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JUDICIAL OFFICERS' TRAINING INSTITUTE

HIGH COURT OF MADHYA PRADESH

JABALPUR-482007

Editorial

Be Sublime

Dear Friends!

After a long interval of about three months, we are again meeting in the process of institutional training. The first session of training programme of this Institute was from 6.7.1996 to 12.7.1996. The Second session was from 23rd July 1996 to 28th July 1996. Hon'ble the Chief Justice, Shri A.K. Mathur was kind enough to inaugurate sessions. In his Lordship's unequivocal address, His Lordship laid emphasis and highlighted many problems. His Lordship called upon all the Judicial Officers to be honest, sincere and faithfull to their duties. His Lordship also expected high standard of integrity and dignity from the Judicial officers. His Lordship also further added that Hon'ble the Supreme court in Judges' case, has given us all the facilities with the expectation that the Judicial Officers would be free from material/worldly needs and will keep them away from tempetations of any kind. His Lordship further stated that the High Court is well aware about the welfare, problems of accomodation and other day to day problems of Judicial officers. His Lordship's only expectation and earnest desire is that the Judicial Officers should be very vigilant and careful in their day to day working and should devote their entire time and energy in their Judicial work and their duties only. The Judicial Officers should not unnecessarily and as a matter of routine, adjourn the cases and should serve the cause of public with full devotion and sincerity, for which, Judicial Officers exists. His Lordship further advised the Judges to be bold in their judicial work and should not be coward or timid, but at the same time, should be polite and faithful in their work.

Hon'ble the Administrative Judge, Justice Shri S.K. Dubey, in his Lordship's valedictory address on 12.7.96 also expected from the Judicial Officers full devotion towards their duties and high standard of integrity. His Lordship also cautioned the Judicial Officers to serve for the common cause of public with dignity.

Hope, these messages will inspire at the Judicial Officers in the State to do their work with same spirit and feelings as has been expected by Hon. the Chief Justice and also by Hon. the Administrative Judge, and the Judicial Officers shall devote their full time and energy to serve the cause of public with their best capacity, ability and by maintaining high standard of integrity and dignity. The task of the Judge while administering Justice according to law is not very easy one. No doubt, the Judicial Officers have been discharging their duties very successfully, however,

should also bear in mind that the litigant public who comes in the Court for redressal of their rights and settlement of various property disputes and other disputes, is a sufferer either at the hands of bureaucracy, government or some individual. We exist to serve the cause of the public and down-trodden. We should evolve our own method of working so that Court time can be utilised to the maximum for judicial work so that cases fixed for the day can be heard and attended to, without there being any occasion for any adjournment or unnecessary adjournments. Adjournment of cases is a very chronic problem in our judicial system and also cause for delay in disposal. One has to fight with this problem with much firmness but at the same time, with politness.

To achieve the expectations of the High Court, let us walk towards the aim with all devotion, sincerity and ability. But in doing so, remember bible which says "When you do a kindness to some one, do it secretly, do not tell your left hand what your right hand is doing." "Take care : Don't do your good deeds publicly to be admired, for then you will loose the reward from your Father in Heaven". Against identical precepts from Quran be remembered which says "Feed the poor, the orphan and the captive for the love of God alone, desiring no reward, not even thanks". "My prayer, my sacrifice, my life, my death, are all for God, the Lord of all the world".

Secret of godliness is to do good works without seeking any return.

P.V. Namjoshi

To no man will we sell
To no man will we delay
To no man will we deny
Justice or Right
Magna Charta of England
A.D. 1215

LIMITATION ACT-ARTICLE 64 & ARTICLE 65

JUSTICE S. K. DUBEY

Before we deal with articles 64 & 65, let us understand what is the meaning of 'Possession' and what is 'adverse possession'.

Possession - The Jurisprudential concept of possession is made up of the ingredients:-

(i) Corpus (ii) Animus

Corpus means actual exclusive physical control over the property denoting physical possession. The animus denotes the intention and exercise of right to possess the property as owner to the exclsusion of others. These two ingredients put together go to constitute legal possession.

Possession in the eye of law consists of the fact of physical occupation and the mental element of holding the subject of possession to exclusion of others. It implies actual power over the object possessed and an apparent control over it. There must not only be physical possession but **animus possidendi** (intention of possessing), that is, knowledge of these rights and the desire and intention of exercising them, if need be. Possession may be acquired by force or by one who has no title. So the **animus** needed for possession is present even when somebody takes forcible possession with the intention to exercise physical power over it on his behalf.

If there is **animus possidendi** which is not accompanied by actual possession will not constitute possession. See - **P. Laxmi Reddy Vs. L. Laxmi Reddy** (A.I.R. 1957 S.C. 314); **Jugal Kishore .v. Ramnath** (1992 J.L.J. 92) and **Nandlal .v. Singhai Nathuram** (1958 M.P.L.J. Note 35).

Adverse Possession - The expression 'Adverse Possession' means the hostile possession, that is, the possession which is expressly and impliedly denial of the title of the true owner. See - **Ezaz .v. Special Manager Court of Wards** (A.I.R. 1935 P.C. 53). The ordinary classical requirement of adverse possession is that it should be **nec vi nec clam nec precaric,** that is, a person who claims title by adverse possession must prove his possession adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

See - P. Laxmi Reddy .v. L. Laxmi Reddy (A.I.R. 1957 S.C. 314). **Chironjilal .v. Khatoon bi (A.I.R. 1995 M.P. 239).**

Meaning thereby it is forcible dispossession or ouster of the true owner which involves some element or force or fraud. Dispossession means coming in of a person and driving out of another person from possession. It signifies expulsion. The physical presence on the property of the person affected is not necessary but the adverse act of the other party must have the quality of destruction for a required period.

See - Meharban .v. Yusuf (A.I.R. 1993 Nag. 7)

Gangoo Bai .v. Soni (1942 N.L.J. 199)

It may be clarified that only on stray act of trespass on an open plot does not amount to dispossession. Encroachment upon a common land by other party also does not amount to dispossession. Real question to be determined will be real ouster of the plaintiff by the defendant. Mere non-user would not amount to dispossession. To prove dispossession, the claimant has to prove actual possession on his part which was the starting point to remove the real owner from possession.

See - Laxminarayan .v. Vithaldas (A.I.R. 1962 M.P. 31).

2. Articles 64 & 65 of the Limitation Act deals with suits relating to possession of the immovable property.

In Indian Limitation Act of 1908 (Old) articles 142 and 144 deals with the aforesaid subject which have been replaced by Article 64 and 65 in the Limitation Act of 1963. These two articles have effected a material change in the Law as it stood, under the Act of 1908 with regard to suits for possession of immovable property. Under the Old Act all suits for possession whether based on proprietory title or on the ground of previous possession were governed by Article 142, where the plaintiff while in possession was dispossessed or discontinued in possession. Where the suit was not one of dispossession of the plaintiff or discontinuance of possession by him the article did not apply. Suits based on title alone and not on dispossession or discontinuance of possession were governed by Article 144. But under the present Act under Article 64 and 65 all suits or the possession of immovable property have been brought under two categories

(i) Suits based only on the right of previous possession and not on proprietory title under Article 64.

(ii) Suits based on proprietory title (Art. 65). let us take Article 64 first, which has replaced Article 142, is restricted to suits based on posses-

sory title so that as owner of property does not lose high right to the property unless the defendant in possession is able to prove adverse possession.

This cannot be said to be corresponding to Art. 142 because in the new Article there are two important departures from the previous Article.

(i) The words "based on previous possession and not on title" have been added and the words "or has discontinued the possession" have been dropped.

In the third column the words "or discontinuance" have been ommitted.

3. Article 142 and 144 of the Limitation Act (Old) had given rise to a good deal of confusion with regard to suits for possession by owners of property. The effect of the change is that these articles appeared to favour a trespasser as against an owner because in various decision it has been held that in an ejectment suit by the owner of the property it was not sufficient for him to establish his title but he had further to establish that he was in possession of the property within 12 years before the date of the institution of the suit. In Article 64 a trespasser who has been dispossessed by the true onwer within a period of 12 years before the date of the institution of the suit, he will also be able to maintain the suit successfully against the latter. In such a case, the true owner, in order to thwart the claim of the trespasser will have to bring a cross suit for establishment of his title and confirmation of possession. Because of the omission of the words "OR has discontinued the possession from the first column and the corresponding words" or discontinuance" from the third column are certainly advantageous to the true owner who will have to meet a case of dispossession only and not of discontinuance of possession. Under article 64 there is no obligation for the plaintiff to prove title when the suit is based on possession only not on title. In such a case, the plaintiff, who while in possession had been dispossessed could bring any suit within 12 years. In Article 64 there is no obligation for the plaintiff to prove his title when the suit is based on possession. Under Article 64 the limitation is 12 years when the possession of the defendant became adverse and to prove such adverse possession the burden is on the defendant.

4. Right to possession as an incident of title is that of an onwer, usufructuary mortgage or a person entitle to possession by contract or possession. In suits based on possession plaintiff's legal title is irrelevant. It is article 65 which deals with the cases of suit based on title.

See - Nair Service Society .v. K.C. Alexander (A.I.R. 1968 S.C. 1145).

The Supreme Court has held that the present amendments by replacing Article 142 and 144 by Articles 64 and 65 of the Limintation Act are not remedial but **declaratory of law.**

See - Nair Service Society Ltd. .v. K.C. Alexander (A.I.R. 1968 S.C. 1145) and Nair Service Society .v. K.C. Alexander (A.I.R. 1968 S.C. 1165)

5. The suit under Article 64 must be brought within 12 years of the date of dispossession. The burden of proving dispossession is on the plaintiff who in order to succeed must prove that the dispossession was not prior to 12 years of the date of filing of the suit. A suit by co-owner against his other co-owner for possession would be a suit for joint possession and if on the basis of previous possession it will attract Article 64. This has to be determined by the Court on the basis of the avertments made as a whole in the plaint. See - Rajendra Singh .v. Sant Singh (A.I.R. 1973 S.C. 2523); Ambika Prasad .v. Ram Ekbal (A.I.R. 1966 S.C. 605).

Once it is found that the suit is barred under Article 64 there is no obligation on the part of the defandant to establish that he had held the land at any stage.

See - Laxminarayan .v. vithaldas (A.I.R. 1962 M.P. 31).

6. Article 65 as said earlier is applicable to all suits based on title, wherein the burden is on the defandant to prove his possession adverse to the plaintiff was adequate in continuity in publicity and extent and a plea at least to show that the possession can be found.

See - Ganesh Prasad .v. Narendra Lal 1992 J.L.J. 710

S.M. Kareem. A.I.R. 1964 S.C. 1254.

In other words the possession must be actual, visible exclusive,

hostile and continued during the time necessary to create a bar under the Statute of Limitation. Possession required must be **nec vi nec clam nec precario.**

In Babu Singh .v. Ranjeet (1996 MPLJ Short Note 36) it was held that where a boundary dispute is in existence possession of a person may not be to knowledge of other person and therefore, it cannot be acquisition of title by adverse possession.

7. As a general rule possession in part of land will in law possession of the whole, if the whole is otherwise vacant, but constructive possession of this kind can only be presumed when there is a claim based upon title. It follows from the above that in the case of part of open land the establishmenmt of adverse possession regarding one portion of the plot cannot lead to any presumption in respect of the other portion. The position in law does not apply in the case of a trespasser if the whole is otherwise vacant. No presumption can be made of possession in favour of a trespasser. His possession must be confined to the land actually occupied by him.

8. If a wrong doer relies on adverse possession he can succeed only as regard to the portion of the land in suit of which he proves actual possession for the statutory period.

9. Permissible possession when becomes adverse

So long a person is in permissible possession and occupying a land, that is, by licence, lease or by any other agreement, his possession does not become adverse. Possession commencing with the permission of the owner does not become adverse by a mere change in the mental attitude of the person in possession. It is well settled that permissible possession canot be converted into adverse possession unless it is proved that a person in possession asserted an adverse possession to the title for 12 years or more.

See - Sheedhari Rai .v. Suraj (A.I.R. 1964 S.C. 758). The possession does not become adverse even after the expiry of the period. A person who is in possession of the property under the agreement to sale his possession can never be adverse.

See - Achal Reddy .v. Ram Krishana (A.I.R. 1990 S.C. 553)

Similarly the possession of an agent, possession of a manager, possession of a servant, possession of guardian, possession of a Karta of the family or a coparcener will not become adverse.

10. A plea of adverse possession can also not be taken against a party who has been kept out of property by process of law or had no right to enter in view of the order of the Court.

In case of **permissive possession when it become adverse.** When a person take a plea of possession he must allege and prove the date when his possession became adverse so that starting point of limitation against a person against whom such claim is made can be calculated. Merely an allegation that a party was in uninterrupted possession or with vague allegation from which the plea of adverse possession cannot be founded.

When a suit is filed for a specific performance under an agreement of sale plea of adverse possession cannot be taken. For taking such plea, he will have to disclaim his right under the agreement. Similarly under Section 53 'A' of Transfer of Property Act when possession is taken under an agreement plea of adverse possession cannot be taken which could be inconsistent. See the recent decision of Supreme Court case of **Mohan Lal (2 L.R.) .v. Mirza Abdul Gafar and another, 1996 JLJ page 354.**

See - S.M. Karim .v. Sakina (A.I.R. 1964 S.C. 1254)

11. Non-enjoyment even in case of co-owner when another co-owner claims ouster and claims title by adverse possession, it is not enough that one out of them is in sole possession and enjoyment of the property and profits of the property. The exclusive possession of one co-sharer even though coupled with non-payment of profits cannot amount to adverse possession unless there has been an ouster of the other co-sharer to their knowledge and openly. He enjoys possession as a trustee on behalf of others. Their relations exists as tennts in common as member of the joint family.

See - P. Laxmi Reddy .v. L. Laxmi Reddy. (A.I.R. 1957 S.C. 314)

Chironjilal .v. Khatoonbi (A.I.R. 1995 M.P. 239).

Mere entry of the name in the reveue records cannot be an indication of adverse possession unless it is shown that it was obtained by clear declaration that the title of other co-sharers was denied. There should be actual notice given to the co-sharers of the denial of his right, so visibly, hostile and notorious as to justify an inference of knowledge on the part of the co-owner sought to be ousted.

See - Cores .v. Appu Hamy (1921 (AC) 230).

If there is no partition mere non-participation in rent and profits by one co-owner would not constitute adverse possession against former in favour of the latter.

If a co-owner transfers whole of the property or mortgages or alienate in any other manner and the co-owner does not object to it for the statutory period of over 12 years it can be a case of ouster. Mere inaction on the part of other co-owner while one of them is in exclusive possession do not constitute ouster. mere non-participation in profit do not constitute ouster. Possession by the eldest male member of the Joint Hindu Family on behalf of the family is no ouster unless there is any overt act in denial of rights of other members. it do not constitute ouster merely because a co-sharer is in possession of unequal share that is, in excess of his share the possession is not adverse to the other co-sharers unless open hostile act is proved. Construction of a building by one-co-owner on the joint property and mutation in the name of the brother and exclusion of other brothers and sist will not amount to ouster giving a perfection of title by adverse possession.

Recently Supreme Court in case of **Thakur Kishan Singh .v. Arvind Kumar, 1995 J.L.J. 1992** has in case of license has held that the mere possession which is howsoever long does not become adverse. A possession of co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession of howsoever length of time does not result in converting the permissive possession into adverse possession. (1996) 7 SSC 436 **Meethiyan Sidhiqu vs. Muhammed Kunju Pareeth Kutty** it is held that unless there is a specific plea prof that the appellant has disclaimed his right and asserted hostile title and possession to the knowledge of the respondent within the statutory period and the latter acquiesced to it, he cannot succeed to have it established that he perfected his right by prescription.

"It (prison) feels like being in hospital without the fear of pain or in the army without fear of war"

Lord Kagan

Contract & Damages

Justice D. M. Dharmadhikari

'Breach of Contract' is a civil wrong and judicial remedies of the injured party may be specific relief, damages, or restitution. Specific relief can be obtained under the Specific Relief Act. Sections 73, 74 and 75 of the Contract Act contain the provisions for awarding damages. The relief of restitution is to some extent governed by the provisions of Section 65. Specific relief is an equitable remedy of specific performance and/or injunction. Injured party may claim compensation for the breach. Such compensation takes the form of damages in money.

Claim of restitution arises when the plaintiff has in performing his part of the contract conferred a benefit on the defendant and seeks to get back that benefit or its value. The loss is to be determined on the compensatory principle. Loss in civil wrong means harm to the person or property of the plaintiff. The purpose of compensating loss or grant of damages for breach of contract is to compensate the plaintiff and not to punish the defendant. Section 73 incorporates that principle. Damages are therefore awarded to put the plaintiff into the position in which he would have been if the contract had actually been performed, or in other words, the plaintiff is entitled to damages for loss of his bargain. The leading Indian case on the subject is A.I.R. 1951 SC 145, on Sec. 73.

The kinds of loss recoverable may arise out of

(1 Expectations, (2) Reliance, and (3) Restitution.

(1) Expectations:

The law protects the expectations created by a contract. Section 73 incorporates that principle.

When a contract is broken, the party who suffers can claim from the party who is in breach, compensation for any loss or damage caused to him thereby which naturally arose in usual course of things from such breach or which the parties knew, when they made the contract to be likely to result from the breach of it. This kind of loss is recoverable for "expectations" and or "reliance"

2) Reliance:

The plaintiff may also incur expenses or other loss by reliance on the contract. For example, the buyer may be required by the contract to collect the goods and if he takes steps to do so but the seller fails to provide the goods then the buyer will have to waste the cost of collection. Expenses may also be wasted if the plaintiff incurs them for the purpose of making use of the subject-matter. For example, a buyer's costs of installing machinery may turn out to be useless because it is not up to the standard laid down in the contract. The plaintiff is, therefore, entitled to be compensated for such reliance loss. Under that head he may even recover expenses incurred before the contract which include preliminary expenses on the basis of expectations

(3) Restitution:

Such a claim may arise where the injured party has in performing his part of the contract conferred a benefit on the other party. It is, for example, available where the defaulting party has wholly failed to perform his part of the contract. Thus, if a seller has been paid in advance and he refuses to deliver the goods, he is liable to restore the price of the buyer. The effect of such a claim is to put both parties into the Position in which they would have been if the contract had never been made. In this respect, it differs from a claim for loss of expectations which is meant to put the plaintiff into the position in which he would have been if the contract had been performed.

The claim for restitution may not strictly be one for damages being based on gain to the defendant, rather than on loss to the plaintiff. The principle to some extent is incorporated in Sections 39 and 65.

The basis of assessment of damages :

When the claim is for reliance loss, the basis is the cost to the plaintiff of his action or forbearance in reliance of the contract. Where the claim is for restitution, the basis is the benefit obtained by the defendant. Where the claim is for expectation loss, or for consequential or incidental loss, there are at least two possible basis for assessment. These will be called 'difference in value' and 'cost of cure'.

In this respect, there is great relevance to market value. Where damages are based on difference in value or on the cost of a substitute, they are to be based on the actual difference of cost or on market value. For example, where a seller wrongfully failed to deliver, the buyer is entitled to the value of the goods, less the price if he has not yet paid it. The relevant factors include the cost of a reasonably close substitute, and the price at which the buyer may have re-sold the goods to a sub-buyer at or about the time of the seller's breach. If there is a market, the value of the goods is prima facie assessed by reference to it so that the buyer will be entitled to the amount (if any) by which the market price exceeds the contract price. The reason for this rule is that the buyer is entitled to the expenses of putting himself in the position of having those goods, and this he can do by going into the market and purchasing them at the market price. This principle applies where goods are bought for sale, no less than where they are bought for use.

Speculative damages or remote damages:

Speculative damages or remote damages are not normally to be allowed unless the nature of the contract and the subject matter warrant it. This principle is incorporated in second part of Section 73 which says that "such compensation is not to be given for any remote or indirect loss or damages sustained by reason of the breach". This was incorporated on the basis of the leading English case **Hadly Vs. Baxendale (1854) 9 Exch.341**". Reason of this principle is that there should be a casual connection between the breach and the loss. The loss which might naturally arise from breach and supposed to have been in contemplation of the parties alone is to be compensated.

Mitigation:

The victim of a breach of contract is said to be under a duty to mitigate his loss. The injured party must take all reasonable steps to minimise the loss. For example, if a buyer fails to accept and pay for goods or a seller to deliver them, the other party is expected to go into the market and make a substitute contract at the relevant time. If he fails to do so and the market moves against him, he cannot recover extra loss which he suffers, as this is due to his failure to mitigate.

This principle is incorporated in Explanation under Section 73 of the Act. The requirement, however, is that the injured party must and need only act reasonably. He is not expected to take unreasonable steps only to increase the loss.

Penalties and liquidated damages :

The amount which will be recoverable on breach of contract is often hard to predict. The parties may try to remove this uncertainty by providing that a fixed sum is to be paid on breach. If the sum is a reasonable estimate of the probable loss the provision will be valid; a provision of this kind is known as a 'liquidated damages clause'. Sometimes, however, the purpose of the Provision is not to make a genuine pre-estimate of loss but to bring pressure to bear on one of the parties to perform his part of the contract. Such a Provision is known as a penalty clause and is invalid. The above provision is incorporated in Sec. 74 of the Contract Act. When such a clause, where payment of a stipulated sum is made dependent on breach of contract, it is for the Court to Judge in each case whether the clause is a liquidated damages clause or a penalty clause. if it is found to be a penalty clause, under Section 74 of the Contract Act the Court has discertain to relieve a party of such penal clause and to grant compensation for loss or damage to the extent of the amount named in the contract. The clause is normally to be construed as penal if the sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivable be proud to have followed from the breach. The clause may also be considered as penal if it makes the same sum payable on one or more of several breaches which must cause different amounts of loss. It may also be termed as penalty where in not paying a fixed sum of money, the contract provides in that event for the payment of a greater sum. The distinction between the clauses for liquidated damages and a penal clause is that in the former the injured party can recover the stipulated amount even though it exceeds its actual loss; in the latter the injured party cannot recover more than the stipulated amount even though his actual loss is greater. if it is a clause of liquidated damages it operates to limit the liability. A penalty clause has to be disregarded by the Court. The injured party under such a clause will be able to recover only the loss which it has been able to prove and upto the stipulated amount.

The Indian Contract Act, on the basis of the leading decision in **Dunlop Tyres [(1915) AC 79 (All England Reporter 79 H.L.)]** has incorporated this in Section 74 of the Contract Act. The following leading cases of the Supreme Court of India may be seen :

(1) A.I.R. 1962 SC 1314 (Chunnilal V. Mehta and Sons Limited)

(2) A.I.R. 1963 SC 1405 (Fatehchand V. Balkrishna Das)

(3) A.I.R. 1987 SC 1257 (K.P. Shubharaman Shastri V. K.S. Raksharam)

(In that case for payment of one installment of Rs.16,000/- entire deposits made in installments upto Rs.28000/- were sought to be forfeited under a penal clause and the Court held that the party in breach has to prove the extent of loss actually suffered. Same view has been taken in A.I.R. 1970 SC 1955

(4)Moula Bux V. Union of India.

The M.P. High Court has followed these decision of Supreme Court and applied them even to consent decrees which are taken to be in the nature of contracts. **(See: 1985 M.P.L.J. 703- Parwati Bai V. Ayodhya Prasad and A.I.R. 1992 MP Page 6 - Bhanwarlal V. Babulal).**

Normally, the question that is confronted in such litigations to the Court is whether a particular clause in the contract is a clause for forfeiture of earnest money or a penal clause. This question when posed to the Court has to be decided on the subject matter, the nature of the contract, and the facts brought in evidence. If it is found to be a part of the price, it may be taken to be earnest money. If it is in the nature of a penal clause being a sum which is arbitrary and unconscionable, the party has to be relieved to the extent of loss proved under Sec. 74 of the Contract Act. (See : AIR 1979 M.P. 66 - Gurbux Singh V. B. Rafia). For deeper study, the following books are suggested.

(1) Mulla's Commentary on Contract Act.

(2) Law of Contract by Avtar Singh.

(3) Chitty on Contract.

(4) Contract - by Cheishire and Fifoot. ●

LAW, JUSTICE & THE JUDICIAL PROCESS

Justice Gulab Gupta
Chief Justice (Retd.)

SYNOPSIS

The Theme -

"Courts of Law" must become "Courts of Justice", which means that JUSTICE must be done even if the heaven falls.

The Methodology -

For the aforesaid purpose, it is necessary to -

1. Constitutionalise the judicial process. This requires understanding of our basic constitutional faith and injecting the same into the judicial decision making process, and
2. Follow the 'Rule of meaningful construction' or 'Purposive interpretation' of legislative provisions.

Instances -

1. Instances where decisions have been given in accordance with law but 'Justice' has not been done:-
   - Nihal Singh Vs. Rambai, AIR 1987 MP 126
   - Prema Vs. Mustak, AIR 1987 Gujrat 106
   - Prestress India Corporation Vs. UPSEB, AIR 1988 SC 2035.
2. Instances Where JUSTICE has been done by adopting meaningful or purposive interpretation of the statute under consideration.
   - Mumtaz Begam V. Mubarak Hussain, AIR 1986 MP 221
     (custody of 4 yrs. old child granted to the mother under Art.226 of the Constitution).
   - Vidya Bohre V. State of M.P., AIR 1987 JLJ 166
     (Subsistence allowance granted to the husband at the instance of the wife)
   - Savitri V. Gobind Singh, AIR 1985 SC 984
     (Considering the object and purpose of Sec. 145 Cr.P.C., interim maintenance can be granted).
3. Instances where constitutionalisation has resulted in JUSTICE in the case :-
   - Sarla Mugdal V. Union of India, AIR 1995 SC 1531 (July)
     (Second marriage of a Hundu husband after his conversion to ISLAM to void being contrary to Art.14 of the Constitution).

- Nihal Singh V. Ramabai. AIR 1987 MP 126
  (contract to purchase a girl to be married to the son of the Respdt. was held violative of Art. 23 and hence not enforceable by law courts).
- Mohini V. State of Karnataka. AIR 1992 SC 1858
  (Right to Life guaranteed under Art.21 includes the right to receive education).

RATIONALE BEHIND THE APPROACH :-

1. Law-making process has come to be dominated by the leaders of the political parties and has become less democratic. It does not reflect the needs of the society.
2. Legislators have lost their vitality and are no longer considered wise. They are, in most cases, legislatively illiterate and hence their wisdom is not respected.
3. Laws are motivated either to earn more money for the State or more votes for the ruling party.

It is therefore not possible to hold that law and justice always go together in this country.

In such a situation it is left to the judiciary to inject 'JUSTICE' into the law and make it more meaningful.

CONSTITUTIONAL IMPERATIVES :-

1. The Preamble, which is the KEY to open the mind of makers and shows the general purpose of various provisions.
   - Berubari case. AIR 1960 sc 845
   - Keshavanand Bharti's case. AIR 1983 SC 1481.
2. Fundamental rights guaranteed under Articles 14,15,19,21,23,25 and 30.
3. Directive Principles of State Policy, which are fundamental in the governance of the country. (See Part IV of the Constitution).
   - Minerva Mills case. AIR 1980 SC 1789 indicates the relationship of fundamental rights and the Directive Principles.
   - Bandhua Mukti Morcha case AIR 1984 SC 802.
     (Directive principles can be enforced by law courts if the same be necessary to secure fundamental rights).
4. A combined reading of the aforesaid provisions would show that 'SOCIAL JUSTICE' is the signature tune of the Constitution and hence it is the obligation of the judicial process to give meaning and

shape to it.

- Punjab National Bank V. Gulam Dastagir, AIR 1978 SC 481.
- Lingappa V. State of Maharastra, AIR 1985 SC 389.
- P.U.D.R. V. Union of India, AIR 1982 SC 1473.
- Pulin Bihari V. Sadhuram, AIR 1984 SC 1471.

For the aforesaid purpose, Courts can use SOCIAL JUSTICE as

(i) Judicial norm, channalising judicial thinking to establish a just social order; and

(ii) an aid to interpretation not only of statutes but also instruments. In this process it can be used as an OBJECTIVE which the judicial process seeks to establish.

MEANINGFUL OR PURPOSIVE INTERPRETATION

Interpretation, according to its classical classification is either (i) Literal, or (ii) Liberal.

Literal Interpretation may mean (i) Plain Meaning Rule, or (ii) Golden rule, or (iii) Mischief rule. Golden rule is the modern version of Plain Meaning rule and avoids absurdity or defeat of the object.

- S.L. Kale V. Union of India, AIR 1990 SC 2114, paras 13 to 17.
- Union of India V. F.T. De Gama, AIR 1990 981, paras 16-18.
- Municipal Corp. Bilaspur V. D. Dehankar, AIR 1992 SC 1846 at para 4. Mechanical approach to be avoided.

Read also Kehar Singh V. Delhi Admn. AIR 1988 SC 1883 and Atmaram V. Ishwar Singh, AIR 1988 SC 2031.

DYNAMISM OF JUDICIAL PROCESS :-

The aforesaid is expected to show that the judicial process is dynamic and capable of ensuring JUSTICE to all, safeguarding LIBERTY and keep the law linked with life to make it an effective instrument of social justice and reformation.

The aforesaid has already effected visible changes in Bail, Maintenance and Rent laws which may be understood and appreciated.

As to BAIL Law -

- Shahzad Hussain V. Ashtiaq Hussain, AIR 1987 SC 1613. (subsequent bail application be placed before the same Judge for consideration).
- State of Maharastra V. Buddhikota Subha Rao, AIR 1989 SC 2292.

(Unless there was some substantial change in the circumstances

The Indian Contract Act. on the basis of the leading decision in **Dunlop Tyres [(1915) AC 79 (All England Reporter 79 H.L.)]** has incorporated this in Section 74 of the Contract Act. The following leading cases of the Supreme Court of India may be seen :

(1) **A.I.R. 1962 SC 1314 (Chunnilal V. Mehta and Sons Limited)**

(2) **A.I.R. 1963 SC 1405 (Fatehchand V. Balkrishna Das)**

(3) **A.I.R. 1987 SC 1257 (K.P. Shubharaman Shastri V. K.S. Raksharam)**

(In that case for payment of one installment of Rs.16,000/- entire deposits made in installments upto Rs.28000/- were sought to be forfeited under a penal clause and the Court held that the party in breach has to prove the extent of loss actually suffered. Same view has been taken in A.I.R. 1970 SC 1955

(4)**Moula Bux V. Union of India.**

The M.P. High Court has followed these decision of Supreme Court and applied them even to consent decrees which are taken to be in the nature of contracts. (**See: 1985 M.P.L.J. 703- Parwati Bai V. Ayodhya Prasad and A.I.R. 1992 MP Page 6 - Bhanwarlal V. Babulal).**

Normally, the question that is confronted in such litigations to the Court is whether a particular clause in the contract is a clause for forfeiture of earnest money or a penal clause. This question when posed to the Court has to be decided on the subject matter, the nature of the contract, and the facts brought in evidence. If it is found to be a part of the price, it may be taken to be earnest money. If it is in the nature of a penal clause being a sum which is arbitrary and unconscionable, the party has to be relieved to the extent of loss proved under Sec. 74 of the Contract Act. (See : AIR 1979 M.P. 66 - Gurb x Singh V. B. Rafia). For deeper study, the following books are suggest .

(1) **Mulla's Commentary on Contract Act.**

(2) **Law of Contract by Av r Singh.**

(3) **Chitty on Contract.**

(4) **Contract - by Cheishire and Fifoot.**

Conduct of the Judges inside the Court

C.S. Gupta
Registrar General

First of all, let us take up the matter of our Judicial System as to what it is and what is expected of a Judge. As you know, Preamble of our Constitution is very important and highlights our Judicial System as to what it is.

1. Preamble of Constitution

Ours is a democratic set-up, the Judges play very important role in the Society to impart justice. Much is expected from the Judges by the Society. Society expects a very high moral conduct and standard from the Judges. What should be the conduct of the Judge inside and outside the Court cannot be enumerated or enlisted as to what he should do and what not. A Judge is also a social being and as has been observed by Hon'ble Supreme Court in its judgement reported in 1989 JLJ 591 (Union Carbide Vs. Union of India), "Like all other human institutions, a Court is also human and fallible". But the Judge should always be conscious about the high traditions of the institution, maintain and uphold dignity of the Judiciary. To achieve this ends, as one Jurist has said, 'the Judge should be a combination of three 'I'.

1. He should be industrious.
2. He should be impartial.
3. He should be intelligent.

The combination of these three 'I' will make him a successful Judge. Our Hon'ble the former C.J. had once quoted Lord Bentham in one of his speeches that nobody can claim to be a perfect Judge. But one should always strive towards this goal.

The life of a Judge should be of self impositions, self restraints and self discipline. These things cannot be thrusted upon a Judge, but it is one's own individuality that how he conducted himself as a Judge.

For a Judicial officer, sincerity and hard work is only the key of success.

1. Should be very punctual (to be elaborated).
2. Conduct of a Judge inside the Court is very important during hearing of cases and recording of evidence.
3. Avoid passing unnecessary remarks - Shahdol incident.
4. Protection of witnesses and cross-examination.
5. Objections during evidence Alertness.
6. Conscientious working - Promotness in judgements and orders.

In this respect, there is great relevance to market value. Where damages are based on difference in value or on the cost of a substitute, they are to be based on the actual difference of cost or on market value. For example, where a seller wrongfully failed to deliver the buyer is entitled to the value of the goods, less the price if he has not yet paid it. The relevant factors include the cost of a reasonably close substitute, and the price at which the buyer may have re-sold the goods to a sub-buyer at or about the time of the seller's breach. If there is a market, the value of the goods is prima facie assessed by reference to it so that the buyer will be entitled to the amount (if any) by which the market price exceeds the contract price. The reason for this rule is that the buyer is entitled to the expenses of putting himself in the position of having those goods, and this he can do by going into the market and purchasing them at the market price. This principle applies where goods are bought for sale, no less than where they are bought for use.

Speculative damages or remote damages:

Speculative damages or remote damages are not normally to be allowed unless the nature of the contract and the subject matter warrant it. This principle is incorporated in second part of Section 73 which says that "such compensation is not to be given for any remote or indirect loss or damages sustained by reason of the breach". This was incorporated on the basis of the leading English case **Hadly Vs. Baxenolale (1854) 9 Exch.3417.** Reason of this principle is that there should be a casual connection between the breach and the loss. The loss which might naturally arise from breach and supposed to have been in contemplation of the parties alone is to be compensated.

Mitigation:

The victim of a breach of contract is said to be under a duty to mitigate his loss. The injured party must take all reasonable steps to minimise the loss. For example, if a buyer fails to accept and pay for goods, or a seller to deliver them, the other party is expected to go into the market and make a substitute contract at the relevant time. If he fails to do so and the market then moves against him, he cannot recover extra loss which he suffers, as this is due to his failure to mitigate.

FORMAL ARREST

P.V. Namjoshi

During the course of Training Programme of the First Session in the month of July 1996 one Judicial officer posed one problem definitely of importance. His problem was regarding formal arrest.

An accused was arrested by the police Station Omti (Jabalpur) for an offence under Essential Commodities Act exclusively triable by a special Judge (Sessions Judge). He was remanded by Judicial officer having no jurisdiction to try the case. The police, Gorakhpur (Jabalpur) had previously registered an offence under Section 25 of the Arms Act, against the accused therefore police applied to the Magistrate. who remanded the accused to the judicial lock up for formal arrest and further investigation. The Magistrate asked the concerning police officer to contact the Sessions Judge because the Magistrate only remanded the accused but the custody of the accused was that of the Sessions (special) Judge. A Magistrate can remand an accused to police or to jail custody for not more than 15 days. But after that period of 15 days the police has to produce the accused before the concerning Trial Court or the Committal Court as the case may be having jurisdiction over the case. According to the Magistrate the accused was in judicial lock up on behalf of the concerning special court and not on behalf of the Judicial Magistrate who granted remand. In the remand form also the Magistrate wrote the name of the Special Court in whose Court the accused was directed to be produced. This matter was discussed among judicial officers. One view was that the Magistrate can grant permission to arrest the accused and virtually or by implication permitting the police to detain the accused in police custody for not more than 24 hours as provided by Section 57 of the Cr.P.C. as the police has authority to detain in custody the person who has been arrested by it for completion of the investigation.

It was said that the Magistrate can not refuse the police to take formal arrest. The question was who should authorise the detention of the accused. In 1976 Cr.L.J. page 1511 it was observed that although the power of remand upto 15 days may be exercised by a Magistrate who has no jurisdiction to try the case, the power of remand thereafter can only be exercised by a Magistrate who has such jurisdiction. Whenever the Magistrate is of the opinion that further detention of the accused is necessary or unnecessary for the purposes of completion of investigation he must forward the accused to a Magistrate having jurisdiction to try him in view of the fact that the power of remand under Section 167(2) is restricted only upto 15 days.

Contract & Damages

Justice D. M. Dharmadhikari

'Breach of Contract' is a civil wrong and judicial remedies of the injured party may be specific relief, damages, or restitution. Specific relief can be obtained under the Specific Relief Act. Sections 73, 74 and 75 of the Contract Act contain the provisions for awarding damages. The relief of restitution is to some extent governed by the provisions of Section 65. Specific relief is an equitable remedy of specific performance and/or injunction. Injured party may claim compensation for the breach. Such compensation takes the form of damages in money.

Claim of restitution arises when the plaintiff has in performing his part of the contract conferred a benefit on the defendant and seeks to get back that benefit or its value. The loss is to be determined on the compensatory principle. Loss in civil wrong means harm to the person or property of the plaintiff. The purpose of compensating loss or grant of damages for breach of contract is to compensate the plaintiff and not to punish the defendant. Section 73 incorporates that principle. Damages are therefore awarded to put the plaintiff into the position in which he would have been if the contract had actually been performed, or in other words, the plaintiff is entitled to damages for loss of his bargain. The leading Indian case on the subject is A.I.R. 1951 SC 145, on Sec. 73.

The kinds of loss recoverable may arise out of

(1) Expectations, (2) Reliance, and (3) Restitution.

(1) Expectations:

The law protects the expectations created by a contract. Section 73 incorporates that principle.

When a contract is broken, the party who suffers can claim from the party who is in breach, compensation for any loss or damage caused to him thereby which naturally arose in usual course of things from such breach or which the parties knew, when they made the contract to be likely to result from the breach of it. This kind of loss is recoverable for "expectations" and/or "reliance".

Cr.L.J. 180).

The latitude given by this section 167 Cr. p.c. to send the accused to nearest Magistrate whether he has jurisdiction to try the case or not is merely to provide for cases in which it is practically not possible to approach the concerning Magistrate immediately.

The Magistrate has jurisdiction to grant police remand or to permit formal arrest of an accused who is in the judicial custody by his order.

But it is not correct to say that there is no provision in the Cr.P.C. to grant formal permission for arrest of an accused who is in jail and further to grant police remand. Reference can be made to **A.I.R. 1954 Rajasthan Page 290 State .v. Sukh Sinha.** Under Section 167 of the Cr.P.C. and Section 344 (Old) = 309 of the Cr.P.C. (New) the Magistrate has jurisdiction to grant police remand to an accused who is remanded to judicial lock up in some other cases. **A.I.R. 1937 Sindh Page 251 Dhaman Vheeranand .v. Emperor** was disented by Rajasthan High Court. The accused who is in custody of the Magistrate under this Section (309 Cr.P.C.) may be remanded to police custody where it is considered desirable to enable the police to carry on investigation of any other offence. It is open to the Magistrate under Section 167 (2) to take the accused out of jail: order judicial custody and handover the police for a maximum period of 15 days. All that a Magistrate is required to do is to satisfy himself that a good case is made out for detaining the accused in police custody in connection with the investigation of a case (State .v. Mehar Chand 1969 Delhi Law Reports 179).

The power of granting permission for formal arrest should be exercised by the Magistrate or the court having jurisdiction over the accused on whose behalf the accused was remanded to judicial lock up. For further reference please go through **A.I.R. 1975 S.C. 1465 Natvarpardia .v. State of Orissa and commentaries on Code of Criminal Procedure by Sohani 18th Edition 4th Volume Section 309 paragraphs 30 Sub Clause (4) 31,33,34 and 42 and last portion of para 47.** Another reference is 1984 Cr.L.J. 1823 Kerala State .v. K.V. Sadanandan. ●

"Let us remember that if we suffer tamely a lawless attack upon our liberty, We encourage it, and involve others in our doom"

Samuel Adams

Tit - Bits

(1) The extract of the Order from the case **Dangal Singh vs. State, M.Cr.C. No.2541/1996** passed by Hon'ble Justice Mr. R.P. Awasthy on 2.7.1996.

Counsel for the parties to the petition are heard.

Contention of Shri Mrigendra Singh is that every time adjournment is being sought by the learned counsel for the accused petitioners on the ground of either his absence or due to some difficulty on the part of the counsel for the accused.

It is not understandable as to why the Presiding Officers of the Court concerned is not recording the examination-in-chief of the prosecution witnesses, who remain present in the Sessions Trial on the dates fixed for recording their statements. This is so because the accused remained present and they did not claim that they were not capable of engaging a lawyer but they had already engaged a lawyer. Therefore, as a matter of fact, examination-in-chief of each and every witness who was present on the fixed date should have been recorded by the Presiding Officer of the court concerned and opportunity to cross-examine such a witness ought to have been granted to the accused. Thereafter, after mentioning this fact that opportunity to cross-examine has been given to the accused in the deposition sheet as well as in the order sheet, the cross-examination by counsel for the accused should have been reserved at the risk and responsibility of the accused with the observation that the Court shall provide full assistance for service of summons on the said witnesses whose statements in chief were already recorded. However, in case the witness dies or becomes incapable of being produced, then the responsibility would be that of the accused because opportunity had already been granted to the accused to cross-examine the witnesses, who were present in the Court, but had failed to make avail of the said opportunity.

Thus, if adjournments are granted merely for asking the adjournments would be asked for. Therefore, it cannot be said that only the accused or their counsel are responsible for the said delay in trial. In fact, had this procedure been adopted by the Presiding Officer of the Court concerned or insisted upon by the learned Govt. Pleader or for that matter the counsel (if any) privately engaged by the complainant, the trial would have had concluded by now.

(2) Extract of the Order in Civil Appeal 18332/1995 passed on 21.11.1995 by Hon'ble the Supreme Court of India. The Senior Executorist and Others vs. Mallaiah.

The respondent entered service when he gave his birth date to be 1.7.1932. Thereafter, he claimed that his actual birth date was 1.7.1934. By an interim order made by the Tribunal he was allowed to continue in service till he attained the age of 60 years on the basis of the two years itself in the year of birth. He would otherwise have retired on 30.6.92. Thus, by virtue of the **interim** order he got an extended tenure in service of two years. Thereafter, the Tribunal disposed off the petition stating that since the petitioner has retired on attaining the age of 60 years on 30.6.1994, that date may be taken as the correct date of superannuation for working out the retiral benefits. The Tribunal did not decide the question whether the age of retirement was 58 or that he was permitted to continue by virtue of the difference in the year of birth. **This shows how the process can be abused by obtaining an interim order and thereafter allowing the petition to lapse after the purpose is served.** Even before us in response to the notice the respondent has not chosen to appear because he has reaped the benefit of the interim order. We had an occasion in **Burn Standard Co. Ltd. & Others** vs. **Shri Dinabandhu Majumdar & Anr.** (JT 1995 (4) SC 23) to make a detailed order in such cases. It is necessary to emphasise that in such cases irreparable damage is caused to the institution which cannot be put back even if the employee is wrong in his contention. If the employee is allowed to reap the benefit through an interim order without a final adjudication by the Tribunal or High Court, as the case may be, it would tantamount to permitting the employee to abuse the process of the Tribunal/Court. That is the reason why in the afore-mentioned judgment we had emphasised that the **Tribunal/Court should be slow in granting interim injunctions in such cases** because it would not cause any hardship to the employee even if he is allowed to retire on the original birth date for the obvious reason that if he succeeds he can always get the monetary benefits to which he would have been entitled had he not been retired earlier in point of time. In the decision mentioned above, **this Court had observed that it would be imprudent on the part of the High Court to allow interim relief to such an employee for continuance in service.** The same principal would apply where the Tribunal is exercising jurisdiction. We would once again draw the attention of the Tribunal/High Courts in this behalf.

(3) Satya Narayan Athya, Petitioner v. High Court of M.P. and another. Respondents. (AIR. 1996 S.C. 750)

The petitioner was appointed on probation as a Civil Judge by proceedings dated July 13, 1979. On completion of six months period, he was put on probation with effect from February 16, 1980. Though two years period had expired, no order of confirmation was issued and he continued on probation. In view of the non-satisfactory nature of the service, the full Court decided that he could not be confirmed. Accordingly, orders were issued on August 5, 1983 discharging him from service under rule 52(a) of M.P. Government Service (Temporary, Quasi-permanent Services) Rules 1960. When the petitioner filed writ petition in the High Court, he was unsuccessful in Latters Patent Appeal, though he succeeded before learned single Judge. Thus this petition for special leave has been filed against the order of the Division Bench passed on February 1993 in L.P.A. No.122/85.

The question, therefore, is whether the petitioner has to be deemed to have been confirmed after his completion of two years of probation. Rule 24(I) of the M.P. Judicial Service (Classification, Recruitment and Condition of Service) Rules, 1955, (for short 'the Rules'), provides thus :

"Every candidate appointed to the cadre shall undergo training for a period of six months before he is appointed on probation for a period of two years which period may be extended for a further period not exceeding two years. The probationers may, at the end of period of their probation, be confirmed subject to their fitness for confirmation and to having passed, by the higher standard, all such departmental examination as may be prescribed.

A reading thereof would clearly indicate that every candidate appointed on probation for a period of two years. On his completion of two years of probation, it may be open to the High Court either to confirm or extend the probation. At the end of the probation period if he is not confirmed on being found unfit, it may be extended for a further period not exceeding two years. It is seen that though there is no order of extension, it must be deemed that he was continued on probation for an extended period of two years. On completion of two years, he must not be deemed to be confirmed automatically. There is no order of confirmation. Until the order is passed, he must be deemed to continue on probation.

If is contended on his behalf by the learned counsel for the petitioner that since the later record was found satisfactory as per the norms laid down by the High Court, the finding that his performance was not satisfactory is not correct. Therefore, his discharge from service is clearly arbitrary. We find no force in the contention. The Division Bench held that during the relevant period his performance was not satisfactory and that subsequent good or bad performance of the petitioner became meaningless. We find that the approach adopted by the High Court cannot be said to be unjustified. Even the strong reliance placed by the learned counsel for the petitioner on the report of the learned District Judge indicates that he needed improvement in disposal of the cases which would show that the full Court of the High Court considered his performance as not satisfactory.

Under these circumstances, the High Court was justified in discharging the petitioner from service during the period of this probation. It is not necessary that there should be a charge and an enquiry on his conduct since the petitioner is only on probation and during the period of probation, it would be open to the High Court to consider whether he is suitable for confirmation or should be discharged from service.

It is thus not a fit case warranting our interference under Article 136 of the Constitution. The S.L.P. is accordingly dismissed.

4. **(1996) 2 SCC 328 New India Assurance Company Vs. Mandar Madhav Tambe and Others,** Motor Vehicles Act 1939.

Section 2 (5-A) read with Rule 16 Bombay Motor Vehicle Rules. A valid driving licence is contemplated by the Act would be one which is issuied in accordance with the provisions of chapter II of the Motor Vehicle Act 1939, after a driving test has been held a person who holds only a Learners' Licence is one who has not taken the driving test successfully. "A driving licence as defined in the Act is different from a Learner's Licence issued under rule 16 of the Bombay M.V. Act. In other words a person would be regarded as being duly licenced only if he has obtained a licence under Chapter II of the Motor Vehicle Act and a person who has obtained temporary licence which enables him to learn driving cannot be regarded as having been duly licenced.

(1996) 2 SCC 37 State Vs. Pirthichand, N.D.P.S. Act 1985.

5. **Court Fees Act (7 of 1870) Schedule 2, Art. 17(vi) (as amended in M.P.). AIR 1996 M.P. 77.**

Theodore Ekka Vs. Evangelical Church of India.

Suit for possession of Church Building and also Parsonage Building in possession of Faster. Suit for Church Building was valid at Rs.300 as provided under Article 17 as it could not have any market value and Parsonage Building valid on basis of one year's rent. Valuation was held to be proper. Remaining open plot need not be valued separately.

In second case reported in **1981 (1) Weekly Note 203 Hari Dhere Vs. Ramachandra** it was held that the plaintiff in his plaint has stated that the house belongs to the plaintiff in which the deity of Shri Dattaji Maharaj is installed. In view, of this avertment it is clear that the plaintiff filed his suit on the basis that he, and not the deity, is the owner of the disputed property as such the Court Fees on the market value is payable.

6. **Court Fees Act - Section 7(v) and Suit Valuation Act Section 3 - Gasobai Vs. Radhabai 1981 (1) Weekly Note 49 - Laxmi Narayan Vs. Shiv Narayan 1966 JLJ 219 and Bhagvati Vs. Kshama Rai 1980 (2) Weekly Note 22.**

Total effect of these Rulings is whether the claim of the plaintiff is confined to the land of which possession is sought after demolition of the buildings erected on it. It is in substance a suit for possession of the land. The value of the buildings which have to be demolished should not be taken into account. In a suit for partition of agricultural rural land court fee on market value need not be paid. The Amendment of the Court Fees Act (Act No.4 of the 1976) with effect from 1.3.1976 was introduced to clarify that even in cases where possession of a part of the land separately assessed to land revenue was claimed, court fees payable on such claim will be proportionately worked out for such part of the land. The intention was to provide relief to agriculturists and the owners of the land revenue paying lands. Remember the distinction between the words "definate share" used in sub section 7(v) b and not a definate share in sub clause 7 (v) d of the Court Fee Act. M.P. amendment.●

The following Judicial Officers are Compulsorily Retired. The details are as follows :-

SNo.	Name of the Officers	Place	w.e.f.
1.	Shri M.S. Katarey, ADJ Distt. Raipur	Balodabazar	13.5.96 A.N.
2.	Shri Ram Naresh Singh Chouhan, ADJ	Raipur	13.5.96 A.N.
3.	Shri Manoolal Markam III AJ to DJ	Gwalior	14.5.96 A.N.
4.	Shri P.C. Jain, I ADJ	Rewa	14.5.96 A.N.
5.	Shri D.R. Arya, III ADJ	Rewa	14.5.96 A.N.
6.	Shri Bapu Gadgil, VIII AJ to DJ	Indore	14.5.96 A.N.
7.	Shri K.C. Sharma (Sr.) AJ to DJ	Datia	15.5.96 A.N.
8.	Shri Mohd. Zia Qureshi CJM (under suspension) with H.Q. at Vidisha	Vidisha	13.5.96 A.N.
9.	Shri Omkar Prasad Dubey Ist. AJ to DJ	Sagar	14.5.96 F.N.
10.	Ku. Ram Mohini Shrivastava ADJ	Betul	20.5.96 A.N.
11.	Shri Virendra Kumar Saxena, OSD High Court of M.P. Gwalior Bench, Gwalior.	Sidhi	16.5.96 A.N.

List of Officers who were reverted as ACJM:-

1. Shri Jagdish Pd. Garg - Ashoknagar as ACJM
2. Shri Kishori Lal Kori - Murwara as ACJM
3. Shri Amarlal Joshi - Chattarpur as ACJM
4. Shri Ramesh Chandra Sharma - Jagdalpur as ACJM
5. Shri Prakash Chand Gupta - Jashpurnagar as ACJM
6. Shri Nirmal Kumar Goel - Narsinghgarh as ACJM

List of Officers who are suspended:-

1. Shri M. D. Agrawal A.D.J. Raipur and attached to Raipur
2. Shri P. C. Gupta A.C.J.M. attached to Raigarh.

Director (JOTI)

मध्यप्रदेश शासन
सामान्य प्रशासन विभाग

डी. क्र. 663/835/1(3)/73 भोपाल, दिनांक 3 नवं. 1973

प्रति,

शासन के समस्त विभाग.

विषय:- कनिष्ठ अधिकारियों द्वारा वरिष्ठ अधिकारियों को शिकायत करने पर कार्यवाही

अधीनस्थ अधिकारी द्वारा अपने से वरिष्ठ अधिकारी की शिकायत उचित माध्यम से करने पर क्या कार्य प्रणाली अपनाई जाए, यह प्रश्न कुछ समय से शासन के विचाराधीन था। इस संबंध में शासन द्वारा यह निर्णय लिया गया है कि यदि किसी अधीनस्थ अधिकारी ने अपने से वरिष्ठ अधिकारी के विरूद्ध स्पष्ट तथा निश्चित आरोप लगाते हुए उचित माध्यम से शिकायत पेश की है तो सक्षम प्राधिकारी को उसकी जांच अवश्य करनी चाहिए बशर्ते कि उस शिकायत में लगाए गए आरोपों को प्रथम दृष्ट्या कार्रवाई की आवश्यकता या गुंजाइश हो। यदि जांच में आरोप सत्य पाए जाते हैं तो आरोपित अधिकारी के विरुद्ध उचित कार्रवाई की जाए, किन्तु यदि आरोपी गलत तथा दुर्भावनापूर्ण पाया जाता है तो उस कनिष्ठ अधिकारी के विरूद्ध उसके इस घोर दुराचरण के लिए विभागीय कार्रवाई की जाए।

२. उपरोक्त पैरा में निर्दिष्ट "उचित माध्यम से" शब्दों का तात्पर्य ऐसी शिकायत से है जो ऐसे अधिकारी के मार्फत पेश की गई हो जिसका कि शिकायतकर्ता अधिकारी सीधा अधीनस्थ हो। यदि इस प्रकार की शिकायत की अग्रिम प्राप्ति विभागाध्यक्ष के मार्फत शासन को पेश की जाती है तो उसे भी "उचित माध्यम से" पेश की गई मान कर उपर्युक्त प्रकार कार्यवाई की जानी चाहिए।

हस्ता/-
बल्देव सिंह
सचिव
मध्य प्रदेश शासन
सामान्य प्रशासन विभाग

"He noblest lives and noblest dies who makes and keeps his self - made laws"

Richard Francis Burton

मध्यप्रदेश शासन, सामान्य प्रशासन विभाग

ज्ञापन

क्र. 7032/ सी. आर. 132-एक (I) भोपाल, दिनांक 25 अक्टू. 1972

प्रति,

सर्व जिलाध्यक्ष,

मध्यप्रदेश

विषय:- राज्य के उच्च न्यायालय के न्यायाधीशों के प्रति शिष्टाचार, स्वागत तथा सुरक्षा व्यवस्था के संबंध में।

सामान्य पुस्तक परिपत्र भाग 6 क्रमांक 1 खण्ड दो में "भारतीय संघ" या मध्यप्रदेश के या भारतीय संघ में किसी भी अन्य राज्य के मंत्री, राज्य मंत्री, तथा उपमंत्री और मध्यप्रदेश के मुख्य न्यायाधिपति के स्वागत के संबंध में हिदायतें के स्थान पर

> " भारतीय महासंघ या मध्यप्रदेश के या भारतीय संघ के किसी भी अन्य राज्य के मंत्री, राज्य मंत्री तथा उपमंत्री और मध्यप्रदेश के मुख्य न्यायाधिपति और उच्चन्यायालय के अन्य न्यायाधीशों के स्वागत के संबंध में हिदायतें "

पढ़ा जावे। उक्त सामान्य पुस्तक परिपत्र, जैसा कि परिपत्र में दर्शाया गया है, इस विभाग के निम्नलिखित ज्ञापनों पर आधारित है -

1. क्रमांक 9006/सी.आर. 35/एक (I) दिनांक 5.12.57
2. क्रमांक 2700/सी. आर. 168 - एक (1) दिनांक 9.12.59

2. राज्य शासन ने निर्णय लिया है कि सुरक्षा, स्वागत, शिष्टाचार संबंधी जो व्यवस्था किसी भी राज्य के मंत्री, राज्यमंत्री, उपमंत्री, तथा मुख्य न्यायाधिपति के लिये की जाती है, ये सभी सुविधाएं राज्य के उच्च न्यायालय के न्यायाधीशों को प्रदान की जाएं।

मध्यप्रदेश के राज्यपाल के नाम से तथा
आदेशानुसार
हस्ता. उप सचिव
म.प्र. शासन, सामान्य प्रशासन विभाग