crossed the upper age limit and number of vacancies are available, without disturbing the already selected candidates, the appellants can be considered for selection on the basis of their placement in the merit list. In our view seeing the conduct of the appellants in making false declaration and applying in more than one district in contravention of the gazette notification, it is not possible to accede to their prayer even on equitable grounds.

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108. TRANSFER OF PROPERTY ACT, SECTION 55 :-
2) EVIDENCE ACT, SECTION 58 : FACTS ADMITTED NEED NOT BE PROVED :-
2001 (1) M.P.H.T. 283
GHANSHYAM Vs. BAL MUKUND

Plaintiff/respondent purchased property through sale deed. Title of vendor was established. Vendor was the exclusive owner of the property. Execution of sale deed was admitted in the written statement by defendant/appellant. Production of original sale deed was not necessary.

The sale deed was executed on 20-4-87 and the suit for possession has been filed on 11-1-88. Plaintiff is clearly entitled to the decree for possession. Even if possession has not been actually handed over under the sale deed, it is open for the plaintiff to sue for possession as the status of the defendant is merely that of tresspasser. He is having no right, title or interest in the property in question.

NOTE :- Section 58 of Evidence Act says that a document admitted need not be proved. Judges are requested to go through the provision.

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109. WHETHER EDUCATIONAL INSTITUTION IS ESTABLISHMENT? :-
(2001) 2 SCC 115
RUTH SOREN Vs. MANAGING COMMITTEE, EAST I.S. S.DD.A.

Under Bihar Shops and Establishment Act, 1953, Educational Institution is not an establishment even though it is an "Industry" within the meaning of the ID Act. The definition of "Establishment" under the Bihar Shops and Establishments Act is not as wide as that of "Industry" under the I.D. Act. Respondents running an Educational Institution in which appellant was employed being not an establishment, held application made by appellant under Section 26(2) before Labour Court against termination of her service by respondent was incompetent.

खेल के मैदान से

मित्रो, फाग का मौसम है। पलाश एवं पलाश के फूल बहार पर हैं। ये ऐसा मौसम है जो पलाश के फूलों के रंग से रंगीन होने का है। गुलाल की गुलाबी छटा चेहरे पर ही नहीं अधरों पर भी स्वाभाविक रूप से आ जाती है। स्मित हास्य का आना, सुखद अनुभव होना प्रसन्न होना–रहना हम न्यायाधीशों के लिए यद्यपि अटपटा सा अनुभव होता हो पर कोशिश तो होनी ही चाहिये। जीवन पंचकोशीय है। लेकिन मनुष्य योनि को ही आनंदमयी एवं ज्ञानमयी कोश प्राप्त है व इसी कारण हंसने की क्रिया मनुष्य करता है। अतः यह स्वाभाविक क्रिया है। यदि हमारी हंसने की आदत नहीं रही हो तो कृपया उसे पुनः शुरू करें, प्रयत्न करें। कुछ रंग आपके लिए हमने चुने हैं। लाल पीले मत होना ध्यान रखना कि जीवन में सुखद क्षण बस ! आए और गए।

लाली मेरे लाल की जिथ देखुं तिथ लाल
लाली देखन मैं गई मैं भी हो गई लाल।

नई परिभाषाएं

प्रसन्नता तो चंदन है, दूसरे के माथे पर लगाइए तो
आपकी अंगुलियां अपने आप महक उठेंगी।

1.	वकील	:	वह व्यक्ति जो केवल अंदाज से खेलता है।
2.	न्यायाधीश	:	वह व्यक्ति जो आत्म विश्वास के साथ केवल अंदाज से खेलता है।
3.	न्यायालय परिसर	:	भूल भुलैया–चक्रव्यूह–खेल का मैदान
4.	लंबित प्रकरण	:	क्रिकेट बॉल
5.	रिमांड प्रकरण	:	वॉलीबॉल
6.	खारिज प्रकरण	:	फटी बॉल
7.	नया पक्षकार	:	अभिमन्यु
8.	पुराना पक्षकार	:	फुटबॉल
9.	हारा पक्षकार	:	हॉकी बॉल
10.	जीता पक्षकार	:	दिवालिया
11.	फाईल	:	न्याय का शिलालेख

सौ. मंजू नामजोशी