VOL. IV PART-IV AUGUST 1998

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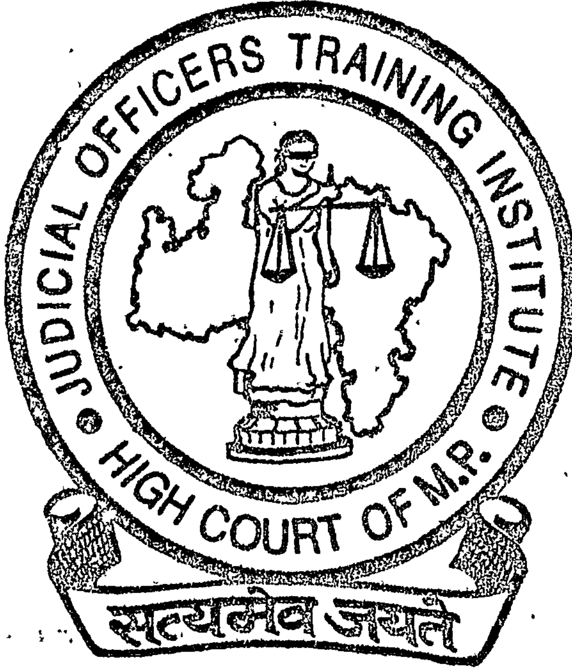

JOTI JOURNAL

न्यायिक अधिकारी प्रशिक्षण संस्थान

उच्च न्यायालय जबलपुर 482007

JUDICIAL OFFICERS' TRAINING INSTITUTE

HIGH COURT OF MADHYA PRADESH

JABALPUR-482007

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संपादकीय

हमारी सार्थकता

पुरुषोत्तम विष्णु नामजोशी

कुछ दिन पहले यथापूर्व मुझे एक माननीय न्यायाधिपति महोदय ने आहुत किया तो सादर सेवा में उपस्थित हुआ। माननीय महोदय ने बताया कि एक अतिरिक्त सत्र न्यायाधीश ने सत्र प्रकरण में धारा 396 भा.द.वि. के अंतर्गत 10 वर्ष की एवं 397 भा.द.वि. के अंतर्गत 7 वर्ष की सजा अभियुक्त को दी है, क्या ठीक है ? मौन धारण किया । मन ही मन में सोचा कि धारा 397 एवं 398 भा.द.वि. अपने आप में पृथक रूप से अपराध परिभाषित नहीं करती केवल न्यूनतम सजा का सृजन करती है।

दूसरी घटना यह हुई कि किशोर न्यायालय में एक अपचारी के विरुद्ध धारा 376 भा.द.वि. के अंतर्गत प्रकरण चल रहा था। जिसमें वह पलायन कर गया। कुछ समय पश्चात जब वह निरूद्ध होकर आया तब उसने लगभग 20 वर्ष आयु को प्राप्त कर लिया था। उसे न्यायिक मजिस्ट्रेट ने संप्रेषण गृह में भेजने का आदेश दिया। वहाँ उसे प्रवेश नहीं दिया गया क्योंकि अब वह आयु से 16 वर्ष से अधिक था। दूसरे दिन मजिस्ट्रेट ने यह सोचा कि 20 वर्ष के व्यक्ति को जेल नहीं भेजा जा सकता तो आदेश हुआ कि पुलिस ही उसे अभिरक्षा में सुरक्षित रखे लेकिन पुलिस कोठरी में बंद न करे। किशोर न्यायालय के मजिस्ट्रेट उन दिनों उपलब्ध नहीं थे। पुनः यह विषय चिंतन का विषय बन गया। किशोर न्याय अधिनियम की धारा 18 के प्रावधान अवलोकनीय हो सकते थे।

एक अन्य घटना यह घटित हुई कि प्रतिवादी साक्ष्य हेतु प्रकरण निर्धारित था। प्रतिवादी प्रारंभिक समय में ही कुछ समय के लिये नहीं आया तो प्रतिवादी की साक्ष्य का अवसर समाप्त कर दिया गया। प्रकरण अंतिम तर्क हेतु निर्धारित हुआ। कुछ समय बाद प्रतिवादी, उसके साक्षी व अधिवक्ता उपस्थित हुए व साक्ष्य हेतु निवेदन किया तो न्यायालय ने कहा, साक्ष्य अधिकार समाप्त कर दिया है। अधिवक्ता महोदय ने आदेश–9 नियम–7 व्यवहार प्रक्रिया संहिता का आवेदन पत्र प्रस्तुत किया वह निरस्त हो गया। संभवतः यूनिट्स अर्जित करने के आशय से ऐसा किया होगा।

ऐसी कई बातें विभिन्न प्रकार से प्रस्तुत होती हैं। हमसे भूलें होना अस्वाभाविक क्रिया नहीं है। दुर्भावना से ऐसी भूलें नहीं होती होंगी। लेकिन एक बात निश्चित है कि हमारे उच्च न्यायवृंद हमसे यह अपेक्षा करते हैं कि जो कार्य हम न्यायिक अधिकारी करते हैं उसमें समझदारी झलकना चाहिये, मनन, चिंतन, विचार–विमर्श, सावधानी, उहापोह निरूपित एवं प्रतिपादित होता रहना चाहिये।

हर बार जब भी मुझे निर्देशित किया गया है तब तब माननीय न्यायाधिपति गणों ने यही कहा है कि परिश्रम पूर्वक, चिंतनयुक्त रूप से समग्र विचारांमंथन करने के पश्चात न्याय निर्णयों का सृजन होना चाहिये तथा ऐसा न्यायिक अधिकारीगणों ने किया है ऐसा अनुभव भी होना चाहिये। किसी एक निष्कर्ष पर पहुँचना एक बात है चाहे वह निष्कर्ष सही दिशा में अग्रसर हो या न हो परंतु ये तो बात निश्चित है कि निष्कर्ष की प्रस्तुति हुई है उसके लिए अध्ययन की कमी न रही हो ऐसा भी प्रकट हो सके।

वास्तव में हमारे में कहीं न कहीं भय, त्रुटि, दोष, कमी, न्यूनता अथवा न्यूनगंड है या कि छद्म अभिमान है जो हमें अपना मार्ग प्रशस्त करने में अवरोध, व्यवधान अथवा रुकावट उत्पन्न करता है। जहाँ तक मनोबल, कर्मठता, आत्मशक्ति का प्रश्न है भय, आशंका अथवा हानि की संभावना अथवा अनिष्ट की चिंता हम करते रहेंगे तो हमारा मनोबल कभी भी ऊँचा नहीं उठने वाला है। जब तक हम विश्वास एवं साहस से हमारा कार्य नहीं करेंगे तो हम न्यायिक अधिकारी के रूप में कार्य ही नहीं कर पाएंगे। अनावश्यक रूप से ऐसे किसी अनिष्ट की चिंता, जैसे ऐसा करने से कहीं शिकायत तो नहीं होगी अथवा ऐसा करने से कहीं विभागीय कार्यवाही तो नहीं होगी, ऐसी चिंता सताती रहती है। यदि ऐसी पीड़ा से हम पीड़ित हों तो आवश्यक है कि आत्म विश्वास का संचार हम आप करें। हमें यह विश्वास है कि हम बिल्कुल निरंक या अज्ञानी नहीं हो सकते। हमें कुछ न कुछ आता है। लेकिन हम में जो कमी अनुभव होती है वह सतत प्रयत्न करते रहने की। हमारा दोष है कि न्यायालय में किसी विषय पर समग्र रूप से अध्ययन न करके जैसे तैसे मामले को प्रकरण को सतही रूप से अंदाज से कल्पनाओं के आधार से निराकृत कर देते हैं। एक बार एवं कई बार ऐसा करने से यह बात हमारे अभ्यास में आती है व हम अभ्यस्त हो जाते हैं। संभवतः यही कारण हो सकता है कि हमें जो और जितना आता है कि उसकी भी प्रस्तुति सुरुचिपूर्ण रूप से नहीं कर सकते।

किसी को प्रताड़ित करने का आशय हमारे वरिष्ठ महानुभावों का कभी भी नहीं रहेगा। हमारे दोष–कमियाँ यदि हम कम नहीं कर पायेंगे तो निश्चित ही क्षति तो होगी। हम सुसंस्कृत जनों के लिए एक संस्कृत सुभाषित है;

।। उद्यमेन हि सिद्धन्ति कार्याणि न मनोरथैः ।।

।। न हि सुप्तस्य सिहंस्य प्रविशन्ति मुखे मृगाः ।।

उद्यमी, परिश्रमी, यत्नशील होने से ही कार्य सिद्ध हो सकता है केवल मनोरथ, इच्छा अथवा अभिलाषा से प्राप्तियां सिद्ध नहीं होती हैं। वनराज भी, यदि अकर्मण्य

रहेगा अर्थात शिकार के टोह में, खोज में न रहेगा तो उसके मुंह में स्वयमेव शिकार आकर प्रवेश करने वाला नहीं है।

यही भावना भगवत् गीता में अध्याय 18 के अंतिम श्लोक में सारगर्भित रूप से प्रदर्शित होती है। यथा;

।। यत्र योगेश्वरः कृष्णो, यत्र पार्थो धनुर्धरः ।।
।। तत्र श्री विजयो भूति धुंवा नीतीर्भतिर्मम ।।

शाब्दिक अर्थ तो केवल यह है कि जहाँ योगेश्वर श्रीकृष्ण हैं और धनुर्धारी अर्जुन हैं वहीं श्रीलक्ष्मी हैं, विजय है, वहीं ऐश्वर्य है और वहीं निश्चल नीति है। लेकिन गीता में योगेश्वर कृष्ण यदि निष्काम कर्मयुक्त (योग) युक्ति का प्रतिनिधित्व करते हैं तो अर्जुन शक्ति का दायित्व निभा रहे होते हैं। युक्ति का भावार्थ होगा ज्ञान, विद्या, कला, आगमन (प्रेरकता)। शक्ति का भावार्थ होगा ओजस्विता, क्षमता, आत्मविश्वास, आत्मबल, महारथ, प्रवीणता। इस प्रकार भावार्थ यह होगा कि जहाँ हमारे में प्रेरणा व प्रवीणता, ज्ञान तथा आत्मबल है जो योग युक्त (निष्काम फल युक्त) हो वहाँ विजय एवं ऐश्वर्य होगा यह निश्चल नीति है।

अतः यदि हम आपमें किसी प्रकार से कोई भय व्याप्त है अथवा मनोबल में ह्रास अनुभव हो रहा हो तो उससे मुक्त होना होगा। इसके लिये समग्र आद्योपान्त, अभंजित एवं अक्षत रूप से अध्ययन, विधि का आवर्तन, अनुशीलन एवं परिशीलन करना होगा।

जब हमारे मन में, विचारों में यदि किसी प्रकार की कोई भ्रामक कल्पना स्वयं के प्रति आत्मश्लाघा अथवा अहंवाद की हो तो उससे स्वयं को मुक्त करना होगा। इसके लिए कर्मरूपी भूमि में स्वयं को ज्ञानरूपी बीज रूप में विसर्जित करके मिटा देना होगा। यदि यह बीज जिज्ञासा, आकांक्षा एवं कौतूहल युक्त बीज है एवं उसमें अकुलाहट, उद्वेग, उत्तेजना, आवेश तथा उत्ताप की शक्ति है तो सफलता का कोमल पौधा जन्म लेगा उसी में हमारी सार्थकता है उसी में हमारी जय विजय है।

- ***The will to win is worthless if you do not have the will to prepare.***
- ***None of us suddenly becomes something overnight, the preparation have been in the making for a life time.***
- ***Expand yourselves, do not contract into your own tiny individuality.***

अंतस चेतना जागृत करो

1997 में चयनित व्यवहार न्यायाधीश वर्ग 2 के चतुर्थ दल जो संख्या में दस का था का प्रथम प्रशिक्षण शिविर दिनांक 4 मई 1998 से 18 मई 1998 तक चला। उक्त सत्र के समापन पूर्व अवसर पर माननीय प्रशासनिक न्यायाधिपति श्रीमान एस.के. दुबे ने प्रशिक्षु व्यवहार न्यायाधीश गणों को अपने विचारों को इस आशा से अभिव्यक्त किया कि नव–नियुक्त न्यायिक अधिकारी भविष्य में न्यायपालिका की प्रतिष्ठा में अभिवृद्धि करेंगे। उनका यह कहना था कि समय गतिमान है अतः आनेवाली पीढ़ी ही भविष्य का दर्पण है। उज्ज्वल भविष्य की अपेक्षा करते हुए आशीर्वाद दिया।

मार्गदर्शन के रूप में सटीक विचार प्रस्तुत किए। उनका कहना था कि वरिष्ठ जनों का, गुरूजनों का आदर करें। उन्हें अपनी कठिनाईयां, समस्याएं बताएं तथा हल करने का प्रयत्न करें। इस के लिए उन्होंने यह भी कहा कि समस्याओं का निदान तब ही संभव होगा जब स्वयं भी समस्या के प्रति जाग्रत रहेंगे व उसका हल खोजने हेतु विभिन्न प्रावधानों का अध्ययन भी करेंगे। माननीय श्रीमान दुबे महोदय ने यह भी कहा कि व्यवहार न्यायाधीश के पद के प्रति जो आकांक्षा थी, जिज्ञासा थी, कौतूहल था उसे प्राप्त कर लिया है लेकिन पद के दायित्वों का निष्ठापूर्वक व ईमानदारी के साथ निर्वाह करने हेतु मन में दबाव हो, उत्ताप हो तथा मुमक्षा हो, सर्वोत्तम कर गुजरने की लालसा हो तथा निर्धार हो। इस लक्ष्य की ओर अग्रसर होने हेतु उन्होंने कहा कि इसके लिए किसी के सहारे या आश्रय की आवश्यकता नहीं है। स्वयं को परिश्रम करना है तथा आत्मानुशासित भी रहना है। ऐसा करने के लिएं न्यायिक अधिकारी को कठोर परिश्रम करना होगा। समय निष्ठ होना नितांत आवश्यक है। स्वयं में ही इतने मार्गदर्शित हो जाना चाहिए की न्यायालय का स्वतंत्र प्रभार प्राप्त होने पश्चात अपने न्यायालय के कर्मचारी बंधु अधिवक्ता गण व पक्षकारों में विश्वास की भावना उत्पन्न हो। नित्य निर्धारित प्रकरणों का एक दिन पूर्व अध्ययन कार्य नियंत्रण के लिए सुगम होता है ऐसा कहकर श्रीमान दुबे महोदय ने यह भी कहा कि निर्धारित कार्य निर्धारित समय पर करना चाहिए जिससे न्यायपालिका की

छवि उज्जवल होगी, सर्वसाधारण व्यक्ति में न्यायदान के प्रति विश्वास बढ़ेगा एवं न्याय का राज्य सुस्थापित होने में बहुत बड़ा हाथ होगा।

न्यायालय में, न्यायालय के बाहर न्यायाधीश की छवि प्रभावपूर्ण होने की बात पर महत्व देते हुए माननीय श्री दुबे ने यह कहा कि सौम्यता व मृदुता हो; भाषा में शुद्धता हो तथा शिष्टाचार से सतत व्यवहार होना चाहिए किसी भी लोभ–प्रलोभ से मुक्त रहने के लिए आत्मानुशासन हो व भौतिक सुखों से मुक्त रहने का सतत प्रयत्न होना चाहिए।

कर्तव्य के प्रति अभिमुख व अग्रसर रहने पर प्रत्येक सफलता आसानी से सहज रूप से प्राप्त होती है। अतः न्यायिक जीवन के प्रारंभ से ही अपने कर्त्तव्यों के प्रति पूर्ण समर्पण की अपेक्षा करते शुभेच्छाएं व्यक्त कीं और आशा व्यक्त की कि न्यायाधीश के अनुरूप न्यायिक अधिकारी गणों का व्यवहार सतत रूप से बना रहेगा।

●

"ध्यानाकर्षण"

"जोति" जर्नल अक्टूबर 1995 से दिसम्बर 1996 की एवं जनवरी 1997 से दिसम्बर 1997 की दो पृथक–पृथक अनुक्रमणिकाओं का वितरण सभी न्यायिक अधिकारीगणों को करने हेतु ग्रीष्मावकाश में उन्हें निर्गमित कर दिया है। अतः यह सुनिश्चित कर लें कि प्रत्येक न्यायिक अधिकारी को उसकी प्रतियाँ प्राप्त हो गईं हैं। यदि नहीं हुईं हैं तो पूर्व पदस्थापना वाले या नई पदस्थापना वाले स्थान से जैसी स्थिति हो, उपलब्ध कर लें।

FAILURE TO MAKE A DECISION AFTER DUE CONSIDERATION OF ALL FACTS WILL QUICKLY BRAND A MAN AS UNFIT FOR A POSITION OF RESPONSIBILITY (JUDGE).

HARVEY W. ANDREWS

A NOTE PREPARED ON A TALK GIVEN TO THE DISTRICT & SESSIONS JUDGE, AND THE ADDITIONAL DISTRICT & SESSIONS AT BHIND ON 10-4-1991

By Hon'ble Justice (Rtd.)
SHRI K.K. VARMA

1- ARRANGEMENT OF CAUSE LIST :

This work should never be left to the Reader especially in old cases, Sessions Cases and cases requiring urgent hearing. This can be ensured only by writing the adjourned date of hearing yourself and before giving dates in such cases, consult the case diary.

2- PREPARATION FOR THE NEXT DAY'S WORKING :

Before leaving your chamber, ask your Clerks to bring the judicial diary to enable you to ascertain the cases fixed on the next working day for motion hearing atleast in civil revisions, criminal revisions, civil misc. appeals and in which issues are to be framed and after ascertaining your work schedule of the writing of judgments at home- the clerks may be asked to send such records with you. These cases should be studied so that in appropriate cases you may be able to dismiss appropriate cases at the time of motion hearing. In cases fixed for framing of issues, you may be able to study the pleading and find out whether or not they require any particulars or amendment. This habit will have to be cultivated in order to be benefited by these instructions.

3- PREPAREDNESS BEFORE COMMENCING HEARING OF A PARTICULAR CASE :

Before taking up the hearing, read two or three order sheets of the previous dates and find out what is the matter that has been fixed for that day. After hearing the matter and before writing the order-sheet of that day, again read the previous order-sheets and then write the order-sheet of that particular date. Not only the proceedings of that day should be clearly and fully recorded in the order-sheets but also a few observations and appropriate directions may be made in few lines about the non-compliance of the directions, if any, given by you in the previous order-sheets. Also see that your directions are always carried out and the Court officials or those bound by your directions are required to explain their omissions in the matter of the compliance of the directions given by you.

4- HOW TO SEE YOUR DIRECTIONS ARE DULY NOTED AND FOLLOWED?

Give written instructions in a separate register to your court officials that the directions given on a particular order-sheet should be noted by them in the margin of the order-sheet and that before the next date of hearing, a note be given by the clerk to show that the directions have been complied or not with reasons or explanations for the non-compliance of the directions. (The register or copy may be called "Daily Instruction Book").

5- How to ensure that process-fee and diet money are paid in time, the summonses/warrants are issued to the witnesses of the parties in time and

the taking of action against the defaulting witnesses in Civil cases. Payment of P.F. and diet money should be insisted upon at the settling date.

It would be better if an interim date of hearing is fixed in the order-sheet of the settling date itself, preferably a fortnight before the commencement of the recording of evidence. This interim date of hearing should be got entered in the judicial diary itself. On this interim date, mark the presence and absence of counsel and after ascertaining whether P.F. has been paid or whether any summonses/warrants have returned unserved, pass an appropriate order and get them noted by counsel, the attendance of those witnesses require additional steps. Further step this may enable you to reject any application for adjournment at the date of the evidence, if your directions given at the interim hearing date had not been followed.

6- In Sessions cases such an interim date should also be given. Your directions for return of the summonses or for reissue of summonses etc. given on such and interim date, should be got noted by the P.P. and the reader so that they may take appropriate actions. If possible, the return of the summonses issued in the first instance may be made returnable by this interim date.

7- Witness who have defaulted in a attendance on service may be proceeded against under Order 16, C.P.C. and under Section 350 of the Cr.P.C. But care be taken not to be disproportionately hard at the time of the final orders in such proceedings. Generally, avoid issue of non-bailable warrants.

8- Whenever a Judge proceeds on leave for some days and has applied well in advance for such leave, he may give a brief note about the Sessions case or suits at the evidence stage falling on the dates for which the leave has been applied. The District & Sessions Judge make arrangement for such cases in accordance with law to be heard by himself or by any other judge exercising similar powers as the judge who has applied for grant of leave.

9- **EXAMINATION OF PLAINT ETC. :**

Before admitting it and registering it as a suit, a claim case or a petition under the Hindu Marriage Act. This examination has to be done by the Judge himself. The routine direction of obtaining reports form the Reader is superfluous because the receiving officer is Dy.C. of C. who does the initial checking. The examination of the plaint etc. is important on three counts :

(i) Examine the clause regarding the valuation of the plaint, petition, memo of appeal etc.

(ii) See that the valuation for jurisdiction and also for valuation of Court fee have been specifically given or not. If not, counsel for the parties should be asked to apply for leave to amend the plaint etc. to give the requisite particulars.

Before ordering registration of the plaint etc. also see that it is really within time and that proper Court fees have been paid or not. In order to do this work effectively, you must have good knowledge of the provisions of the

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will ensure a permanent record. Particulars of the case, the date of hearing and the names of counsel of the parties may be mentioned in the notes.

14- JUDGMENT :

Never sit to write or dictate a judgment before you have studied the record and the law applicable fully. You must be clear in your mind about your

the taking of action against the defaulting witnesses in Civil cases. Payment of P.F. and diet money should be insisted upon at the settling date.

It would be better if an interim date of hearing is fixed in the order-sheet of the settling date itself, preferably a fortnight before the commencement of the recording of evidence. This interim date of hearing should be got entered in the judicial diary itself. On this interim date, mark the presence

findings, the reasons for your findings and also the manner in which you are going to put your reasons on paper. While writing judgments avoid vagueness in expression. Record specific findings on the issues in civil cases and on the formulated points for determination in Criminal cases and criminal appeals.

15- The first paragraph of the judgment is very important. It should be very specific. In civil cases, the relief(s) sought, should be clearly set out in the opening paragraph of the judgment. While writing last paragraph of the judgment always refer to the opening paragraph of the judgment so as to ensure that nothing has been left out. Counsel's fees should be allowed in those cases where certificates have been filed before the delivery of the judgment. Always fix the fees in amount. Do not say 'As per Rules'. In suits and appeals any reasonable fee be fixed but that it cannot exceed the amount actually certified. For counsel appearing for the State Govt. and other Corporation etc. where no fees is paid to counsel before the date of the judgment, fix a reasonable fee looking to the nature of the case.

16- Always note the date of institution of the suit at the top of the judgment and (in bracket) after the serial number of the suits.

17- **DECREE :**

The drawing up of decrees self contained is being ignored by the Judges. The decree should contain amongst other things, at the top, the name of the Judge, the nature of the claim, the date of institution of the suit or appeal, the valuation of the suit/appeal for the purposes of court-fee and jurisdiction. The description of the immovable property or other property in dispute should be given in the decree or in a schedule to be annexed to the decree, also enclosing a map (of the immovable property) if there is one. In appellate decrees where the lower Court's decree is being affirmed, modified or especially while affirming the trial Court's decree the particulars of that decree should be given just below the ordering portion of your own decree. For example - the trial Court's decree for eviction and arrears of rent is being affirmed. First state : "The appeal is being dismissed and the trial Court's following decree is being affirmed". Then give a description of the trial Court's decree. Similarly, if the appeal is allowed against the eviction but is dismissed for the arrears of rent, the appellate Court's decree may be framed as follows :

> "The appeal is allowed in part and the trial Court's decree for eviction of the appellant is hereby set aside, but the appeal is dismissed as against trial Court's decree for arrears of rent, amounting to Rs. 500/- is hereby affirmed."

While making directions about costs of the appeal deal with the orders of the trial Court about the costs of the trial. While awarding interest or mesne profits .... from the date of the institution of the suit, mention that date in the decree itself.

समुचित विशिष्टियाँ : क्यों एवं कैसे?

पुरुषोत्तम विष्णु नामजोशी

व्यवहार प्रक्रिया संहिता (व्य. प्र. स.) के आदेश 6 नि. 5 में यह कहा गया है कि "दावे या प्रतिरक्षा की प्रकृति का अतिरिक्त तथा अधिक अच्छा कथन करने या किसी अभिवचन में कथित किसी बात की अतिरिक्त एवं अधिक अच्छी विशिष्टियाँ देने का आदेश खर्चों और अन्य बातों के बारे में ऐसे निबन्धनों पर दिया जा सकेगा जो न्यायसंगत हो"। अर्थात् न्यायालय से यह अपेक्षा की गई है कि जहां पर अभिकथनों के सम्बन्ध में अधिक एवं समुचित माहिति प्रदान करने की आवश्यकता अनुभव हो वहां न्यायालय ऐसा आदेश दे सकता है।

उक्त प्रावधान में दावा (क्लेम) एवं प्रतिरक्षा (डिफेन्स) शब्द का प्रयोग किया गया है। यह दावा अथवा प्रतिरक्षा पक्षकारों द्वारा अपने अपने अभिवचनों के माध्यम से की जाती है जिसे अंग्रेजी में प्लीडिंग के रूप में बताया जाता है। आदेश 6 नियम 1 व्य.प्र.स. में अभिवचन शब्द को परिभाषित किया है व कहा है कि अभिवचन का अर्थ "दावा" अथवा "उत्तर वाद" से है। दावे के माध्यम से किसी संपत्ति के प्रति हम अपना विधिक अधिकार अथवा विधिक स्थिति (Legal Character or right to the property) स्थापित करना चाहते हैं तो दूसरा पक्ष ऐसे अधिकार अथवा स्थिति का प्रत्याख्यान करता है अथवा अस्वीकार करना चाहता है। ***दी लॉ ऑफ प्लीडिंग द्वारा पी.सी. मोधा*** में प्रारम्भिक रूप में ही स्पष्ट रूप से अभिवचन को स्पष्ट करते हुए बताया है कि "Pleadings are statements in writing drawn up and filled by each party to a case, stating what his contentions will be at the trial (hearing) and giving all such details as his opponent needs to know in order to prepare his case in answer." यहां ट्रायल तथा हियरिंग शब्द का एक ही अर्थ है अर्थात् सुनवाई अथवा श्रवण तिथि। ***पी. रामनाथ अय्यर अपने लॉ लेक्सिकॉन*** में विशिष्टियाँ शब्द को इस प्रकार अभिव्यक्त करते हैं :-

Particulars (in pleading). the object of particulars in pleadings is to make a litigant state with sufficient fullness the nature of his claim or defence so as to enable parties to go to trial with a knowledge of the case which they have to meet, and there by to save expense, and to prevent them from being taken by surprise.

इस प्रकार संक्षिप्त में यह कहा जा सकता है कि अभिवचन वह विशिष्टियाँ अथवा विवरणिका है जो प्रकरण का प्रत्येक पक्षकार लिखित में प्रस्तुत करता है तथा अभिकथित करता है ताकि एक दूसरे को बताया जा सके कि ऐसे कौन से विवादित बिन्दु हैं जिस पर प्रकरण की सुनवाई के समय वह अपना पक्ष प्रस्तुत करेगा। इसी कारण यह महत्वपूर्ण बात हो जाती है कि पक्षकार अपनी अपनी विवरणिका (विशिष्टियाँ)

सुस्पष्ट असंदिग्ध भाषा में लिखें व स्पष्ट करें कि दावे अथवा उत्तरवाद के माध्यम से वह क्या कहना चाहता है व क्या सहायता प्राप्त करना चाहता है। इस प्रकार अभिवचनों का मुख्य उद्देश्य यह है कि एक पक्षकार दूसरे पक्षकार को लिखित में स्पष्ट व पूर्ण रूप से यह अभिव्यक्त करे कि उसका दावा अथवा प्रतिरक्षा क्या है, जिससे पक्षकारगणों को सुनवाई के समय ज्ञात रहे। प्रत्येक पक्ष को प्रकरण के समर्थन में या खण्डन में क्या साक्ष्य देना है तथा कोई भी पक्षकार अप्रत्याशित स्थिति में न रहे, तथा प्रकरण का निराकरण कम लागत में व न्यूनतम अवधि में हो।

इस प्रकार प्रकरणों में अभिवचनों का अत्यधिक महत्व है। अभिवचन सुस्पष्ट, बोधगम्य हो तथा ऐसे हो कि एक पक्षकार दूसरे पक्षकारों के अभिवचनों को पढ़कर यह समझ सके कि दावे अथवा प्रतिरक्षा के माध्यम से पक्षकार क्या अभिव्यक्त करना चाहते हैं। हमारी विषय वस्तु केवल दावों के विषय तक ही सीमित रहेगी क्योंकि हमें नैमित्यिक रूप से इसी विषय से सम्बन्धित प्रकरणों में कार्यवाही करना पड़ती है।

सर्वसामान्य रूप से यह अनुभव रहा है कि अभिवचन ढीले ढाले, पकड़ रहित शब्दों में, लापरवाही से किए जाते हैं। इसी कारण अभिवचनों में बार-बार संशोधन प्रस्तावित करना पड़ता है। यह भी ज्ञात नहीं होता है कि प्रकरण की विषय वस्तु क्या है व दावे अथवा उत्तरवाद में क्या कथन किया जाना है। केवल अंदाज से मनमाने रूप से कथन कथित किए जाते हैं। अभिवचनों के सम्बन्ध में भारत में यह सुस्थापित सिद्धांत हो गया है कि उच्च न्यायालयों में जैसे अभिकथन संक्षिप्त एवं यथार्थ होते हैं (ऐसा माना जाता है) वैसे अभिकथन अधीनस्थ न्यायालयों में अपेक्षित नहीं होते है यथा ***बादत ॲण्ड कम्पनी वि. ईस्ट इंडिया ट्रेडिंग कंपनी ए. आय. आर. 1964 सु. को. 538 (545) चरण 11.*** इस प्रकार अभिवचन कलात्मक, संक्षिप्त, यथार्थ, असंदिग्ध, नियमनिष्ठ, सुनिश्चित रूप से कथित किए जाने चाहिए जिससे वास्तविक विवादात्मक प्रश्न अभिनिश्चित हो सके। एक बार यह अभिनिश्चित हो जाता है कि वास्तविक विवादात्मक प्रश्न क्या है तो पक्षकारगणों को यह सुविधा होती है कि किस प्रकार साक्ष्य प्रस्तुत करता है।

यह भ्रम भी टूट जाना चाहिए कि अभिवचनों के सम्बन्ध में दायित्व केवल अधिवक्ताओं का मात्र है। यदि अभिवचन अस्पष्ट, असंगत, अकलात्मक है व न्यायालय ने उस विषय पर विचार एवं चिंतन नहीं किया व प्रकरण के निर्णय हेतु तिथि निर्धारित कर दी तो निश्चित ही निर्णय लिखने में कठिनाई होगी एवं संभवतः यह स्थिति भी आ सकेगी कि प्रकरण में निर्णय नहीं दिया जा सकेगा व प्रकरण में पुनः कार्यवाही प्रारम्भ करना पड़े। अतः न्यायालयों ने भी इस संबंध में जागृत रहना है।

अभिवचनों में क्या क्या बातें अभिकथित की जाना है इस विषय पर आदेश 6 नि. 2 एवं 4 व्य.प्र.स. के कुछ अंश महत्वपूर्ण हैं जो नीचे अनुसार दर्शाए जा रहे हैं।

आदेश 6 वि. 2 व्य.प्र.स. :-

2. अभिवचन में तात्विक तथ्यों का, न कि साक्ष्य का, कथन होगा :-

(1) हर अभिवचन में उन तात्विक तथ्यों का, जिन पर अभिवचन करने वाला पक्षकार यथास्थिति, अपने दावे या अपनी प्रतिरक्षा के लिए निर्भर करता है और केवल उन तथ्यों का, न कि उस साक्ष्य का जिसके द्वारा वे सिद्ध किए जाने हैं, संक्षिप्त कथन अन्तर्विष्ट होगा।

(2) हर अभिवचन आवश्यकतानुसार विभिन्न चरणों में विभक्त किया जावेगा, जो यथाक्रम संख्यांकित किए जाएंगे। हर अभिकथन सुविधानुसार पृथक चरणों में किया जाएगा।

(3) अभिवचन में तारीखें, राशियाँ और संख्याएं, अंकों और शब्दों में भी अभिव्यक्त की जाएंगी।

आदेश 6 नि 4 व्य.प्र.स. -

4. जहां आवश्यक हों वहाँ विशिष्टियों का दिया जाना :-

उन सभी मामलों में जिनमें अभिवचन करने वाला पक्षकार किसी दुर्व्यपदेशन, कपट, न्यास भंग, जानबूझकर किए गए व्यतिक्रम या असम्यक् असर के अभिवाक् पर निर्भर करता है, और अन्य सभी मामलों में, जिनमें उन विशिष्टियों के अलावा विशिष्टियाँ जो पूर्वोक्त प्रारूपों में उदाहरण स्वरूप दर्शित की गई हैं आवश्यक हो अभिवचन में वे विशिष्टियाँ (यदि आवश्यक हो तो तारीखों व मदों के सहित) कथित की जाएंगी।

इस प्रकार अभिवचनों के सम्बन्ध में मूलभूत नियम इस प्रकार बताए जा सकते हैं।

(1) अभिवचन तात्विक तथ्य अथवा घटनाओं के विषय में होंगे।

(2) उस साक्ष्य का उल्लेख नहीं किया जाना है जिसके माध्यम से अभिकथित तात्विक तथ्य अथवा घटना सिद्ध की जाएगी।

(3) तथ्यों का यथार्थ, सुनिश्चित, संक्षिप्त रूप से उल्लेख किया जाना होता है।

(4) सारवान् विधि या प्रक्रिया सम्बन्धी विधि की विषय सामग्री का अभिवचन नहीं होता है।

इन चार मुद्दों को संक्षिप्त रूप से सूत्रबद्ध रूप में यह कहा जा सकता है कि आदेश 6 नि 2 व्य.प्र.स. के अंतर्गत अभिवचनों में केवल सारवान तथ्य न कि विधि अथवा साक्ष्य अभिकथित करना है।

आदेश 6 नि. 4 व्य.प्र.स. को देखने से ज्ञात होगा कि जहां आवश्यक हो वहां विशिष्टियाँ भी देना अनिवार्य है। अर्थात् जो पक्षकार किसी विशिष्ट तथ्य को अभिकथित करना चाहता है व न्यायालय से यह अपेक्षा करता है कि वह उन बातों

पर विश्वास करे वहां विशिष्टियाँ अथवा विवरणी अवश्य प्रदान करें। जैसे समय की निश्चितता, तारीखों की निश्चितता, स्थान, हिसाब, छल कपट, कदाचार, दुर्व्यवहार, दुराचार, असम्यक असर, परंपरा, परिपाटी रूढ़ी, क्रूरता, सुखाधिकार, अनिश्चितता, औचित्य प्रतिपादन, विधिक आवश्यकता, प्रतिनिधित्व, विशेष क्षति, संपत्ति संबंधी सत्त्व का अधिकार, विशिष्ट भूल आदि आदि।

यहाँ एक बात और ध्यान रखने योग्य है कि तात्विक तथ्य (मटेरियल फॅक्ट) एवं तात्विक तथ्य के सम्बन्ध में विशिष्टियाँ अथवा विवरणिका (पर्टिक्यूलर्स ऑफ मटेरियल फैक्ट्स) में सूक्ष्म लेकिन महत्वपूर्ण अंतर है। यदि जिस तात्विक तथ्य का उल्लेख अभिवचनों में होना है व नहीं किया जाता है तब यदि उक्त तात्विक तथ्य के उल्लेख के अभाव में "वाद कारण" (कॉज़ ऑफ एक्शन) दर्शित नहीं होता है तो दावा आदेश 7 नि 11(ए) के अंतर्गत निरस्त भी हो सकता है लेकिन विशिष्टियाँ तात्विक तथ्य के सम्बन्ध में वे विवरणात्मक बातें हैं जिस आधार से दोनों पक्षकार प्रकरण में विषय वस्तु को ठीक से समझ सके एवं यह निर्धारित कर सके कि प्रकरण से विवाद क्या है। जैसे छल, कपट, मिथ्या, व्यवपदेशन सम्बन्धी अभिवचन करना मात्र पर्याप्त नहीं है अपितु उन आधारों को भी बताना पड़ेगा जिस कारण से पक्षकार यह कथन करना चाहता है कि क्यों कर किस कारण से उसके साथ छल कपट आदि हुआ है। यथा प्रतिवादी को यह अभिवचन करना मात्र पर्याप्त नहीं है कि वादी ने प्रोनोट छल कपट कर लिखवा लिया है अपितु यह दर्शित करना होगा व विवरण देना होगा कि किस प्रकार का कृत्य वादी ने उसके साथ किया है जिस कारण वह यह मानता है कि उसके साथ छल कपट हुआ है। इस सम्बन्ध में **घासीराम वि. ऊँकार ए. आय. आर. 1968 उड़ीसा 99 नोट (जी) (106) का एवं खवास वि. पशुपतिनाथ** 1986 सिक्किम 6(9) का अवलोकन अपेक्षित है। **उदयसिंह वि. माधवराव सिंधिया** ए. आय. आर. 1976 सु. को. 744 (752) में कहा है कि 'All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence are MATERIAL FACTS. PARTICULARS on the other hand are details of the case set up by the party.

अभिवचन किस प्रकार से दावे में अथवा उत्तरवाद में किए जाना है इस विषय पर विस्तार से आ. 6, 7 एवं 8 व्य.प्र.स. में बताया गया है। जहां अभिवचन सुस्पष्ट, असंदिग्ध, यथार्थ सुनिश्चित नहीं है वहां एक पक्षकार को यह अधिकार है कि दूसरे पक्ष से, उसके द्वारा दिए गए अभिवचनों के विषय में स्पष्टीकरण ले अर्थात् अतिरिक्त एवं समुचित विशिष्टयां (फरदर ॲण्ड बेटर पर्टिक्यूलर्स) प्राप्त करें। ऐसा करने हेतु आदेश 6 नि. 5 व्य.प्र.स. के अंतर्गत न्यायालय को एक आवेदन पत्र प्रस्तुत किया जाना चाहिए तथा उस पर व्यर्थ समय न दौड़ाते न्यायालय ने सुनवाई करना चाहिए। ऐसे आवेदन पत्र के निराकरण में अधिक से अधिक 1–2 दिन का समय लग सकता है।

आवेदन पत्र की सुनवाई करके आदेश पारित करने की भी एक पद्धति है। यद्यपि हम आक्षेप के रूप में न भी कहें लेकिन प्रकरण में विलंब करने के आशय से भी ऐसे आवेदन पत्र प्रस्तुत हो सकते हैं तो सद्भावना पूर्वक वास्तविक रूप से भी ऐसे आवेदन पत्र प्रस्तुत हो सकते हैं न्यायालय को यह देखना होता है कि क्या आवेदन पत्र में उल्लिखित आधारों के परिणामस्वरूप ऐसा आवेदन पत्र स्वीकार किया जा सकता है या नहीं। ऐसे कौन से आधार हैं जिस कारण आवेदन स्वीकार हो सकता है अथवा नहीं। यह बात ऊपर उल्लेखित अभिवचनों सम्बन्धी सिद्धांतों के आधार से निर्धारित की जाना होती है। अर्थात् यदि तात्विक तथ्य एवं विशिष्टियाँ आधी–अधूरी हैं, अस्पष्ट हैं या संदिग्ध हैं व प्रकरण के निराकरण के लिए उनका खुलासा किया जाना आवश्यक है तो ऐसे तथ्यों के संबंध में आवेदन पत्र स्वीकार किया जा सकता है। कुछ मुद्दों पर अधिक बेहतर जानकारी या समुचित माहिति की आवश्यकता हो भी सकती है तो कुछ के सम्बन्ध में आवश्यकता न भी हो। यह बात न्यायालय प्रकरण के अभिकथन एवं आवेदन पत्र में दिये तथ्यों के आधार से निर्धारित कर सकता है।

एक बात ध्यान देने योग्य और भी है। वो यह कि न्यायालय ने ऐसा कभी नहीं मान लेना चाहिये कि किसी एक बात की जानकारी दूसरे पक्ष को तो होना ही चाहिए, इसलिए उस विषय पर अतिरिक्त विशिष्टियाँ देने की आवश्यकता नहीं है। किसी बात की कोई अवधारणा किए बिना ही गुण दोष पर आवेदन पत्र का निराकरण किया जाना चाहिए। न्यायालय ने यह भी देखना चाहिए कि यदि ऐसी समुचित जानकारी प्रदान करने हेतु आदेश नहीं दिया जाएगा तो परिणाम क्या होगा? क्या प्रकरण में प्रभावशाली आदेश/निर्णय पारित करने में कोई कठिनाई आ सकेगी? क्या कोई संदिग्धता, अस्पष्टता शेष रहेगी? ये सब सोचने विचारने हेतु न्यायिक अधिकारियों का कर्त्तव्य है कि वे अभिकथनों के सम्बन्ध में सिद्धांतों को विस्तार से समझ लें। टिप्पणियां सहित पुस्तकों को देखें व आदेश लिखने के पूर्व पूर्वानुमान लगावें कि इन विशिष्टियों के सम्बन्ध में पक्ष–विपक्ष में आदेश देने की स्थिति में क्या परिणाम होगा? ऐसा कभी नहीं हो सकता कि पीठासीन अधिकारी आवेदन पत्र में दिए गए तथ्यों को न पढ़े दावे एवं उत्तरवाद को न पढ़े एवं उभय पक्षों के तर्कों पर कथित रूप से विचार करके आदेश पारित कर दे। ऐसा करने से दो बातें सामने आएंगी। एक बात तो यह कि पीठासीन अधिकारी अपने कर्तव्यों के प्रति उपेक्षा कर रहा है व दूसरी बात यह कि ऐसे आदेश के विरूद्ध वरिष्ठ न्यायालय में कोई कार्यवाही कर दी जाती है तो प्रकरण में अनावश्यक रूप से देरी हो जावे। यदि कोई पक्षकार इसी आशय से आवेदन पत्र प्रस्तुत कर रहा हो तो उसकी तो इच्छा ही पूर्ण हो जाएगी। उसका जो आशय था उसमें वह सफल हो जाएगा एवं यह इसलिए कि पीठासीन अधिकारी अपने कर्तव्यों के प्रति विमुख रहा है।

यदि न्यायालय समुचित विशिष्टियाँ प्रदान करने हेतु आवेदन पत्र पूर्णतः अथवा आंशिक रूप से स्वीकार करती है तो न्यायालय ने आदेशिका किस प्रकार लिखना है यह भी एक उदाहरण देकर बताया जा रहा है यदि न्यायालय ने विशिष्ट विशिष्टियाँ प्रदान करने हेतु आदेश दिया है एवं पक्षकार उसका पालन नहीं करता है तो तीन प्रकार से न्यायालय कार्यवाही कर सकती है। यदि आदेश का पालन वादी को करना है व वादी आदेश का पालन नहीं करता है तो वादी का वाद खारिज किया जा सकता है अथवा वादी के वाद की कार्यवाही को तब तक के लिए स्थगित रखा जा सकता है जब तक कि वादी आदेशों का पालन करें। यदि आदेश का पालन प्रतिवादी को करना है तो उसकी प्रतिरक्षा समाप्त की जा सकती है। यथा ***डैवी विरूद्ध बेनी नॅक (1893) 1 क्यू. बी. 185 सी. ए.; नेडूनगडी बॅंक विरूद्ध ऑफिशियल असायनी ए आय. आर 1930 मद्रास 473; वासुदेवन विरुद्ध नेडूगथीपांड ए.आय. आर. 1932 मद्रास 316; बक्षीराम वि. गोकुलदास ए.आय.आर. 1940 नागपुर 261; ए.आय.आर. 1941 नागपुर, 223, ए.आय. आर. 1980 म.प्र. 204*** लेकिन कुछ अपवाद भी हैं, जैसे जिन मुद्दों पर विशिष्टियाँ चाही गई हैं एवं प्रदान नहीं की हैं उस विषय वस्तु की सीमा तक दावे को निरस्त किया जा सकता है, पूर्ण दावे को नहीं। यही बात प्रतिवादी के प्रतिरक्षा के सम्बन्ध में भी कही जा सकती है। जैसा कि ***म.प्र. स्टेट को-ऑपरेटिव ॲण्ड डेव्हलपमेंट बैंक विरुद्ध जे. एल. चौकसे*** में कही गई है। एक और दृष्टांत किसनलाल मुलतामल ***ए.आय.आर.1964 कलकत्ता पृष्ठ 328*** की ओर आकृष्ट किया जाता है।

इस प्रकार न्यायालय ने ऐसे आवेदन पत्रों को तुच्छ कोटि का मानते हुए टालमटोल वाला या अव्यवस्थित (स्लिपशॉड) आदेश कभी भी पारित नहीं करना चाहिए अन्यथा न्यायालयों की उपेक्षा के कारण प्रकरण में देरी हो सकती है।

नीचे एक उदाहरण दिया जा रहा है जिस आधार से यह दर्शित करने का प्रयास है कि आवेदन पत्र पर विचार करके आदेश किस प्रकार से देना है। यह ध्यान रहे कि आदेश देते समय आदेशिका में, अथवा यदि पृथक से आदेश लिखा जा रहा है तो उस आदेश में संक्षिप्त रूप से दावे की प्रकृति, प्रतिरक्षा हेतु उत्तरवाद प्रस्तुत कर दिया है तो उसकी प्रकृति, आवेदन पत्र द्वारा अपेक्षित विशिष्टियाँ एवं दूसरे पक्षकार द्वारा जिन आधारों पर विवाद किया है उसका स्पष्ट किन्तु संक्षिप्त व सारगर्भित खुलासा होना चाहिए। ऐसा होने से वरिष्ठ न्यायालय में यदि न्यायिक अधिकारी के आदेश को चुनौती दी गई है तो वरिष्ठ न्यायालय द्वारा आदेश को पढ़ने से सारासार रूप्र विचार कर निष्कर्ष निकालने में सुविधा होगी एवं वरिष्ठ न्यायालय में भी प्रकरण के निराकरण में देरी नहीं होगी।

ध्यान रहे कि जिस प्रकार वाद प्रश्न की निर्मिति के समय हमें उन अधिनियमों

के प्रावधानों के विषय में भी जानकारी होना चाहिये जिसके आधार से सही रूप से वाद प्रश्न निर्मित होता है जैसे साक्ष्य भार किस प्रकार से होगा, उपधारणा क्या है, न्यूनतम अभिकथन क्या क्या होंगे। यथा विनिर्दिष्ट सहायता की मांग दावे में है, तो यह अभिकथन आवश्यक है कि वादी सतत रूप से अपनी ओर से उन शर्तों का पालन किया है व करेगा जिसका निर्वाह उसे करना है। वचन पत्र के आधार से यदि दावा है व प्रतिवादी ने वचन पत्र पर हस्ताक्षर किए है ऐसा स्वीकार किया है तो उपधारणा क्या होगी। इसी प्रकार विशिष्टियाँ प्रदान करने हेतु आदेश देते समय भी न्यायालय से यह अपेक्षा होती है कि विधिक प्रावधान क्या है इस बात का ज्ञान पीठासीन अधिकारी को हो। यदि ऐसी बात है तो आदेश उचित रूप से पारित किया जा सकता है।

प्रारूप उदाहरण इस प्रकार है :-

म. प्र. स्थान नियंत्रण अधिनियम के अंतर्गत वादी ने एक प्रतिवादी के विरूद्ध विवादित मकान से निष्कासन हेतु प्रस्तुत किया। वादी ने दावा चरण–1 में कहा कि प्रतिवादी, वादी का विवादित मकान जो इन्दौर में स्थित है, में रूपये 15 मासिक दर से किराएदार है तथा किराया मासिक रूप से देय होता है।

चरण –2 में वादी ने यह भी कहा कि विवादित मकान उसे अपने परिवार के निवास स्थान हेतु आवश्यक है तथा वर्तमान स्थान जहाँ वादी रहता है केवल तीन कक्ष होकर वादी का परिवार 6 जनों का है। उसके पास अन्य कोई स्थान रिक्त रूप से उपलब्ध नहीं है।

प्रतिवादी ने वादी के दावे का उत्तर प्रस्तुत नहीं किया एवं आदेश 6 नियम 5 व्यवहार प्रक्रिया संहिता का आवेदन पत्र प्रस्तुत कर निवेदन किया कि वादी से समुचित विशिष्टियाँ (फरदर एवं बेटर पर्टिक्यूलर्स) देने हेतु कहा जावे। प्रतिवादी ने अपने आवेदन पत्र में कहा है कि :–

(ए) वादी ने मकान के उस भाग का वर्णन नहीं किया है न विवरण दिया है जिसमें वह किराए से रहना कहा जाता है।

(बी) किराएदारी किस दिन से प्रारम्भ होती है यह भी नहीं बताया है।

(सी) यह भी नहीं बताया है कि किराएदारी लिखित है या मौखिक।

(डी) यदि किराएदारी लिखित है तो विलेख प्रस्तुत करने हेतु निर्देशित किया जावे।

(ई) वादी ने यह भी नहीं बताया कि परिवार में कौन कौन सदस्य हैं व उनके नाम, नातेदारी एवं आयु तथा व्यवसाय नहीं बताया है।

(एफ) वादी ने यह भी नहीं बताया है कि इन 6 सदस्यों की आपसी रिश्तेदारी क्या है।

(जी) वादी ने यह भी नहीं बताया है कि वादी को विवादित स्थान की किस प्रकार आवश्यकता है।

प्रतिवादी के आवेदन पत्र का वादी ने घोर विरोध किया है व कहा है कि प्रकरण में उत्तर वाद प्रस्तुत न करके निराकरण में विलंब करना चाहता है। यह भी कहा कि समस्त विवरण प्रतिवादी के माहिति में है अतः इस संबंध में किसी भी प्रकार की कोई जानकारी नहीं दी जाना है। वादी ने कहा है कि वादी का आवेदन पत्र खर्चे हर्जे सहित निरस्त किया जावे। वादी को रुपये 100/– क्षतिपूर्ति के दिये जावें व प्रतिवादी को उत्तरवाद प्रस्तुत करने से वंचित किया जावे।

उपरोक्त उदाहरण निष्कासनवाद के संबंध में है। पीठासीन अधिकारियों को अब अभिवचनों के सम्बन्ध में विचार करना है। अतः आदेश 6 से 9 व्य.प्र.स. के समस्त प्रावधान ध्यान में रखना होंगे। आ. 7 नि. 3 व्य.प्र.स. कहता है कि जहां दावे की विषय वस्तु अचल संपत्ति है वहां यथा संभव उसकी चतुःसीमा देना होगी, कृषि भूमि हो तो सर्वे नंबर, क्षेत्रफल, स्थान आदि का वर्णन भी होगा। यह भी विचार के लेना होगा कि इस संबंध में नक्शे भी प्रस्तुत करने होंगे। यह इसलिए भी आवश्यक होगा कि न्यायालय यदि दावा खारिज करता है या पारित करता है तब भी स्थान का वर्णन होगा, डिक्री के साथ नक्शा होगा जैसा कि नियम एवं आदेश सिविल के नियम 168 एवं आ. 20 नि. 9 व्य.प्र.स. में अपेक्षा की है। यह इसलिए कि किस विषय वस्तु से सम्बन्धित निर्णय है यह ज्ञात हो सके। यह भी ध्यान रखना होगा कि म. प्र. स्थान नियंत्रण अधिनियम धाराओं में से धारा 12(1) ई में क्या लिखा है व उस अनुरूप क्या अभिवचन दावे में होना है। यह भी देखना होगा कि ऐसे दावे में साक्ष्य भार किस पर है। इस पृष्ठभूमि को ध्यान रखते हुए यदि हमें आदेश पारित करना हो तो किस प्रकार आदेशिका लिखेगें यह भी बनाया जा रहा है।

आदेशिका

01.01.96

1 वादी द्वारा श्री शर्मा अधिवक्ता उपस्थित प्रतिवादी द्वारा श्री वर्मा अधिवक्ता उपस्थित

2 प्रतिवादी ने दि. 31–12–95 को एक आवेदन पत्र आ. 6 नि. 5 व्य.प्र.स. का आय. ए. 1 प्रस्तुत किया था जिसका उत्तर आज वादी की ओर से प्रस्तुत किया गया।

3 उभय पक्षों को आवेदन पत्र आय. ए. 1 पर सुना गया। नीचे अनुसार आदेश पारित किया जाता है।

4 वादी का वाद प्रतिवादी के विरुद्ध म. प्र. स्था. नि. अधि. के अंतर्गत निष्कासन व अवशेष किराया वसूली हेतु है।

5 प्रतिवादी नें उत्तर वाद प्रस्तुत नहीं किया है।

6 प्रतिवादी ने आ. 6 नि. 5 व्य.प्र.स. का आवेदन पत्र प्रस्तुत कर निवेदन किया है कि दावे में जो अभिवचन वादी ने किए है वे अस्पष्ट हैं व उस कारण प्रतिवादी उत्तर वाद प्रस्तुत करने में असमर्थ है।

7 वादी की ओर से आवेदन पत्र का उत्तर प्रस्तुत कर निवेदन किया है कि अतिरिक्त विशिष्टियाँ प्रदान करने की आवश्यकता नहीं है क्योंकि प्रतिवादी के ज्ञान में सभी तथ्य है व प्रतिवादी देरी करना चाहता है।

8 प्रतिवादी द्वारा प्रस्तुत आवेदन पत्र के आधार से पृथक--पृथक मुद्दे ज्ञात होते हैं उन पर विचार किया जा रहा है।

(ए) इन्दौर शहर में भवन किस मोहल्ले में है, भवन का नंबर क्या है, सम्पूर्ण भवन किराए से दिया है या आंशिक भाग किराए से दिया है, इसका कथन वादी ने नहीं किया है। आ. 7 नि. 3 व्य.प्र.स. के अनुरूप विवादित स्थान के सम्बन्ध में मानचित्र भी प्रस्तुत नहीं किया है। यद्यपि यह तथ्य प्रतिवादी के ज्ञान में हो भी फिर भी वह तथ्य तात्विक तथ्य है व अभिवचन के रूप में दावे में सम्मिलित होना आवश्यक था। उसके अभाव में यह न्यायालय प्रभावशाली डिक्री भी पारित नहीं कर सकेगा। अतः उक्त मुद्दे के संबंध में वादी ने विवरण प्रदान करना चाहिए।

(बी), (सी) एवं (डी) किराएदारी मौखिक है या लिखित, किराएदारी माह के किस तारीख से प्रारम्भ होती है किस अंग्रेजी माह अथवा हिन्दी मिति से प्रारम्भ होती है इस तथ्य को भी प्रकट नहीं किया है। वादी को चाहिए था कि यदि किराएदारी लिखित है तो उक्त विलेख को आ. 7 नि. 14 व्य.प्र.स. के प्रावधानों के अंतर्गत प्रस्तुत करता क्योंकि वह प्रावधान भी अभिवचनों का अंग है। कोई बात प्रतिवादी के ज्ञान में होना एक बात है व दावे के अभिवचनों का एक भाग होना दूसरी बात है। प्रकरण में निर्णय न्यायालय को देना होता है व जब तक तथ्य अभिलेख में नहीं होंगे न्यायालय कारगर या सार्थक आदेश नहीं दे सकेगी अतः इस संबंध में भी वादी को विवरण देना होगा। यदि विलेख है तो वह भी प्रस्तुत करना होगा।

(ई) एवं (एफ) प्रतिवादी की यह अपेक्षा है कि वादी दावे में परिवार के सदस्यों का सम्पूर्ण वर्णन, नाम, आयु एवं आपसी संबंधों के आधार से करे। लेकिन ऐसा करने की आवश्यकता नहीं है। क्योंकि यह न तो तात्विक तथ्य है न ही तात्विक तथ्य से संबंधित विवरण का अंग है। यह तथ्य साक्ष्य से संबन्धित है अतः आदेश 6 नि. 2 व्य.प्र.स. के प्रावधानों के अनुरूप साक्ष्य का विषय अभिकथन का विषय नहीं हो सकता है। म.प्र. स्थान नियंत्रण अधिनियम (म.प्र.स्था.नि.अ.) की धारा 12(1) ई के अनुसार भी वादी को

केवल यह सिद्ध करना है कि विवादित स्थान का वह स्वामी है तथा उक्त स्थान की उसे या उसके परिवारजनों को सद्भावनापूर्वक आवश्यकता होकर अन्य कोई स्थान नगर इन्दौर में स्वयं का उपलब्ध नहीं है। परिवार क्या है, सदस्यों का विवरण आदि सब साक्ष्य का विषय है व न्यायालय को विधि प्रावधानों के आधार से यह निर्धारित करना है अतः इस विषय पर वादी को विशिष्ट विवरण देने की आवश्यकता नहीं है।

(जी) प्रतिवादी का कहना है कि वादी को विवादित स्थान की किस प्रकार आवश्यकता है, नहीं बताया है। वास्तव में इस सम्बन्ध में वादी द्वारा किए गए अभिवचन पर्याप्त हैं कि वादी का परिवार 6 जनों का होकर उसके पास केवल तीन कक्ष मात्र हैं। वादी को साक्ष्य के माध्यम से बताने का आधार होगा कि किस प्रकार व क्यों आवश्यकता है। यह विषय भी साक्ष्य से सम्बन्धित है अतः आ. 6 नि. 2 व्य.प्र.स. के अंतर्गत दावे में अभिवचनीत करने की आवश्यकता नहीं है।

परिणामतः प्रतिवादी का आय.ए. 1 का आवेदन पत्र आंशिक रूप से स्वीकार होता है। बिन्दु क्र. (ए) से (डी) के सम्बन्ध में समुचित विशिष्टियाँ प्रदान करें एवं बिंदु क्र. (ई) (एफ) (जी) पर विवरण प्रस्तुत करने की आवश्यकता नहीं है।

वादी उक्त विशिष्टियाँ प्रदान करने हेतु समुचित रूप से एक आवेदन पत्र आ. 6 नि. 17 व्य.प्र.स. प्रस्तुत करें। प्रकरण संशोधन आवेदन पत्र प्रस्तुत करने हेतु 05-01-1996

हस्ताक्षर

(नाम सहित न्यायालयीन मुद्रा)

उपरोक्त प्रारूप अनुसार ऐसे आवेदन पत्रों का निराकरण किया जा सकता है। प्रत्येक पीठासीन अधिकारी की आदेश लिखने की अपनी-अपनी शैली होती है, पद्धति होती है, उस अनुरूप आदेशिका लिखी जा सकती है। लेकिन महत्वपूर्ण बात जो ध्यान रखना है वह है परिष्कृत भाषा, आवेदन पत्र से संबंधित विषयों की जानकारी एवं इस पूर्वाग्रह से मुक्ति की कोई आवेदन पत्र मात्र विलंब से प्रस्तुत हुआ है या दुर्भावना से प्रस्तुत हुआ है।

विषय से संबंधित प्रावधानों को संक्षिप्त विवरण प्रस्तुत करने का अल्प प्रयत्न है। यदि विस्तारपूर्वक इस विषय पर अध्ययन की रुचि हो तो अभिवचनों के संबंधित मानक पुस्तकें तथा व्य.प्र.स. से सम्बन्धित मानक पुस्तकों का अवलोकन किया जा सकेगा।

Director
Judicial Officers Training Institute
High Court of M. P.
JABALPUR

निर्णय का क्रियात्मक भाग : पूर्ण एवं सारगर्भित कैसा हो

पुरुषोत्तम विष्णु नामजोशी

किसी प्रकरण में जब हम निर्णय देते हैं तो उसके पश्चात् डिक्री या जयपत्र तैयार करते हैं।

डिक्री शब्द की परिभाषा व्य.प्र.स. की धारा 2(2) में दी है तथा कहा है कि न्यायालय की डिक्री यथा स्थिति पक्षकारों के अधिकारों का निश्चयात्मक रूप से अवधारणा करती है। ऐसी डिक्री प्रारम्भिक व अंतिम भी हो सकती है। सामान्य रूप से डिक्री अंतिम डिक्री के रूप में ही तैयार होती है लेकिन कभी कभार वह प्रारंभिक भी होती है इस सम्बन्ध में डिक्री की परिभाषा में स्पष्टीकरण भी दिया है तथा बताया है कि डिक्री तब प्रारम्भिक होती है जब वाद के पूर्ण रूप से निराकृत कर दिए जा सकने से पहले आगे और कार्यवाही की जाना है। वह अंतिम तब होती है जबकि ऐसा न्याय निर्णयवाद को पूर्ण रूप से निपटा देता है।

धारा 33 व्य.प्र.स. में बताया है कि न्यायालय प्रकरण की सुनवाई पूर्ण हो चुकने के पश्चात् निर्णय सुनाएगा और ऐसे निर्णय के अनुसरण में डिक्री होगी। आदेश 20 एवं आदेश 34 व्य.प्र.स. प्रारम्भिक न्यायालयों द्वारा तैयार की जाने वाली डिक्री के सम्बन्ध में प्रक्रिया बताता है तो आदेश 41 नियम 30 से 37 अपील के निर्णय व डिक्री के विषय में बताता है। यह प्रथम अपील के सम्बन्ध में है तो आदेश 42 अपीलीय डिक्री से सम्बन्धित अपील के सम्बन्ध में विवरण देता, है। आदेश 45 के अनुसार उच्चतम न्यायालय द्वारा निर्णित अपील में डिक्री के विषय में बताया है तथा आदेश 45 नियम 1 में डिक्री की पृथक परिभाषा दी है।

प्रथमतः नियम एवं आदेश सांपत्तिक भाग 1 पाठ 9 के नियम 156 व 157 की ओर ध्यान आकृष्ट किया जा रहा है वे इस प्रकार है :—

156 मूल दावे में, चाहे वह परीक्षण के पश्चात् या अन्यथा निर्णीत किया गया हो, निर्णय के आदेशात्मक भाग (Ordering Portion) में स्वीकृत सहायताओं का उल्लेख किया जाना चाहिए तथा अपील में मूल आज्ञप्ति में किये गये परिवर्तनों (Modification) यदि कोई हो, का उल्लेख स्पष्ट रूप से विशिष्टताओं सहित एवं यथार्थ रूप से करना चाहिए।

157 निर्णय में यह बात विशेष रूप से व्यक्त की जाना चाहिए कि क्या कोई, या कितना ब्याज (दावे के कालावधि के ब्याज सहित) स्वीकृत किया गया है, तथा क्या ब्याज केवल आज्ञप्ति (डिक्री) के अंतर्गत वसूल किया जाने वाले

धन पर लगाया जाना है या उस धन एवं वाद व्यय दोनों पर लगाया जाना है तथा किस दर से लगाया जाना है।

आदेश 20 व्य.प्र.स. के अंतर्गत विभिन्न प्रसंग आते हैं। उसमें पक्षकारों को क्या क्या सहायता दी जाना है किस प्रकार से उल्लेख होना है इसका भी वर्णन किया गया है। आदेश 20 नि. 10 चल संपत्ति परिदान के संबंध में डिक्री विषयक, नि 11 किश्तों से रकम संदाय विषयक, नियम 12 अधिपत्य एवं अन्तकालीन लाभों के लिए डिक्री, नियम 12 ए स्थावर संपत्ति के विक्रय या पट्टे की संविदा के विनिर्दिष्ट पालन के विषयक एवं अन्य प्रावधान अंन्य प्रकार की डिक्रियों के विषय में उल्लेखित है। उपर उल्लेखित प्रावधानों के अतिरिक्त आदेश 34 में स्थावन सम्पत्ति के संबंध में डिक्रियों के बनाने की प्रक्रिया दी है।

यह सर्वविदित है कि जो भी डिक्री बनती है वह निर्णय के आधार से बनती है। अर्थात वादी एवं प्रतिवादी के अधिकारों का एवं दायित्वों का विनिश्चय करने के लिए न्यायालय ने जो कारण लिखे एवं अपना निर्णय दिया उस पर न्यायालय निर्णय के अंतिम भाग में क्रियाशील आदेश लिखता है उसी पर से डिक्री तैयार की जाती है। सामान्य रूप से यह परपंरा रही है कि वाद प्रश्न जो बनते हैं उसमें अंतिम वाद प्रश्न **"सहायता एवं व्यय"** का होता है। उसमें ही न्यायालय क्रियाशील आदेश लिखता है। यह व्यवस्था सर्वोत्तम व उचित भी है। ऐसा करने से सभी संबंधितों को ज्ञात हो जाता है कि न्यायालय का अंतिम क्रियाशील आदेश क्या है। रीडर को भी सुविधा होती है कि जो डिक्री बनाना है वह किस प्रकार की बनाना है। रीडर की समझ, योग्यता, क्षमता एक सीमित क्षमता हो सकती है। अतः प्रथम कर्तव्य तो पीठासीन अधिकारी का है कि वह देखे कि डिक्री निर्णयानुसार बनाई गई है या नहीं एवं रीडर को इस संबंध में उचित मार्गदर्शन भी दे। ऐसा नहीं हो सकता कि रीडर कहेगा उस अनुरूप न्यायाधीश डिक्री पर हस्ताक्षर करेगा। हम अपने ही सोच समझ कर कार्य करना है। अतः क्रियाशील प्रवर्तनशील आदेश को सुस्पष्ट रूप से लिखें। डिक्री अपने आप में पूर्ण होना चाहिए। क्योंकि डिक्री को देखने से ही यह ज्ञात होना चाहिए कि विवादित संपत्ति क्या है, पक्षकार कौन है। निर्णय कब हुआ है, ब्याज या अवशेष रकम या किराए की गणना करना है तो दावे की तिथि, मूलधन, अन्य व्यय आदि क्या स्वीकार किए है अस्वीकार किए हैं इन सब बातों का खुलासा होना चाहिए। डिक्री परिपूर्ण होगी तो इसका अर्थ यह हुआ कि न्यायाधीश ने क्रियाशील आदेश को सुस्पष्ट रूप से लिखा है। दावों की पंजी में भी इस संबंधी प्रविष्टि पूर्ण होगी। प्रवर्तन न्यायालय में भी डिक्री का चेकिंग दावों की पंजी पर से ही हो जाएगा व बार बार मूल रेकार्ड को आहूत करने की आवश्यकता नहीं पड़ेगी।

इस लिए यह महत्वपूर्ण है कि जिस क्रियाशील आदेश के आधार से डिक्री निर्मित की जाती है वह आदेश पूर्णरूप से समग्र रूप से सारासार विचार करके लिखा जावे जिससे कोई भी बात छूटना नहीं चाहिए। प्रत्येक सहायता इस प्रकार से निर्णय में लिखी जाना चाहिए जो सुस्पष्ट हो, उसका अर्थयान्वय करने की आवश्यकता बिलकुल नहीं होना चाहिए तथा जहां निर्देशात्मक सहायता हो वहां स्पष्ट निर्देश दिया जाना चाहिए जहां घोषणात्मक सहायता हो वहां स्पष्ट रूप से घोषणा हो तथा जहां आज्ञापक सहायता हो वहां आज्ञापक शब्द प्रयोग करके सहायता लिखी जाना चाहिए। उदाहरण के लिए यदि वादी रु. 500 प्रतिवादी से प्राप्त करने हेतु सहायता देना चाहता है तो न्यायालय ऐसा नहीं लिखेगा कि प्रतिवादी से वादी रु. 500/– पाने का अधिकारी है। यदि केवल इतना लिखेगें तो ऐसी सहायता घोषणात्मक सहायता होगी। तब या तो यह लिखें कि प्रतिवादी से वादी रु. 500/– प्राप्त करने का अधिकारी है एवं प्रतिवादी वादी को रु. 500/– अमुक अमुक दिन दिनांक को या उसके पूर्व संदाय करे या रु. 500/- प्रतिवादी वादी को अमुक अमुक दिनांक को या उसके पूर्व संदाय करे। किसी निश्चित दिनांक को या उसके पूर्व (ऑन ऑर बिफ़ोर ए पर्टिक्यूलर डेट) शब्द में बहुत पकड़ है। जैसे प्रतिवादी वादी को रु. 500/– दस दिन में दे, अथवा प्रतिवादी वादी को रु. 500/– आज से दस दिन में दे अथवा प्रतिवादी वादी का रु. 500/– दिनांक 01–01–96 को या उसके पूर्व देगा में से प्रथम उदाहरण में लेकिन परंतुक की समस्या आ सकती है। शेष दो उदाहरणों में ऐसी समस्या नहीं रहेगी व आदेश सुस्पष्ट होगा। आदेश 20 एवं आदेश 34 तथा आदेश 41 नियम 30 से 37 को पढ़ने से स्पष्ट हो जावेगा कि किस प्रकार से किसी निर्णय का क्या क्रियाशील भाग हो ताकि डिक्री परिपूर्ण रूप से तैयार की जा सके। इस लेख के माध्यम से यह प्रयत्न रहेगा कि नैमित्यिक रूप से न्यायालयों में जिस प्रकार के वाद श्रवण हेतु आते हैं उनमें निर्णय का क्रियाशील आदेश लिखकर बताया जावे ताकि नया दृष्टिकोण नया विचार प्रसूत हो सके व और अधिक सुधार हो सके। कुछ प्रारूप दिए जा रहे हैं। यह बात पुनः बताने की आवश्यकता नहीं है कि प्रत्येक न्यायाधीश की स्वयं की प्रतिभा होती है, शैली होती है, प्रणाली होती है। उस अनुरूप प्रावधानों को पालन करके क्रियाशील आदेश लिखा जाना चाहिए।

वर्तमान में यह विचार है कि यहां पैसों के लेनदेन के दावे में, मकान निष्कासन के दावे में, आधिपत्य प्राप्त करने घोषणा एवं स्थाई निषेधाज्ञा के दावे में व हिन्दू विवाह अधिनियम के अंतर्गत विवाह विच्छेद के संबंध में पारित किए जाने वाले क्रियाशील आदेश को बताया जावे।

धन सम्बन्धी प्रकरण का क्रियाशील भाग का प्रारूप :

वाद प्रश्न क्र. 5 सहायता एवं व्यय

(चरण) 12 परिणामतः उपरोक्त विवेचन के आलोक में वादी का वाद प्रतिवादी के विरूद्ध नीचे अनुसार पारित होता है।

(अ) प्रतिवादी वादी को दावे के अनुसार मूलधन रु. 3,000 (तीन हजार) एवं ब्याज 1,080 (एक हजार अस्सी) एवं नोटिस व्यय रु. 30 (तीस) इस प्रकार इस प्रकार कुल 4110 (चार हजार एक सौ दस रुपये) संदाय करे।

(ब) प्रतिवादी वादी को मूलधन रु. 3,000 (तीन हजार) पर दावा दिनांक 01–01–96 से रकम संदाय होने तक रुपये 6 (छः) प्रतिवर्ष प्रतिशत की दर से कटमिति से ब्याज भी संदाय करेगा।

(स) प्रतिवादी उक्त रकम मासिक किश्तों में संदाय करेगा। प्रथम क़िश्त दिनांक 01–01–97 को देय होगी जो रु. 100 (एक सौ) की होगी व आने वाले अंग्रेजी माह के प्रत्येक प्रथम दिवस को देय होती रहेगी। कोई भी दो किश्तों का व्यतिक्रम होने पर शेष बची रकम वादी प्रतिवादी से एकमुश्त प्राप्त करने का अधिकारी रहेगा। जो भी रकम संदाय होगी वह प्रथमतः मूलधन पेटे समायोजित होगी।

(द) प्रतिवादी वादी को वाद व्यय दे। अधिवक्ता शुल्क नियमानुसार प्रमाणित होने पर प्रमाण पत्र के अनुसार अथवा परिशिष्टानुसार, जो भी कम हो, देय होगा।

टीप क्र. 1 - उचित यह होता है कि न्यायालय स्वयं निश्चित रकम निर्धारित करे यदि ऐसा संभव है। निर्धारित दर से कम या अधिक वकील फीस देने हेतु आदेशित करना हो तो उसके लिये स्पष्ट कारण होना चाहिए। उभय पक्षों को अपना अपना वाद व्यय वहन करने का आदेश देना है तो उसके कारण भी दर्शाने होंगे। कृपया नियम 179 एवं व्य.प्र.सं. की धारा 35 एवं 35 ए एवं 35 बी का भी अवलोकन करें। वकील फीस विषयक संशोधित नियम एवं आदेश सांपत्तिक भाग छः पाठ 24 नियम 523 से 535 का अवलोकन करें जो "जोति" के भाग दो अंक तीन पृष्ठ 29 पर प्रकाशित हुए हैं।

टीप क्र. 2 - निर्णय के अंत में "तदनुसार डिक्री बनाई जावे एवं निर्णय खुले न्यायालय में घोषित किया गया" ये लिखने की बिल्कुल आवश्यकता नहीं होती है क्योंकि यह तो विधिक अनिवार्यता है। इसे शब्दाधिक्य निरर्थकता की भूल (एरर ऑफ रिडन्डन्स) कहते हैं।

टीप क्र. 3 - ध्यान रहे कि सहायता एवं व्यय वाले चरण में सहायताएँ जो दी जा रही है उन्हें यथा सम्बन्ध पृथक पृथक चरण में लिखे व सामान्य से अधिक मार्जिन छोड़ कर उन्हें लिखे जिससे उक्त भाग एकदम दृष्टि में आ सके। (आ. 20 नि. 6 ए व्य.प्र.स. भी देखें)

टीप क्र. 4 - कट मिति शब्द का अर्थ होता है कि जो रकम समय—समय पर संदाय होती जाएगी उस रकम को समायोजित करने पर शेष बची रकम पर ही ब्याज लगता है। धारा 59, 60 व 61 संविदा अधिनियम के प्रावधान भी देख लेना सुसंगत होगा। जिसका पालन कराए जाने पर निर्णित ऋणि को ब्याज का ज्यादा भार भी नहीं पड़ेगा व रकम चुकती करने पर भी उसे सुविधा होगी व न्याय हो सकेगा।

मकान से निष्कासन सम्बन्धी प्रकरण का क्रियाशील भाग का प्रारूपः

वाद प्रश्न क्र. 5 सहायता एवं व्यय

(चरण) 12 परिणामतः उपरोक्त विवेचन के आधार से वादी का वाद प्रतिवादी के विरूद्ध नीचे अनुसार पारित होता है :—

(अ) प्रतिवादी वादी को विवादित किराएंदारी वाला भाग मकान नं. 2001, महात्मा गांधी मार्ग, इन्दौर, का रिक्त अधिपत्य आज दिनांक 01—01—1998 से दो माह पश्चात् अविलम्ब दें। (टीप—धारा 12(6) (ए) म. प्र. स्था. नि. अ के अनुरूप)। विवादित किराएदारी वाले भाग का मानचित्र निर्णय का अंग रहेगा। जिस पर पीठासीन अधिकारी के द्वारा हस्ताक्षर किए गए हैं।

(ब) प्रतिवादी वादी को दावे अनुसार अवशेष किराया रुपये 360 (तीन सौ साठ) दे तथा वाद दिनांक 01—01—97 से निर्णय दिनांक तक का अवशेष किराया रु. 30 (तीस) प्रति माह प्रमाणे (अनुसार) रु. 360 (तीन सौ साठ) एवं निर्णय दिनांक 01—01—98 से अधिपत्य देने तक विवादित स्थान उपयोग व उपभोग हेतु रु. 30 प्रतिमाह प्रमाणे क्षतिपूर्ति राशि संदाय करे।

(स) यह कि विवादित स्थान व्यवसायिक स्थान के रूप में है तथा दस वर्ष से भी अधिक समय से प्रतिवादी किराएदार रहा है अतः धारा 12 (6) (बी) (एक) (ए) अनुसार किराएदारी की दर रु 30 (तीस) के आधार से दो वर्ष के किराए बराबर की राशि रुपये 720 (सात सौ बीस) वादी प्रतिवादी को संदाय करेगा।

(द) प्रतिवादी वादी को वाद व्यय देगा (जैसा भी निर्धारित करना हो लिखें)

(फ) वादी को यह अधिकार होगा कि निर्णय चरण 12(स) में उल्लेखित राशि

जो वादी द्वारा प्रतिवादी को संदाय की जाना है उसका समायोजन प्रतिवादी से वसूल की जाने वाली रकम में से कर सकेगा।

अधिपत्य, घोषणा एवं स्थायी निषेधाज्ञा के सम्बन्ध क्रियाशील भाग का प्रारूप :

वाद प्रश्न क्र. 5 सहायता एवं व्यय

(चरण) 12 परिणामतः उपरोक्त विवेचन के पश्चात वादी का वाद प्रतिवादी के विरुद्ध नीचे अनुसार पारित किया जाता है :–

(अ) यह घोषित किया जाता है कि निम्न सर्वे नंबर की भूमि का स्वामी वादी है।

सर्वे क्र.	क्षेत्रफल	लगान	ग्राम आदि
01	01.200 हेक्टर	02 रु	ग्राम
02	01.800 हेक्टर	02 रु.	मूसाखेड़ी
			तहसील एवं जिला इन्दौर

(ब) प्रतिवादी वादी को उपरोक्त विवादित भूमि का अधिपत्य अविलंब सौंप दे।

(स) प्रवादी वादी को दावे के अनुसार रु. 2,000 उपयोग उपभोग की क्षतिपूर्ति राशि संदाय करे एवं वाद दिनांक 01-01-97 से निर्णय दिनांक तक रु. 200 (दो सौ) प्रतिवर्ष प्रमाणे एवं निर्णय दिनांक 01–01–98 से अधिपत्य सौंपने तक इसी दर से क्षतिपूर्ति राशि देगा।

(द) प्रतिवादी को इस आदेश द्वारा स्थाई रूप से निषेधित किया जाता है कि प्रतिवादी वादी के उक्त विवादित भू भाग पर किसी भी प्रकार से वादी के हितों के विपरीत कोई भी कृत्य स्वयं या अपने माध्यम से किसी और से नहीं करेगा न ही वादी से भविष्य में जबरदस्ती अधिपत्य प्राप्त करेगा।

(फ) वाद व्यय (यथा औचित्य अनुसार)

हिन्दु विवाह अधिनियम के अंतर्गत विवाह विच्छेद हेतु क्रियाशील भाग का प्रारूप :

(कृपया धारा 23 हिन्दु विवाह अधिनियम के प्रावधानों का अवश्य रूप से अवलोकन हो)

वाद प्रश्न क्र. 5 सहायता एवं व्यय

12 परिणामतः उपरोक्त विवरण के आधार से वादी का वाद प्रतिवादी के विरुद्ध नीचे अनुसार पारित होता है।

(अ) यह कि आज आज दिनांक 01.01.1998 से वादी एवं प्रतिवादी के बीच वैवाहिक सम्बन्ध विच्छेदित होते हैं एवं विवाह विच्छेद की डिक्री हिन्दू विवाह अधिनियम की धारा 13 उपधारा (खुलासा करे) के आधार से पारित

की जाती है। वे आज से पति – पत्नि नहीं रहे।

(ब) यह कि डिक्री की एक एक नकल निःशुल्क रूप से वादी एवं प्रतिवादी को दी जावे।

(स) वाद व्यय (यथा औचित्य अनुसार)

टीप क्र. 1 : डिक्री की निःशुल्क प्रतिलिपि हिन्दु विवाह अधिनियम की धारा 23(4) के अंतर्गत दी जाती है। जब डिक्री एक पक्षीय रूप से पारित होती है तब भी प्रतिवादी को डिक्री की प्रतिलिपि दी जानी चाहिए। दावे के शीर्षक में लिखे पते पर न्यायालय ने न्यायालयीन व्यय से पंजीकृत डाक से भेज देना चाहिए। इसके दो लाभ हैं। प्रथम यह कि धारा 23 (4) का पालन होता है। दूसरी बात यह कि यदि प्रतिवादी के आह्वान पत्र का निर्वाह वादी ने छल कपट से, असत्य रूप से कराया हो अथवा वास्तव में आह्वान पत्र का निर्वाह हुआ ही नहीं है तब प्रतिवादी को डिक्री की नकल मिलते ही वास्तविकता ज्ञात होगी व यदि वस्तुस्थिति ऐसी ही है तो वह द्विपक्षीय कार्यवाही हेतु आवेदन पत्र प्रस्तुत कर सकता है।

टीप क्र. 2 : यदि विवाह विच्छेद आपसी सहमति से है तो वैसा विशेष उल्लेख अवश्य करें।

टीप क्र. 3 : यदि डिक्री वैवाहिक अधिकारों के प्रत्यास्थापना हेतु है तो उसमें इस बात का खुलासा होगा कि प्रतिवादी वादी के घर वापस लौटे यथा नियम एवं आदेश सांपत्तिक नियम क्र. 172.

टीप क्र. 4 : यदि डिक्री विवाह प्रारंभिक रूप से ही शून्य होने विषयक दावा है तो जो डिक्री पारित होगी उसमें निर्णय दिनांक से विवाह शून्य घोषित नहीं होना है अपितु केवल यह लिखना मात्र पर्याप्त होगा कि उक्त कथित विवाह शून्य है।

टीप क्र. 5 : अन्य अनुशांगिक सहायताएँ यथा स्थायी भरण पोषण भत्ता (धारा 25) बालकों का अधिपत्य (धारा 26) संपत्तियों का व्ययन (धारा 27) जैसी मांगी हो उस विषय में भी यथा औचित्य स्पष्ट एवं असंदिग्ध आदेश निर्णय में हो।

टीप क्र. 6 : वैवाहिक संबंधों के विषय में न्यायिक पृथक्करण की डिक्री में न्यायायिक पृथक्करण हेतु आदेश धारा 10 हिन्दु विवाह अधिनियम के अंतर्गत दिया जा सकता है। आधार धारा 13 के ही होंगे। व उसी अनुरूप आदेश पारित होगा।

विभिन्न विषयों के वादों में विभिन्न प्रकार से क्रियाशील आदेश पारित किए जाते हैं। संबंधित विधि के प्रावधान देखकर उस सम्बन्ध में आदेश दिया जाना चाहिए। उदाहरण के रूप में कुछ प्रारूप प्रस्तुत किए हैं। निश्चित ही वे स्वयं मे पूर्ण नहीं हो सकते। प्रकरण के तथ्यों के आधार से ही क्रियाशील आदेश पारित होते हैं। विचारों को जागृत करने के आशय से यह संक्षिप्त लेख मात्र है।

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TIT-BITS

1. O 22 R 12 CPC
(1998) 3 SCC 148
V. UTHIRAPATHI VS. ASHRABALI

Petition for execution of eviction decree filed within time. Death of the decree holder or judgment debtor during the pendency of the execution. During pendency of the execution J.D. died. Held that there is no limitation period for bringing on record legal representatives of the deceased. Fresh execution petition can also be filed by or against the legal representatives.

The expression "as if such order is an order of a civil court" in section 18 of the T. N. Buildings (Lease & Rent Control) Act 1960 read with Rule 25 under that Act used the words "proceedings under the Act". The expression "proceedings under the Act" does not cover execution proceedings hence Rule 25 is not applicable to the execution proceedings. If during the pendency of the execution if the death occurs of the judgment debtor or decree holder execution petition will not abate but will remain pending. No limitation period is prescribed for bringing on record the L.Rs. of the deceased. They can come on record at any time.

Reference of Section 146 of the CPC is invited which refers to proceedings by or against representatives, which runs as under :-

> "sever as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application may by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

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2. CONSUMER PROTECTION ACT
(1998) 3 SCC 247
MARINE CONTAINER SERVICE SOUTH PRIVATE LTD. VS GO GO GARMENTS

Contract Act Applies to the complaints filed under Consumer Protection Act. An agent can invoke Section 230 of the Contract Act whether in proceedings before the commission or otherwise and if facts found support him, his defence cannot be brushed aside.

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3. CONSUMER PROTECTION ACT
(1998) 4 SCC 39
SPRING MEADOWS HOSPITAL VS. HARJOLAHLUWALIA

Being a beneficial legislation the said Act should receive a liberal interpretation (construction) where an young child was taken to a private hospital by parents and treated by the Director held not only the child but his parents were also consumers. If the child suffered damage due to the negligence of the hospital and the life of the child consequently reduced to vegetative state requiring life long care and attention. Compensation of 12.5 lakhs was awarded to the child and Rs. 5 lakhs to the parents of the child.

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4. **NEGOTIABLE INSTRUMENTS ACTS SS. 138 & 139**
(1998) 3 SCC 249
MODI CEMENT VS. KUCHIL KUMAR NANDI

Stop payment instructions cannot obviate the offence under Section 138 if otherwise made out. Insufficientcy of funds at the time of drawing of the cheque will not justify drawing of presumption of dishonesty on the part of the drawer under Section 138. Drawer is entitled to make deposit or make arrangements for sufficiency of funds in his account before presentation of the cheque. Section 138 of attracted only when the cheque is dishonoured.

A ruling to that effect in para 6 of ***Electronics Trade & Technology Development Corporation (1996) 2 SCC 739*** and followed in ***K.K. Siddharthan Case (1996) 6 SCC 369*** being contrary to the object and perhaps of Ss. 138-142 ***OVERRULED.***

Issue of cheque raises a presumption under Section 139 of the Act,

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5. **TORT NEGLIGENCE**
(1998) 3 SCC 67
P.A. NARAYANAN VS. UNION OF INDIA

Res Ipasa Loquitur. Rape, robbery and murder in running train, railways like all carriers owe common law duty to take reasonable care. Standard of care is high and strict, Railways would be liable in case of negligence. A lady was assaulted and robbed of her ornaments during train journey. Evidence of the guard and motorman of the train showing that despite pulling of the alarm chain by the deceased train was not made to stop. Case was disposed off by the Supreme Court itself instead of relegating the appellant to Claims Tribunal or Civil Court after a lapse of 17 years. Loss of life due to direliction of duty by Government Servant. Appellant was entitled to compensation.

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6. **RESERVATION IN SERVICE**
(1998) 4 SCC 1
REVIEW PETITION IN POST GRADUATE INSTITUTE VS.FACULTY ASSOCIATION

Single post cadre reservation cannot be applied through roster or otherwise. This is because 100% reservation is not permissible.

Contrary view taken in some of the earlier cases, ***OVERRULED.*** Those cases are ***(1997) 6 SCC 282 Post Graduate Institute vs. K.N. Narasimham and (1997) 6 SCC 777 State of Punjab Vs. M. L. Shegal.***

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7. **LANDLORD AND TENANT**
(1998) 4 SCC 49
RAHABHAR PRODUCTIONS PVT. LTD. VS. RAJENDRA K. TANDON

"Bonafide need" should be genuine, honest and conceived in good faith.

Landlords desire for possession, however honest it might otherwise be, has inevitably, a subjective element in it. The "desire" to become "requirement" must have the objective element of a "need" which can be decided only by taking all relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down.

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8. SECTION 13, 14 AND 20 CONTRACT ACT
(1998) 3 SCC 471
TARSEM SINGH VS. SUKHMINDER SINGH

Mistake as matter of fact explained was explained by Supreme Court. Mistake as to area of land agreed to be sold. One party considering it in terms of "bigha" and the other in terms of 'kanal'. It was held that it is a mistake as to matter of fact essential to the agreement. In present case while the defendent intended to sale the land in terms of kanal the plaintiff intended ot purchase in terms of bighas. Both terms are different. They define units of measurement. Both convey different impressions regarding area of land. The dispute was not with regard to the unit of measurement only. Since these units relate to the area of the land it was really a dispute with regard to the Area of land which was the subject-matter of agreement for sale or to put differently, how much area of the land was agreed to be sold, was in dispute between the parties and it was with regard to the area of the land that the parties were suffering from a mutual mistake. The area of the land was as much essential to the agreement as the price which, incidentally, was to be calculated on the basis of the area. Thus the mistake with which the parties were suffering related to a matter essential to the agreement.

In consequence; the Supreme Court dealt with Section 65 and 74 of the Contract Act and held that if the parties are under a mistake as to a matter of fact the agreement being void under Section 20 the forefeiture clause is also void and cannot be enforced for recovery of compensation under Section 74 as that section contemplates a valid agreement. Referring to Section 65 it was held that in such an agreement of sale the proposed seller is not entitled to forefeit the earnest money by the forefeiture clause contained in the agreement in case of proposed buyers' failure to perform his part of payment of balance amount of consideration.

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9. CRIMINAL TRIAL
(1998) 3 SCC 455
SHOBIT CHAMAR VS. STATE OF BIHAR

Court has to bear in mind the crime and the criminal while awarding sentence where more than one person involved in the crime, distinction can be drawn between them on the basis of degree of complicity and brutality for the purpose of award of sentence.

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10. SECTION 10, SECTIONS 17 TO 21 AND SECTION 34 EVIDENCE ACT (1998) 3 SCC 410 *C.B.I. VS. V.C. SHUKLA*

Probative value of : Entries in books of account. Such statements shall not alone be sufficient evidence to charge any person with liability. Entries even if relevant are only corroborative evidence. Independent evidence as to trust worthiness of those entries necessary to fasten the liability. It was held on facts that entries made in the Jain Hawala diaries though admissible under Section 34 but truthfulness thereof not proved by any independent evidence. Supreme Court further explained the word "book" and held that it means spiral notebook/ pad but not loose sheets.

The word "books of account" was also explained by the Supreme Court making a reference of ***Mukundaram Vs. Rajaram AIR 1914 Nagpur 44 which was approved.***

Section 17 to 21 : "Admission", "Confession". Distinction between was also explained. Statement, oral or documentary, made by a party to a proceeding as admission can be proved against him but not against others who are being jointly tried with him unless it amounts to a confession. Assuming that the entries in account books are the statements which even if not communicated to any other person are admissions, It was held that entries made by Jains in notebooks can only be proved against them. Moreover, prosecution case regarding conspiracy between Jains and others cannot be sustained in absence of primafacie case against the others as being parties to the conspiracy since in a conspiracy there must be two parties and therefore, the statements cannot be proved as admission of Jains of such conspiracy.

Section 10 : Admissiblity of evidence of statements acts or writings of one co-conspirator against the other explained. There should be existence of a reasonable ground to believe about existence of conspiracy to commit an offence or actionable wrong. Evidence not showing existence of any conspiracy held Section 10 not applicable.

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11. SECTION 27 EVIDENCE ACT (1998) 3 SCC 523 *MANORANJAN SINGH VS. STATE OF DELHI*

No offence was registered against the appellant when he was taken to the police station for interrogation nor was any accusation made against him. He was not in custody of the police when he made the disclosure statement. Therefore, Section 27 was not applicable in this case and recovery should not have been treated as having been made on the basis of the disclosure statement of the appellant.

What the Surpreme Court said in paragraph 4 is of much improtance. So the paragraph 4 is reproduced here :

> "But, we see no reason to disbelieve the evidence of the said three witnesses who have categorically stated that the key was produced by

the appellant and with it the lock of that room was opened. The witnesses have also stated that after opening the room the accused had pointed out the rexine bag containing dalda tin from which RDX was found. From this evidence, it becomes clear that the appellant was in conscious possession of the said explosive articles. We are of the view that the appellant was rightly convicted by the trial court. Hence, we see no reason to differ from the findings recorded by the trial court."

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12. SECTION 6 SPECIFIC RELIEF ACT
(1998) 3 SCC 331
TIRUMALA TIRUPATI DEVASTHANAMS VS. K.M. KRISHNAIAH

Summary suit for possession could not be filed within the limitation period of six months under Section 6 by the dispossessed person. Even after expiry of the time for filing the summary suit dispossessed person can still file a suit for possession on the basis of prior possession i.e. suit based on possessionary title. But in such a suit the defendant who dispossessed the plaintiff could defend himself by proving title and if he proved title he could remain in possession. Since in the present case title of the defendant was found to have not been extinguished and was subsisting in respect of the suit property, the dispossessed plaintiff, who had applied for possession after expiry of six months' period from the date of dispossession prescribed in Section 6 would not be able to recover the possession. Arts. 64 and 64 of the Limitation Act were also discussed.

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13. SECTION 13 EVIDENCE ACT
(1998) 3 SCC 331
TIRUMALA TIRUPATI DEVASTHANAMS VS. K.M. KRISHNAIAH

While referrring to ***Srinivas Krishnarao Kango Vs. Narayan Devji Kango A.I.R. 1954 SC 379*** and ***Settal Das Vs. Santh Ram,*** A.I.R. 1954 SC 606 the Supreme Court held in para 9 as under :

> "In our view, this contention is clearly contrary to the rulings of this Court as well as those of the Privy Council. In ***Srinivasa Krishnarao Kango Vs. Narayan Devji Kango*** speaking on behalf of a Bench of three learned Judges of this Court, Venkatarama Ayyar, J. held that a judgment not inter partes is admissible in evidence under Section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. A contention that judgments other than those falling under Section 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. Again B.K. Mukherjee, J. (as he then was) speaking on behalf of a Bench of four learned Judges in ***Sital Das Vs. Sant Ram*** held that previous judgment not inter partes, was admissible in evidence under Section 13 of the Evidence Act as a "transaction" in which a right to property was "asserted" and "recognised". In fact, much earlier, Lord Lindley held in the Privy Council in ***Dinomoni Chowdharani Vs. Brojo Mohini Chowdhrani, ILR (1902) 29 Cal 190***

(PC) that a previous judgment, not inter partes was admissible in evidence under Section 13 to show who the parties were, what the lands in dispute were and who was declared entitled to retain them. The criticism of the judgment in ***Dinomoni Vs. Brojo Mohini and Ram Ranjan Chakerbati Vs. Ram Narain Singh, ILR (1985) 22 Cal 533 : 221 A 60 (PC)*** by Sir Jhon Woodroffe in his commentary on the Evidence Act (1931, p. 181) was not accepted by Lord Blanesburgh in ***Collector of Gorakhpur Vs. Ram Sundar Mal, AIR 1934 PC 157 : 611A 286."***

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14. CRIMINAL TRIAL : SEARCH WITNESS :
(1998) 3 SCC 625
RONNY VS. STATE OF MAHARASHTRA
CR.P.C. SECTION 100 (4) & (5) : SEARCH WITNESS :

A witness of such other than one from the locality even if he has been brought by the investigating agencies along with them cannot be disbelieved only on the ground that he was not of the locality where the search took place but was brought by the police along with them for the purpose of search. The evidence, however, can be rejected if it suffers from any serious infirmities or if there is any inherent inconsistency in the testimony. If there is intrinsic merit in the evidence of the witness of the search the same cannot be rejected solely on the ground that the witness is not from the locality of the search or that he was brought by the police with them. The witness in question was not of the locality and he was one of the drivers of the cars in which the investigating team came to the place of search and he was taken as a witness of search for the sake of convenience.

SECTION 9 OF EVIDENCE ACT :

The evidence of indentification is a relevant piece of evidence under Section 9 where the evidence consists of identification of the accused person at his trial. The statement of the witness made in the court, a fortiori identification by him of an accused is substantive evidence but form its very nature it is inherently of a weak character. The evidence of identification in the TIP is not a substantive evidence but is only corroborative evidence. It falls in the realm of investigation. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what he has seen earlier, strength or trustworthiness of the evidence of the identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time after a long time, the probative value of such uncorroborated evidence bocomes minimal, so much so that it becomes unsafe to rely on such a piece of evidence. But if a witness has known an accused earlier in such circumstances which lend assurance to identification by him in court and if there is no inherent improbability or inconsistency.

SECTION 3 EVIDENCE ACT :

Relevancy and admissibility of evidence to establish the charge. Use of

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evidence detected in connection with different crimes against the accused would not vitiate the investigation. The germane question is not as to in connection with what offence during the investigation the evidence had come to light, but whether the evidence so collected is relevant and admissible to establish the charge in the present case and it was not the submission that the evidence so let in was irrelevant or in admissible.

NOTE : (The readers are requested to go through the text of this ruling).

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15. (1998) 3 SCC 561
STATE OF UP VS. NAHAR SINGH AND OTHERS
SECTION 154 CR.P.C. : F.I.R. :

As regards preparation of the F.I.R. in consultation with others, Supreme Court held that it is noticed that this is spoken to by PW2 who is the brother of the deceased Ram Gopal. The complaint is said to have been prepared by PW1, son of the said Ram Gopal, late in the night at about 2.00 a.m. Where there are two male members of the family who were grief-stricken, it was but natural that PW1 and his uncle (PW2) should talk about giving the complaint and draft the same. This fact, in the circumstances of this case, can hardly be a ground to weaken the case of the prosecution.

Non mention of details and meticulous particulars is not a ground to reject the prosecution case. The purpose of recording F.I.R. is to set the investigating agency in motion for prosecuting the persons responsible for the cognizable offence mentioned in the F.I.R. Though the F.I.R. should not be too sketchy or vague, yet non-mentioning of the details and meticulous particulars is no ground to reject the case of the prosecution.

Please see ***Nawratan Mahton Vs. State of Bihar (1979) 3 SCC 488.***

CRIMINAL TRIAL : IDENTIFICATION PARADE :

It is evident that the time was 6.30 p.m. and that though the sun had set, yet there was light and at that time the lantern was also lighted. At that time it won't be too dark to see a person particularly when he (is known accused). When the light was enough to enable the assailants to identify their victims and kill them, it can hardly be contended, much less accepted, that the light was not enough to identify the assailants.

SECTION 154/157 CR.P.C. :

Delay in filing the FIR. The evidence on the record discloses that gruesom murder of the deceased perosns was committed by the appellants and others who dragged the dead bodies to the rear side of the Junior High School placed them on the heap of dung cakes and burnt them there. The assailants were keeping a watch on the road through out the night. The atmosphere there was awesome. In such circumstances, late in the night, no reasonable person would have dared to go to the police station to lodge the complaint. The assailants left the place at about 5.00 a.m. and the complaint was given in the police station at about 7.00 a.m. The distance from the scene of the occurrence to the police station can be covered in about 2 hours.

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16. M.V. ACT 1939 SECTIONS 94 & 95 : COMPREHENSIVE INSURANCE POLICY :
(1998) 3 SCC 744
AMRIT LAL VS. KAUSHALYA

The terms of the contract of insurance can be wider than that prescribed by the statute. Under the policy insurer agreeing to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death or bodily injury to "any person". It was held that "any person" would include gratuitous passenger.

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17. LANDLORD AND TENANT : NOTICE TO TENANT :
(1998) 3 SCC 654
PALANI AMMAL VS. VISHWANATH

Notice preceeding ejectment suit by landlord is required only when the tenant accepts him as a landlord. When the tenant denied the title of the landlord Section11 of Madras City Tenants' Protection Act, 1921 is not applicable.

18. SERVICE LAW :
(1998) 3 SCC 732
M.H. DEVENDRAPPA VS. KARNATAKA STATE SMALL INDUSTRIES DEVELOPMENT CORPORATION

Misconduct - Insubordination - Press statement of political nature by an employee.

Writing letter to the Governor without permission, alleging malfunction of the employer. Exployees plea was rejected that his action was justified because it was in exercise of his Constitutional Right of Freedom of Speech and Expression. Any action which is detrimental to the interests or prestige of the employer, undermines discipline and the efficient functioning of organisation in which he is working is misconduct. However, legitimate action discreetly and properly taken by a government servant with a sense of responsibility and at proper level, to remedy any malfunctioning in the organisation is not barred. Freedoms have to be read harmoniously so that conduct rules, which are reasonably required in furtherance of one freedom are not struck down as violating other freedoms.

In the present case, the appellant had made a direct public attack on the head of his organisation. He has also, in the letter to the Governor, made allegations against various officers of the Corporation with whom he had to work and his conduct was clearly detrimental to the proper functioning of the organisation or its internal discipline. Making public statements against the head of organisation on a political issue also amounted to lowering the prestige of the organisation in which he worked. On a proper balancing, therefore, of individual freedom of the appellant and proper functioning of the Government organisation which had employed him, this was a fit case where the employer was entitled to take disciplinary action under Rule 22.

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19. SECTION 34 AND SECTION 40 (1) (a) SPECIFIC RELIEF ACT : (1998) 4 SCC 361
ASHOK KUMAR VS. NATIONAL INSURANCE COMPANY

Chapter II of the Specific Relief Act 1963 contains fasciculous of rules relating to specific performance of contracts. Section 14 falls within that chapter and it points to contracts which are not specifically enforceable. Powers of the court to grant declaratory relief or adumbrated in Section 34 of the Act which falls under Chapter VI of the Act. Even the wide language contained in Section 34 did not exhaust the powers of the court to grant declaratory reliefs. Mere fact that a suit which is not maintainable under Section 14 of the Act is not to persist with its disability of non admission to civil courts even outside the contours of chapter II of the said Act. Section 34 is enough to open the corridors of Civil Courts to admit suits filed for a variety of declaratory reliefs.

O 6 R 2-4 AND O 7 R 1 CPC :

The Supreme Court in paragraph 16 held as under :

> "The said contention is based on a fallacious premise that the suit was for enforcement of a contract of employment. The respondent was appointed on certain terms and pursuant to such appointment he worked within the scope of such employment. Termination of his employment purportedly in terms of the same contract is challenged by him by praying for a declaration that such termination is invalid and, therefore, he continues in the same employment. ***Maintainability of a suit cannot be adjudged from the effect which the decree may cause. It can be determined on the basis of the ostensible pleadings made and the state reliefs claimed in the plaint."***

The Supreme Court in para 17 of the judgment held that the Specific Relief Act widens the spheres of the Civil Courts; its preamble shows that the Act is not exhaustive of all kinds of specific reliefs.

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20. REGISTERED WILL-GENUINENESS (INDIAN SUCCESSION ACT SECTIONS 59-61-63 AND EVIDENCE ACT SECTION 68 AND 102) (1998) 4 SCC 384
GURDIAL KUAR VS. KARTAR KAUR

The conscience of the court must be satistied that the Will in question was not only excuted and attested in the manner required under the Indian Succession Act, 1925 but it should also be found that the said Will was the product of the free volition of the executant who had voluntarily executed the same after knowing and understanding the contents of the Will. Therefore, whenever there is any suspicious circumstance, the obligation is cast on the propunder of the Will ot dispel the suspicious circumstance. As in the facts and circumstances of the case, the court of appeal below did not accept the valid execution of the Will by indicating reasons and coming to a specific finding that suspicion had not been dispelled to the satisfaction of the Court and such

findings of the court of appeal below has also been upheld by the High Court by the impugned judgment, there is no reason to interfere with such decision.

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21. SECTION 3 AND 5 EVIDENCE ACT : WORDS AND PHRASES : "RELEVANCY" AND "ADMISSIBILITY" - DISTINCTION BETWEEN AND THE MEANING OF "PROBATIVE VALUE OF EVIDENCE" :
(1998) 4 SCC 517
RAM BIHARI YADAV VS. STATE OF BIHAR

The law relating to dying declaration ; the "relevancy", "admissibility" and its "probative value" is fairly settled. More often the expressions "relevancy and admissibility" are used as synonyms but their legal implications are distinct and different for more often than not facts which are relevant may not be admissible, for example, communiction made by spouses during marriage or between an advocate and his client though relevant are not admissible; so also facts which are admissible may not be relevant, for example questions permitted to be put in cross-examination to test the veracity or impeach the credit of witnesses, though not relevant are admissible. The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case.

SECTION 32 EVIDENCE ACT : DYING DECLARATION :

Though dying declaration is indirect evidence being a specie of hearsay, yet it is an exception to the rule against admissibility of hearsay evidence. Indeed, it is substantive evidence and like any other substantive evidence requires no corroboration for forming basis of conviction of an accused. But then the question as to how much weight can be attached to a dying declaration is a question of fact and has to be determined on the facts of each case.

It can not be said that unless the dying declaration is in question-answer form, it could not be accepted. Having regard to the sanctity attached to a dying declaration as it comes from the mouth of a dying person though, unlike the principle of English law he need not be under apprehension of death, it should be in the actual words of the maker of the declaration. Generally, the dying declaration ought to be recorded in the form of questions and answer but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the above mentioned factors, if there is other evidence to show that the recorder of the statement has satisfied himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted.

Khushal Rao Vs. state of Bombay, AIR 1958 SC 22 : 1958 SCR 552;

State (Delhi Administration) Vs. Laxman Kumar, (1985) 4 SCC 476 : 1986 SCC (Crl) 2; State of Orissa Vs. Parasuram Naik, (1997) 11 SCC 15; 1997 SCC (Crl) 1177, explained and distinguished. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a modically trained person is insisted upon. In the absence of availability of a doctor to certify the above-mentioned factors, if there is other evidence to show that the recorder of the statement has satisfied himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted.

CRIMINAL TRIAL : ACT OR OMISSION

Act or omission if deliberately done in favour of the accused who was a member of the police force by the investigating agency such omission would not be taken in favour of the accused. Though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused, yet in a case like the present one where the record shows that investigation officers created a mess by bringing on record Exh. 5/4 and GD Entry 517 and have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant. In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.

Reference is invited to the following rulings also ***State of M.P. Vs. Ram Garib, 1998 (1) MPWN 216*** in which it is held that if dying declaration is recorded by doctor himself no certificate of mental condition is necessary. Even if recorded not in the language of the maker make no difference when doctor has no reason to record false statement. It was further held that dying declartion may be recorded by anybody present at spot. No form has been formed. Normally it should be recorded in question and answer. Maker must be mentally fit. If the F.I.R. is lodged by the deceased it becomes dying declaration after the death of the deceased. In ***1998 (1) MPWN 232*** it was held that a dying declaration recorded by the doctor in question and answer form proved by him can be made the basis for conviction.

NOTE : Readers are requested to go through the text of the Spureme Court judgment.

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22. 1998 (1) VIDHI BHASHWAR 196
PAMMI ALIAS VIJENDRA SINGH VS. STATE OF M.P.

154 CR.P.C. F.I.R. :

In paragraph 19 of the judgment the Supreme Court held that,

> "We make a note of the fact that PW 1 has said in evidence about the presence of the other two witnesses. Learned senior counsel attacked their testimony mainly on the ground that their names did not find a place in the FIR or in the Inquest Report, but the investigating officer came to know of them only at a later stage of investigation. It is a matter of a appreciation of evidence and the mere fact that PW 1 in the injured condition did not mention the names of all the eye-witnesses when he gave the first information statement is no ground to frown at the evidence of PW 2 and PW 4."

CRIMINAL PRACTICE :

Statement recorded in another case cannot be used in any other case. In para 17 the Supreme Court held that,

> "The second premise is that one Purushottam, driver, has stated in Exhibit D-8 that after the incident in this case, he had occasion to take one Rajendra Palla on a motor cycle from Panchsheel Store (Mangal Waria). Thus, learned Sessions Judge used Exhibit D-8 is a copy of the deposition of a witness called Purushottam recorded in another criminal case tried in the Court of J.M.F.C. The deponent Purushottam was not examined as a witness in this case. We have absolutely no doubt that the Sessions Judge had committed a gross error in banking on Exhibit D-8 for any purpose whatsoever in this case."

JUDGE :

Time and again this Court has emphasised the need to exercise judicial restraint, particularly while dealing with judgments and order to the lower Courts. We are in agreement with the submission of Shri Sushil Kumar, Senior counsel that the High Court should have avoided such types of unsavoury remarks against a judicial personage of the lower hierarchy.

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23. O 22 CPC, BOMBAY PUBLIC TRUSTS ACTS 1959 SECTIONS 50 AND 50 A :
(1998) 4 SCC 343
SAIYAD MOHAMMAD BAKAR ELIEDROOS VS. ABDULHABIB HASAN

In paragraphs 7 and 8 of the judgment the Supreme Court held as under:

> "Section 50-A infuses the Charity Commissioner with power in addition to Section 50 to frame, amalgamate or modify any scheme in the interest of proper management of a public trust. This is exercised either suo motu when he has reason to believe it is necessary to do so or when two or more persons having interest in a public trust make an application to him in writing in the prescribed manner. This merely

enables the Charity Commissioner to initiate procedings for settling a scheme for the proper management or administration of a public trust, In the background of the setting of various provisions, the object of the Act, the Charity Commissioner being clothed with sufficient power to deal with all exigencies where a public trust or its trustees stay away from its legitimate path and where the materials are before him or placed before him by the said two persons, then to hold abatement of proceedings on application of any procedural laws not only would amount to the curtailment of his power but make him spineless and helpless to do anything in the matter of a public trust ending the very object of the Act. This is a too restrictive interpretation to be accepted.

"A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.

It was held that the Procedural law is always subservient to substative law and in aid of justice and not to defeat the object sought to be achieved.

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24. SECTION 9 CPC : JURISDICTION OF COURT : FINALITY CLAUSE : (1998) 4 SCC 470
HYDERABAD VANASPATI LTD. VS. A.P. ELECTRICITY BOARD

In para 30 of the judgment the Supreme Court held as under :

"The ruling does not help the consumers in this case. The impugned clause 39 does not suffer from the vices mentioned above. No doubt, clause 39.10.6 provides that the order on appeal shall be final subject to clause 39.11 and not liable to be questioned in any court of law. Similarly, clause 39.11 makes the order of the Chairman or his nominee final and not liable to be questioned in any court of law. But learned Senior Counsel for the Board, Mr. Shanti Bhushan, has fairly conceded that the orders are subject to judicial review and the jurisdiction of courts cannot be taken away by the clause. It is to be noted that the trial Court and the High Court have in this case upheld the juridsiction of the civil court to entertain the suit and consider the validity of the orders passed by the Board against the consumers."

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25. SECTION 114 ILL. (G) AND SECTION 45 EVIDENCE ACT : (1998) 4 SCC 336
STATE OF U.P. VS. LAKHMI

No doubt it is the duty of the prosecution to prove postmortem findings in murder cases, if they are available. Absence of such proof in the prosecution evidence in a murder case is a drawback for prosecution. However, this case cannot be visited with fatal consequences on account of such a lapse because the accused has admitted that death of the deceased was a case of homicide.

NOTE : Readers are requested to go through the following rulings also :

DOCTOR DEAD : ***1979 Cr.L.J. 236 Jagdev Singh Vs. State.*** Medical report of a dead doctor is admissible under Section 32 (2) of the Evidence Act.

DOCTOR ON LONG LEAVE : ***Prithvi Chand Vs. State, A.I.R. 1989 SC 702 = 1989 MPWN Pt. 1 Note No. 123.*** Section 32 - 45 Evidence Act, concerned doctor proceeded on long leave. Report may be proved by another doctor.

DOCTOR, WHEREABOUTS NOT KNOWN : Evidence of a medical withness whose whereabouts were not known was properly admitted under Section 33 of the Evidence Act. ***AIR 1957 SC 904 = 1958 SCJ 106 = 1958 SCR 409.***

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26. SECTIONS 41 AND 48 LAND ACQUISITION ACT : WITHDRAWAL FROM ACQUISITION :
(1998) 4 SCC 387
LARSEN AND TOUBRO LTD. VS. STATE OF GUJRAT

An owner need not be given notice of the intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. Rights of the owner are well protected by sub sections (2) and (3) of Section 48 of the Act. Such withdrawal from acquisition must be preceded by a notification to the beneficiary for whom acquisition proceedings were initiated and also an opportunity to such beneficiary to show cause against the proposed withdrawal.

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27. CRIMINAL TRIAL DELAY IN QUESTIONING WITNESS :
(1998) 4 SCC 494
MOHD. IQBAL VS. STATE OF MAHARASHTRA

Merely because a witness was examined after a considerable period from the date of occurrence his evidence need not be discarded on that ground alone but at the same time while testing the credibility and assessing the intrinsic worth of such witnesses the delay in their examination by the police has to be borne in mind and their evidence would require a stricter scrutiny before being accepted.

SECTION 9 EVIDENCE ACT : T.I. PARADE :

When accused is known to the witness by face only and not by name then evidence of TI parade can corroborate the substantive evidence of identification in court. If the witness knew the accused persons either by name or by face, the question of the police showing him the accused persons becomes irrelevant. If the witness did not know the accused persons by name but could only identify their appearance then a test identification parade was necessary, so that, the substantive evidence in court about the identification, which is held after a fairly long period, could get corroboration from the T.I. parade. Where accused is shown to the witness during investigation, then the so-called identification parade loses its value and identification in court also becomes inconsequential.

Please see (1998) 3 SCC 625 (Bonny Vs. State) Reported in this magazine.

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28. WORDS AND PHRASES : "PARTY AGGRIEVED" AND "PERSON AGGRIEVED"
(1998) 4 SCC 447
GOPABANDHU BISWAL VS. KRISHNA CHANDRA MOHANTY

Persons who are directly affected and immediately affected persons are parties aggrieved. However, persons remotely affected, are not parties aggrieved. On facts it was held that persons who were not directly affected by grant of relief to the appellant , but their chances of promotion in future may have been affected, were not the parties aggrieved. But they have remedies available. Such parties could avail of the remedy of intervention, review and SLP at appropriate time.

In paragraph 14 of the judgment the Supreme Court held as under :

> "The same is the case with the applicants in Review Application No. 18 of 1993. These two applicants in Review Application No. 18 of 1993 were direct recruits to the Indian Police Service of 1975 and 1976 batches. The quota for direct recruits is different and these applicants were not concerned with the appointments made within the quota of promotees from the State Police Service. Therefore, it is difficult to look upon them as persons aggrieved. If at all they would be affected by the promotion given to the original applicant-Biswal, that would be in respect of their chance for promotion to the next higher post. This does not confer any legal right on these applications. They cannot, therefore, be considered as persons aggrieved. In our view the Tribunal was not entitled to, and ought not to have entertained the review applications once the special leave petition from the main judgment and order had been dismissed."

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29. O 39 1 AND 2 CPC : STATUS QUO ANTE :
1998 (1) V.B. 246
LOK SEWA SADAN VS. MUNICIPAL COMMISSIONER

Person dispossessed forcibly may be put in possession by issuance of temporary injunction in mandatory form.

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30. O 6 R 2 CPC AND M.P.A.C.A. SECTION 12 (1) (E) :
1998 (1) V.B. 191
MOHAN LAL VS. YOGENDRA NARAYAN

PLEADINGS : Referring to ***AIR 1997 SC 59 Mrs. Minal Eknath Vs. M/s Traders and Agencies*** in which it was held that :

> "It would have been better if she had referred to those facts but mere omission to state them in the plaint cannot be regarded as sufficient for disentitling her from claiming a decree for eviction, if otherwise she

is able to prove that she requires reasonably the suit premises for her occupation."

The contention of the landlord was upheld.

●

31. CIVIL SERVICE (PENSION) RULES 1972 (CENTRAL) : COMPULSORY RETIREMENT.
1998 (1) V.B. 68 (SC)
I.K. MISHRA VS. UNION OF INDIA

Compulsory retirement is not punishment. No rules of natural justice need to be observed. It should be in public interest. Blamished service record for years together. Minor punishments also inflicted. Order of complusory retirement is not arbitrary. Regulations 199 and 207 of the Rule 48 (b) were referred. It was held that employee passing S.A.S. examination not considered for promotion because of his bad record. Merely passing of such examination does not wipe out that record, It may be used for ordering compulsory retirement.

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32. 01 R 10 CPC : OPPORTUNITY TO BE HEARD :
1998 (1) V.B. 68 (SC)
I.K. MISHRA VS. UNION OF INDIA

Allegations of malafide against officer cannot be heard without impleading him by name and in absence of particulars of malafide. It was alleged in the suit that the Accountant General, M.P. bore grudge against the appellant. This argument was rejected because the record before the Supreme Court did not reveal that the concerning Accountant General, M.P. was party to the suit. In fact he was not impleaded by name in the suit. Further the allegations against the Accountant General, M.P. were totally vague. No inference of malafide could be drawn from such allegations. In the absence of full facts and particulars in the plaint in respect of allegation of malafide, the order of compulsorily retiring the appellant cannot be held to be malafide order.

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33. O 34 R 5 AND O 9 R 13 CPC : FINAL DECREE
1998 (1) MPLJ 546
NANDLAL VS. NATIONAL INDUSTRIAL DEVELOPMENT CORPORATION

Service of notice is essential before the decree can be made final. When in final proceedings the defendant can have same say to avoid sale of mortgaged property instituted. He has to be heard and a notice has to be served on them. That is a baisc requirement. The final decree passed ex-parte was set aside by the High Court in the absence of the notice.

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34. SECTION 12 (1) (C) M.P.A.C.A. :
1998 (1) V.B. 40 (VIDHI-BHASWAR)
SURESH VS. PRABHULAL

Accommodation let out for residential purposes and there after some part

of the accommodation was started to be used for ironing clothes. The user is inconsistent and tenant is liable to be evicted. Judgments of 1979 MPRCJ 110 and 1985 MPRCJ 44 distinguished.

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35. SECTION 385, 386 AND 374 CR.P.C. : CRIMINAL APPEAL EXPARTE HEARING
1998 (1) V.B. 23
MANGU VS. STATE

Appeal against conviction. In such a case where accused and his counsel not appeared in the court the appeal was still be dicided on merits after perusal of records and memo of appeal. In cirminal cases if, none appears for the accused his appeal exparte arguments can be heard. **(1994) 4 SCC 664** and **AIR 1996 SC 2439** followed.

●

36. SECTIONS 52 AND 57 N.D.P.S. ACT :
1998 (1) V.B. 31
AMBALAL VS. STATE

These provisions are directory and not mandatory in nature. **A.I.R. 1995 SC 1157** followed.

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37. O 39 Rr 1 AND 2 CPC
1998 (1) V.B. 238
SHIV GOPAL VS. VISHWANATH PRASAD

Factum of possession should be adjudged as existing on date of suit. Support can be had from documents coming in existence after the date of the suit.

●

38. SECTION 302 I.P.C. - MURDER - APPRECIATION OF EVIDENCE
1998 (1) JLJ 298 (SC)
SHEIKH ABDUL HAMID VS. STATE OF M.P.

In the present case there was no eye witness of the murder of the 3 deceased person, i.e. murder of wife, daughter and son, But dead bodies found in the inner room in exclusive possession of the accused. The victim missing for 2 to 2½ months but no heed paid by the accused. Key of the room was also found in possession of the accused. Hence held that motive was established and link of circumstance completed even from medical report.

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39. SECTION 376 I.P.C. - RAPE - COLLOQUIAL LANGUAGE :
1998 (1) JLJ 290
VAHID KHAN VS. STATE OF M.P.

The prosecutrix used the expression, "BURA KAM KIYA". When such an act has been stated to have been committed after removing her clothes rape is meant by such act. In this regard the ruling of single Judge of the M.P. High

Court in case *Kailash Vs. State of M.P. 1990 (1) MPWN Note No. 56* was dintinguished.

Further it was held that a judge is under obligation to understand what the witness desires to convey. Language used by witness in deposition should be understood by the judge. It is common knowledge that in different parts of the contry, a particular act is described in many ways and different expression are used for the purposes of same act. Evidence of witness has to be understood from the knowledge of the people of that area. It is not expected from a witness to use in deposition sheet the words mentioned in codified law. A judge is under an obligation to understand what a witness desires to convey.

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40. RAILWAY PROPERTY (UNLAWFUL POSSESSION) ACT 1966, SECTION 3 NATURE OF OFFENCE BAILABLE OR NON BAILABLE : IT IS NOT BAILABLE :
1998 (1) JLJ 286
SUBASH CHANDRA JAIN VS. STATE

Referring to Schedule 1 Part 2 of the Cr.P.C. it was held that punishment for 3 years and upward. Therefore the offence is non bailable. ***Ganesh Chandra Vs. State 1987 Cr.L.J. 931 Rajasthan*** was relied on while ***Union of India Vs. State of Assam 1997 Cr.L.J. Gouhati 1033*** discented from.

Note : This has been reported as unreported judgment in JOTI. Please see vol. III Part VI December, 1997 'JOTI JOURNAL' page 43.

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41. JUVENILE JUSTICE ACT SECTIONS 8 & 32 :
1998 (1) JLJ 240
RINKU VS. STATE

The person brought before the sessions Court as an accused, the sessions judge has power to determine as to whether such person is a juvenile or not. If found juvenile such person along with record should be sent to Juvenile Court for trial.

Further distinction between Section 32 and 8 was explained by the High Court. Section 8 relates to procedure to be followed by the Magistrate not empowered under the Act and procedure to be adopted by such Magistrate. Section 32 related of procedure when a juvenile is produced before the Juvenile Court. Juvenile Court enters into an enquiry in respect of age when juvenile is produced in the Court. In the present case such juvenile was not porduced before the Juvenile court. He was being tried before the sessions court. When he moves an application that his case be forwarded to Juvenile Court the Sessions court cannot act as a post office. On receiving application transferred the case to Juvenile Court. The essential ingredients in Section 8 is of forming the opinion by sessions judge. For forming such opinion the sessions Judge must record a finding about the person brought before it that he is a juvenile. Such enquiry was conducted by the sessions Judge.

●

42. SECTION 8 JUVENILE JUSTICE ACT :
1998 (1) M.P.L.J. 529
DEVENDRA SINGH VS. STATE OF M.P.

An application was filed before the Court to treat the accused as juvenile. Accused produced horoscope - Affidavits of grandfather and uncles but they were not considered. Enquiry into the age was also not conducted. Such procedure was also illegal. The matter was remanded to the Sessions Court.

●

43. SECTION 8 & 32 JUVENILE JUSTICE ACT
1998 (1) JLJ 274
SURESH VS. STATE

Section 8 - Person produced before the Magistrate sent to competent authority is required to hold enquiry as to age of person so sent. It shall determine the age of the person concerned. If the person is produced before the Magistrate and certificate of birth even if obtained subsequently evidentary value cannot be ignored. Magistrate has to make an opinion about the person brought before it. He shall record information whether the person brought is juvenile.

SECTION 3 EVIDENCE ACT - AGE APPRECIATION OF EVIDENCE :

I. Age can be determined on the basis of genuine education certificates issued by competent authority. Such record is maintained by competent statutory authority.

II. Certificate of birth even if obtained subsequent after the offence, it cannot be ignored. Margin of mistake of ossification report should go in favour of accused person when there is a certificate of age.

(Suresh Agrawal Vs. State of M.P. 1998 (1) JLJ 274)

III. It may be determined on the basis of electoral rolls. Name entered in the roll of such person should be deemed to be 18 years or above.

(Rinku Vs. State 1998 (1) JLJ 240)

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44. SECTIONS 18 & 19 HINDU MARRIAGE ACT AND M.P. RULES 1975 :
RULE NO. 2 (4) ; JURISDICTION OF THE COURT :
1998 (1) MPLJ 619
KISHORI BARI VS. ARUN KUMAR

Petition for divorce by husband on ground of desertion. Territorial jurisdiction of the Court for the purposes of conferring territorial jurisdiction is not the place where marital home is situated, but the place where the parties last resided together. Jurisdiction of the Court within whose jurisdiction parties last resided. Decree by the Court which lacked territorial jurisdiction is to be set aside.

Section 18 of the CPC is attracted only when the local limits of jurisdiction of court are uncertain and Section 21 of the Hindu Marriage Act contemplates of regulation of the proceedings under Hindu Marriage Act as far as may be by the CPC. The application of the provision of the CPC has been made subject to the other provisions of the Hindu Marriatge Act. ***Pushpa Datt Vs. Archana Mishra 1942 MPLJ 466*** was relied on.

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45. SECTION 47 CPC
1998 (1) V.B. 109
KAMAL SISODIYA VS. PATWA ABHIKARAN

An order of compensation was given by the Consumer Forum and the order for recovery was transferred to Civil Court for execution of the same. There was joint order against those non applicants for payment of compensation. There were 3 non applicants. One opponent filed an application in the Civil Court raised the objection that he is liable only to pay 1/3rd of the execution amount. No objection regarding jurisdiction of the Consumer Forum was raised. The general rule is that the executing court cannot go behind the decree and it must take the decree as it is and should proceed to execute it. This section does not entitle the executing court to investigate the question of validity of the decree when on the face of it there is nothing illegal in it. In the instant case by the impugned order, the executing court ordered for execution of 1/3rd amount against the opponent which indicated that the order passed by the Forum is not null and void, on the ground of inherent lack of jurisdiction. The opposite party was also not noticed before passing such order. The order of the executing Court was illegal apparent on the face of it particularly when execution of 1/3rd amount indicates that the order passed by the Forum is not null and void for inherent lack of jurisdiction. ***AIR 1954 SC 340 Karan Singh Vs. chaman Paswal and others*** and ***AIR 1957 Rajasthan 267 Shankarlal Vs. Motilal and others*** were referred to.

SECTION 43 CONTRACT ACT (JOINT DECREE) AND SECTION 25 CONSUMER PROTECTION ACT :

Joint decree for the recovery of money execution was filed in the Civil Court as the Consumer Forum transferred its order to civil court for execution. Execution of the Consumer Forum's order was prayed for only against one opponent decree holder as a right to proceed against all or any one of the judgment debtors. It is incumbent upon the court to proceed for execution of order for entire amount only against the opponent. If there is a joint decree for recovery of money in one of joint promisors may be compelled to perform execution of order prayed for only against opponent.

NOTE : Please see Section 43 contract Act and its examples along with Section 145, 146 and 147 Contract Act. The same is the principle with surities also.

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46. MAINTENANCE : SECTION 125 CR.P.C. AND SECTION 3 (1) (B) MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT 1986:
1998 (1) V.B. 268
GAFFUR VS. SMT. SALMA

There was a reference before the Division Bench of the M.P. High Court and the reference was as under :

> "Whether a Muslim father is not liable to maintain , under section 125 of the Code of Criminal Procedure, his legitimate minor child/children above 2 years of age after he has divorced his wife through whom

child/children is/are born, if the divorced wife is unable ot maintain the child/children above 2 years, who is/are living with her?"

Smt. Salma filed a composite application in the Court of JMEC Sagar against her husband, petitioners Gaffur, for grant of maintenance under Section 125 of the Code of Criminal Procedure for herself and her two minor daughters, namely Ku. Najma and Ku. Nagma. The trial court granted maintenance of Rs. 200/- per month to non applicant No. 1 for a period of 2½ months only from 1.3.1985 to 18.5.1986 (the date of the commencement of the 1986 Act) and Rs. 150 per month each to non petitioners minor daughters from 1.3.1986 to the date of their majority. This order was passed on 1.2.91. Gaffur preferred a revision before the Court of Sessions wich affirmed the grant of maintenance to the non-petitioner. The petitioner filed petition under Section 482 Cr.P.C. before the High Court. Hon'ble single Judge of the High Court did not agree with the case of ***Noorunnisha Maqsood Ahmad Vs. Masood Ahmad Haji*** reported in ***1994 MPLJ 701.*** The Division Bench of the High Court in this Mis. Criminal Case No. 1275/1992 decided on 23.9.1997 held that no such exceptional case is made out which may necessitate by the Court in exercise of its inherent power of Section 482 of Cr.P.C. It was further decided that the peitioner Gaffur, inspite of his being divorced his wife liable to maintain his minor daughter, under the provisions of Sectoion 125 of the Code. Reference and reliance was made on the decision of ***Noor Sabha Khatoon Vs. Mohd. Quasim (1997) 6 SCC 233.***

NOTE : Please refer to Vol. III Part IV December, 1997 'JOTI JOURNAL' Page No. 35 citation No. 4 for the ruling of the Supreme Court.

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47. SECTION 19 PROBATION OF OFFENDERS ACT READ WITH SECTION 360 CR.P.C.
1998 (1) V.B. 297
DAYALU DAS VS. STATE

Referred ***State of Kerala Vs. Ghellappan George 1983 Cr.L.J. 1780*** in which it was held as under :

> "There could be no ambiguity in regard to the result of S.19 of the Act and that is, if in any State or part of a State the Act has been brought into force S. 562 of the Code of 1898 shall cease to apply. With the coming into force of the Act in the State of Kerala, S. 19 of the Act automatically came into operation and from that moment, the provisions of the Act are applicable in Kerala State and not the provisions of S.562 of the Code of 1898. This conclusion appears to be free from any controversy."

Relying on another citation of the Full Bench of Himachal Pradesh High Court in ***State of H.P. Vs. Latsingh 1990 Cr.L.J. 723*** held that since Section 19 of the Probation of Offenders Act was made applicable, Provisions of Section 360 of the Code are fully inapplicable.

Reference was also made to Section 8 (1) of the General Clause Act, 1897.

According to that Section the new enactments occupying the field of repealed enactments reference to repealed provisions shall be construed as reference of provisions in new enactments. The High Court refused to interfere with the order of the sessions court with the direction that in the present case the sessions judge must be deemed to have invoked Section 4 of Probation of Offenders Act 1958 in releasing the accused persons on probation of good conduct. It could not have been done under Section 360 ot the Cr.P.C.

NOTE : Section 19 of the Probation of Offenders Act runs as under :

19. Section 562 (Now 360) of the Code not to apply in certain areas; subject to the provisions of Section 18 Section 562 (Now 360) of the Code shall seize to apply to the states or parts there of in which this Act is brought into force".

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48. SECTION 15 EASEMENT ACT : EASEMENT ON NAZUL LAND :
1998 (1) V.B. 135
CHAMAN SINGH VS. RAMNARAYAN

The High Court in para 8 of the judgment held that in fact the plaintiff claims that land as to be road if that be so the plaintiff appellant could not have any right of easement as such over the same. The right of easement can be acquired only on a dominant heritage if the disputed road did not belong to the defendant, a right of easement as against his property could not be accrud.

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49. POSSESSION ; KHASRA ENTRIES :
1998 (1) V.B. 238
SHIV GOPAL VS. VISHWANATH

The question of possession was decided by the High Court in para 11 of the judgment. It is reproduced ;

"The Khasras of the year 1991-92 to 1994-95 came into existence after institution of the suit. The Court was required to consider the factum of possession on the date of the suit. If the Court comes to the conclusion that on the date of the suit, the party was in possession, then it can certainly find support from the documents which came into existence subsequently, but the reverse would not be true. A Court would not be permitted to presume that because the plaintiffs were in possession in 1995, 1993 or 1991, therefore, they must have been in possession in the year 1990."

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50. SECTIONS 58 AND 55 TRANSFER OF PROPERTY ACT - ORDER 34 CPC AND SECTION 128 CONTRACT ACT :
1998 (1) V.B. 226
OM PRAKASH VS. BANK OF INDIA AND OTHERS

Mortgaged property was knowingly purchased without written permission of the mortgagee bank. Nothing was deposited towards the mortgaged amount. The transaction was held not bonafide. Money decree should first be satisfied

by sale of mortgaged property if proceeds are insufficient then judgment debtor or guarantor can be proceeded against. ***1992 SC 1740 State Bank Vs. M/s. Index Port.***

51. CRIMINAL TRIAL : APPRECIATION OF EVIDENCE :
1998 (1) CRIMES 127 (SC)
C.V. GOVINDAPPA VS. STATE OF KARNATAKA

Appellant's wife came out of the house burning in flames, yet the appellant did not take any step to help her or take her to hospital. Conduct of the appellant after the incident is a circumstance which is to be taken into account while establishing his guilt. The conduct of the witnesses in not informing the police and taking the appellant's wife to hospital was not unnatural. There is nothing on record to show that any one of the witnesses was motivated to speak against the appellant. Evidence of PW 12 to PW 14 were held acceptable. Appellant was rightly convicted by High Court.

52. O. 33 R. 1 CPC AND ART. 39A CONSTITUTION OF INDIA :
1998 (1) MPLJ 486
FULA BAI VS. STATE OF M.P.

Nature of approach while dealing with prayer by one alleged to be indigent.

The provisions of Order 33 of the Civil Procedure Code have been enacted for the purpose of allowing a person to sue as indignet, if he happens to be unable to pay the Court fee. Provisions do not mean that the indigent person should sell out all his property and put himself without any source of livelihood, and should come on road for the purpose of paying the Court fee. Merely because a person has retired it cannot be said that therefore he can pay the Court fee form his pension, P.F. and gratuity amount. The State never desires to deprive such a retired employee from such source of livelihood after retirement. The Court fee can be recovered from defeated plaintiff in accordance with legal process. In border line cases attitude of the Courts should be broad minded. In democracy right to approach the Court for legal relief should not be denied on the ground of poverty. That is why the Constitution has taken care of that by making provisions of legal aid. Court's decision in this context should be consistent with that spirit, of Article 39-A of Constitution.

(NOTE : Please see 'JOTI JOURNAL' Vol III Part I, Page 26). (Feb 1998)
(1998 (2) M.P.L.J. SN-26 Fulabai vs State)

53. APPLICATION OF ARTICLE 182 (2) AND (5) LIMITATION ACT AND O. 9 R. 13 CPC :
1998 (1) MPLJ 438 (F.B.)
SURAJDIN VS. SHRINIWAS

The reference was answered by the Full Bench in para 16 part 1 and part 2 as under :

To conclude, our answers to the two questions are in the negative as under :

(1) The word 'Appeal' as used as Clause (2) of Article 182 of the Limitation Act, 1908 means an appeal from a decree or an order which is sought to be executed. It will not include an appeal made against an order refusing to set aside ex parte decree under Order 9, Rule 13 of the Civil Procedure Code.

(2) Contesting of an application by the judgment-debtor for setting aside an ex parte decree under Order 9 rule 13, Civil Procedure Code does not constitute step-in-aid within the meaning of Article 182 (5) of the Limitation Act, 1908.

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54. SECTION 13 (2) M.P. ACCOMMODATION CONTROL ACT - INTERPRETATION OF WORDS "AMOUNT OF RENT PAYABEL BY THE TENANT": 1998 (1) MPLJ 402

AJAY MAHAWAR VS. SMT. SAVITA DEVI KARIYA

The words "amount of rent payable by the tenant" accruing in sub-section (2) of section 13 of the M.P. Accommodation Control Act as amended by M.P. Act No. 27 of 1983 with effect form 15-8-1983 have to be read in sequence provided under the provision as what the Court would do if any dispute as to the amount of rent payable by the tenant is raised. Obligation of the Court thereon starts and the obligation is to fix a reasonable provisional rent. ***1977 MPLJ 822, Anandilal Vs. Shivdayal*** distinguished.

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55. SS. 23-J, 12 (1) AND 45 -RIGHT OF LANDLORD TO AVAIL ALTERNATIVE REMEDIES AVAILABLE UNDER THE M.P.A.C. ACT : 1998 (1) MPLJ 461 (F.B.)

ASHOK KUMAR VS. BABULAL = 1998 (1) JLJ 311

In para 8 fo the judgment following law was laid down by the Full Bench of the M.P. High Court :

If the landlord defined in section 23-J, want to avail the benefit of chapter III-A then they can maintain a suit for eviction of a tenant before the Rent Controlling Authority on the ground of bonafide requirement and in case, they do not want to avail the special forum created under the Chapter III-A and want to invoke the ordinary Civil Court Remedy then that forum will be available to them and their suit will not be dismissed on the ground that they should invoke the remedy provided under Chapter III-A. It will be open for the landlords to file a civil suit before the Civil Court on the basis of the bonafide requirement or on any other grounds mentioned in section 12 of the Act. Similarly, it will be open for the landlords defined in section 23-J to maintain a suit before the Rent Controlling Authority on the ground of reasonable bonafide requirement, the section 23-J and that does not exclude the jurisdiction of the Civil Court, if the landlords so choose. It is the choice of the landlord and it cannot be restricted that he can only avail the remedy for eviction on the ground of reasonable bonafide requirement before that forum alone.

The judgment in ***Mahendra Kumar Vs. Anand, 1989 MPLJ 281*** of Single Bench was overruled.

Eviction suit already pending on various grounds the landlord of the special category could withdraw civil suit on bonafide need and file application for eviction under Section 23-A of M.P. Accommodation Control Act.

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56. SECTION 12 (1) (A) AND ITS PROVISIO : (M.P.A.C. ACT)
1998 (1) MPLJ 612 = 1998 (1) JLJ 370
NATIONAL INSURANCE COMPANY VS. DWARIKA PRASAD

Held; that the expression 'acquire any accommodation or any interest therein by transfer' as ›sed in the proviso to section 23-A of the M.P. Accommodation Control Act contemplates within its ambit only those transfers which are inter vivos i.e. between living persons and not of any other category. The benefit secured under the proviso can extend only in favour to those tenants where the landlord has acquired an interest in the accommodation uder their tenancy by purchase etc. An acquisition of interest on account of inheritance devolution or testamentary succession is not contemplated under the proviso and it falls outside its ambit. Therefore, the trial courts order rejecting tenant's application was proper. ***1998 MPLJ 682, 1997 (2) MPLJ 17, Ref., 1996 JLJ 524, Indu Singh Vs. Leelawati*** held to be perincuriam.

NOTE : Please refer to Section 12(4) M.P.A.C.A. runs as under :

> "Where a landlord has acquired any accommodation by transfer, no suit for the eviction of tenant shall be maintainable under sub-section (1) on the ground specified in clause (e) or clause (f) thereof, unless a period of one year has elapsed from the date of the acquisition."

Please see commentary on Section 12 (4) at page 315 and commentary on Section 23-A at page 462 of M.P. Accommodation Control Act by R.C. Khare, Advocate, 1995 edition.

SUBSEQUENT EVENT - M.P. ACCOMMODATION CONTROL ACT :

Cause of action made available during pendency of the suit may be availed of. The purpose is to avoid multiplicity of allegation ***P. Venkateshwarulu Vs. M.G.T., AIR 1975 SC 1409*** and ***Munshi Khan Vs. Maya Devi, 1993 JLJ 136*** were relied on.

NOTE : For futher details please go through the following law reported in M.P. Accommodation Control Act 1961 by Shri R.C. Khare, 1995 Edition page No. 223 Note No. 87, Note No. 88 (i) and Note No. 90 particularly the following case law.

"General rule is that the rights of parties to a suit must be regulated with reference to their state at the date of the institution of the suit and a suit must be tried in all its stages on the cause of action that existed on the date of its commencement and the relief claimed in the suit must be confined to matters existing at that date. ***Durga Prasad Vs. Secy. of State, AIR 1945 PC 82 (D).***"

"Events which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration for the purpose of adjudication until a decree is made by the final court determining the rihgts of parties but any event that takes place after the decree becomes final cannot be made a ground that some event has altered the situation. ***P.V. Papanna Vs. K. Padmanabhaiah, AIR 1994 SC 1577***; See also ***D.K. Soni Vs. P.K. Mukherji, AIR 1988 SC 30.***"

"General principle is that subsequent events are noticed to shorten the litigation when those events affect the question interpartes and to do full justice between the parties. ***Kastoorchand Vs. Kodulala, 1969 RCJ 672.*** See also ***J.G. Kohili Vs. F.C., 1975 RCJ 689.***"

"The principle that the court may take notice of subsequent event has no application where the service of a notice of demand for arrears of rent and the waiting of the specified period thereafter are made a condition precedent to the filing of the suit and its being entertained by the Court. That principle applies only to cases where a person comes to the court on a completed cause of action. ***Santram Vs. Onkarprasad, 1969 RCJ 667.***

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57. O 30 R 4 AND O 22 R 4 ; ABATEMENT - PARTNERSHIP :
1998 (1) MPLJ 478
PUNJAB NATIONAL BANK VS. FIRM RAM KRISHNA RAM GOPAL

Sub rule (1) of R 4 in) 30 of the CPC provides that it is not mandatory to joint the legal representatives of the deceased partner as a party in the suit. The suit would not abate if the appeal has been brought in the **NAME OF THE FIRM.** It is well settled in law that a suit includes an appeal, therefore the principles enjoined under O 30 R 4 of the Code would also be applicable in appeal.

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58. O 22 CPC AND O 1 R 10 CPC :
1998 (1) V.B. 218
SUNIL KUMAR VS. BHAGWATI PRASAD

A suit was filed by one Bhagwati Prasad against Narayan Das and Dhalekhan as being partners for rendition of accounts and or dissolution of partnership firm. One of the partner Dhulekhan died but his legal representatives were not brought on record. In due time an attempt was also made to substitute his legal representative through an application under O 1 R 10 CPC which was also rejected by the court below. The High Court held that if no application for substitution of appelants or respondents made within time abatement takes place automatically. Suit for disolution of partnership and account was filed. The legal representatives were brought on record within time, suit abates as a whole. It was further held that if the suit is barred for not bringing legal representatives on record within limitation and no application for setting aside abatement was also filed, the filing of application under O 1 R 10 for making party is a desperate attempt.

NOTE : In this case suit was not brought against the firm but only against the partners in their names.

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59. NATURE OF ACCOMMODATION UDER M.P. ACCOMMODATION CONTROL ACT :

1998 (1) JLJ 360

PRESIDENT, TRANSPORT COOPERATIVE BANK LTD. VS. SMT. CHANDRAPRABHA

The accommodation having kitchen, small store room and dining. Accommodation as well as a residential accommodation from structural point and the accommodation initially let out for residential purpose and some of the accommodation let out was used for non-residential purposes thereafter. The whole accommodation cannot be termed as non-residential accommodation:

It the accommodation is let out for composite purpose the landlord is entitled to eviction decree on proving his bonafide need for any one purpose.

NOTE : Please refer to ***Hukumuddin Vs. Prem Narain, 1997 MPLJ (2) 360*** in which it was held that the character of the accommodation whether it is residential or otherwise will depend upon the intention for which it was let out. But when accommodation is vacant its character becomes neutral.

Please refer to vol. III part IV, December 1997 'JOTI JOURNAL' at page 36.

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60. HINDU SUCCESSION ACT, 1955 (SECTION 5(I) AND SECTION 11) AND INDIAN SUCCESSION ACT SS. 372 AND 373 (3)

1998 (1) JLJ 345

K. SHYAMLAL VS. K. SUGUNA DEVI

Marriage in contravention of Section 5 (1) is void from very inception. No declaration to that effect is necessary. Widow of such marriage cannot claim succession.

Widow of void marriage cannot claim succession certificate for estate of her deceased husband. That grant of succession certification is a rule which is to be promoted and not to be defeated. Certificate is to be granted to a party having prima facie title for the same. Intricate question if involved need not be decided by the Court.

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61. SECTION 117 LAND REVENUE CODE :

1998 (1) JLJ 334 (SC)

VISHAL SINGH VS. STATE OF M.P.

Para 4 of the judgment is referred in which it is said that,

> "No doubt the entry in the revenue record was made in favour of the appellants and their men but such and entry could only raise to a rebuttable presumption."

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62. PRECEDENT : BINDING NATURE OF :
1998 (1) JLJ 372
NATIONAL INSURANCE COMPANY LTD. VS. DWARAKA PRASAD

Previous binding decision not considered, such decision being per incuriam is not binding.

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63. STATUS QUO - MEANING OF : WORDS AND PHRASES
1998 (1) JLJ 357
NARMADA MAI KHADAN KAMGAR KARIGAR SAHKARI SAMITI VS. LAXMINARAYAN

Action complained recurring in nature. The words "status Quo" would mean that state of things as existing on date of passing of the order obtained should be maintained there after. It implies the existing state of things at any given point of time. It was further held that status quo to be preserved by a temporary injunction or a temporary mandatory injuction is the last placeable non-contested 'status' which preceded the pending controversy.

Para 7 of the judgment referred to words and phrases Vol. 40 example given there under :

> "In suit by owners and lessees of lands abutting on either bank of river to enjoin defendants, claiming under lease from state of river bed, form trespassing upon lands owned or leased by plaintiffs, the 'status quo' of subjcect matter of controversy was the peaceable, non-contested status of plaintiffs before defendant sought to interfere therewith."

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64. SECTION 34 SPECIFIC RELIEF ACT & CONSEQUENTIAL RELIEF; 02 R2 CPC
1998 (1) JLJ 403 (S.C.)
STATE OF M.P. VS. MANGILAL SHARMA

Under Section 34 of the Specific Relief Act a declaratory decree merely declares right of decree holder. The relief of declaration of status of Government servant does not entitle back wages etc. After the reinstatement of a Government Servant he is governed by statutory rules and not by the contract. Relief of declaration simplicitor sought that plaintiff is in continous Government service, After decree suit for arrears of salary may face bar created under O2 R2.

Relavant portion of the Judgment in para 6 is quoted as under :

> " A declaratory decree merely declares the right of the decree holder vis-a-vis the judgment debtor and does not in terms direct the judgment debtor to do or refrain form doing any particular act of thing. Since in the present case decree does not direct renstatement or payment of arrears of salary the executing Court could not issue any process for the purpose as that would be going outside or beyond the decree. Respondent as a decree holder was free to seek his remedy

for arrears of salary in the suit for declaration. The executing Court has no jurisdiction to direct payment of salary or grant any other consequential relief which does not flow directly and necessarily from the declaratory decree. It is not that if in a suit for declaration where the plaintiff is able to seek further relief he must seek that relief through he may not be in need of that further relief. In the present suit the plaintiff while seeking relief of declaration would certainly have asked for other reliefs like the reinstatement, arrears of salary and consequential benefits. He was, however, satisfied with a relief of declaration knowing that the Government would honour the decree and would reinstate him. We will therefore assume that the suit for mere declaration filed by the respondent-plaintiff was maintainable, as the question of maintainability of the suit is not in issue before us.

Cases referred :

Roshan Lal Vs. Union of India, A.I.R. 1967 SC 1889, State of Punjab Vs. Kishan Dayal, A.I.R. 1990 SC 2177. Prakash Chand Khurana Vs. Harnam Singh, A.I.R. 1973 SC 2065, Prakash Chand Vs. S.S. Grewal 1975 Cr.L.J. 679 (F.B.) Punjab & Haryana High Court.

NOTE : (Please go through the text of the judgment.)

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65. PROSECUTION UNDER SECTION 193 I.P.C.; SECTION 340 CR.P.C. CHALLENGE TO PROSECUTION :
1998 (1) MPLJ 625
KUPPILI MOHAN RAO VS. MANGING DIRECTION, F.C.I.

The power to punish a witness for perjury is only with the Court in accordance with the provisions of section 340 of Cr.P.C. which require holding of an enquiry, recording a finding and making a complaint for trial by a competent Magistrate. If the judgment of the criminal Court is carefully perused, the criminal court has refused to rely on the prosecution case because it was not supported by the complainant himself, and the petitioners as the two witnesses did not implicate the accused in their version given in the cross-examination, the Criminal Court, therefore held the offence to have not been proved. The Criminal Court in its judgment has not expressed any opinion that the petitioners as two witnesses have given any false deposition. The criminal Court also did not consider it necessary to initiate any action for prosecuting the two petitioners for alleged offence of perjury punishable under Section 193, Indian Penal Code. The act of the petitioners in judicial proceedings which amounts to a criminal offence of perjury, to be tried in accordance with the Code of Criminal Procedure, cannot be allowed to be dealt with departmentally by the employer. If the employer is held to be empowered to hold the petitioners guilty of perjury, the course adopted would indirectly mean usurpation by the departmental authorities the Power of Criminal Court.

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66. AMENDMENT AT APPELLATE STAGE TO CORRECT THE OMISSION IN DESCRIPTION OF PROPERTY IN SUIT : O 6 R 17 & O 41 R 33 CPC: 1998 (1) MPLJ 634

BHAGWATI PRASAD VS. BALESWARDAYAL

In the plaint the paintiff pleaded that only two rooms on ground floor were let out to the tenant. Plaintiff omitting to mention other accommodation let out to the tenant. In notice to quit also only 2 rooms were mentioned. The trial Court decreed the suit for possession of two rooms only as described in the plaint. In appeal by tenant landlord filed application to amend plaint so as to include omitted portion of accommodation. The amendment was allowed by the appeal in exercise of powers under O 41 R 33 and decreed the claim for the entire tenanted accommodation. In second appeal by the tenant the High court upheld the judgment and decree of the first appellate Court and held that the amendment was merely for removing inaccuracy or omission on the part of premises let out. The tenant admitted his tenancy in the written statement and therefore also consequential amendment was not necessary. Held that the tenant was not prejudiced by the amendment.

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67. DOCUMENT IN SINDHI LANGUAGE : OBJECTION TO SUPPLY HINDI TRANSLATION; SECTION 137 CPC

1998 (1) MPLJ 641

HUKUMATH RAI VS. SHAMBOO LAL

The plaintiff filed a document in Sindhi language as a part of evidence. Both parties were conversant with Sindhi language. Section 137 (2) has no applicability with respect to language of documents. Court cannot compel plaintiff to supply translated copy of the judgment in Hindi. Objection by the defendant was rightly rejected.

NOTE : Please refer to M.P. Amendments in CPC under O 13 R 7 published in 'JOTI JOURNAL' Vol III Part III June, 1997 Page 30 which runs as under :

Rule 7. Add the following as sub-rule (3) -

"(3) Every document produced in evidence which is not written in the Court language or in English, shall be accompanied by a correct translation into English and every document which is written in Court language but in a script other than Devanagri shall be accompanied by a correct translation into Devnagri script. If the document is admitted in evidence, the opposite party shall either admit the correctness of the translation or transliteration or submit his own translation or transliteration of the document".

Rule 9 - Insert the following as sub-rule (2) renumbering the existing sub-rule (2) sub-rule (3)-

"(2) Where the document has been produced by a person who is not a party to suit the Court may order and at the request of the person applying for the return the document shall order the party at whose instance the document was produced to pay the cost of preparing a certified copy."

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68. DISCONNECTION OF TELEPHONE OF SON FOR NON PAYMENT OF CHARGES BY FATHER FOR HIS OWN TELEPHONE : ILLEGAL : 1998 (1) MPLJ 643

MAHESH AGRAWAL VS. UNION OF INDIA

Disconnection of Telephone of son for default in payment of bill by father with respect to the telephone in father's name. There was no outstanding bill against the son. Disconnection of son's phone was illegal. Reconnection was ordered.

In this judgment Section 7 Telegraph Act and R. 443 of Telegraph Rules explained.

Cases Referred : ***Chan Datta Vs. Union of India. 1997 (2) MPLJ 523*** was referred in the judgment. ***Union of India Vs. Firm Ram Chand Naraindas, 1995 MPLJ 560*** in which Section 7 (b) of the Telegraph Act was also referred to. The judgment was distinguished.

●

69. "ACT POLICY" : SECTION 147 LIABILITY TO THIRD PARTIES : 1998 (1) MPLJ 645

ORIENTAL INSURANCE CO. LTD. VS. RADHARANI

The clause in the policy called Policy for Act liability was in the following terms - "Liability to Third Parties. 1. Subject to the Limit of liability as laid down in the Motor Vehicles Act the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's cost and expense which the insured shall become legally liable to pay in respect of death or bodily injury to any person and/or damage to any property of Third Party".

The liability of insurer to third parties occuring in "Act only policy" under the Motor Vehicles Act, 1988 covers death or bodily injuries to any person, considering the words 'any person' in the context of the legal instrument, the meaning is absolutely clear and manifest and there is no justification to give a restricted meaning to the said expression. The terms and conditions being wide enough, the policy of the present nature would cover an occupant of any jeep who is carried without hire or reward. The words 'any person' are of wide amplitude and the liability accepted by the Insurance Company cannot be curtailed or restricted.

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70. MAINTENANCE UNDER SECTION 125 CR.P.C. 1998 (1) MPLJ 654

KAMALA BAI VS GHANASHYAM AGRAWAL

The trial Court granted maintenance to wife at Rs. 500/- where as Rs. 300 each to 3 children permonth. In revision before the sessions Judge the sessions judge did not assign any reason for reducing the amount of maintenance but

stated that the amount granted by Magistrate was excessive. Held on the facts of the case that the amount awarded by the Magistrate being reasonable and not excessive order of sessions judge was set aside.

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71. O 13 RR. 1&2 : APPLICATION WHEN REQUIRED
1998 (1) MPLJ 666
OMPRAKASH VS. NANDLAL

Once a document has been placed on record, a separate application under O 13 R 2 is not required to be given.

O 13 R 2 of the Code deals with the eventuality where documents have not been placed on the record in terms of O 13 R 1. Once a document has been placed on record then, a separate application under O 13 R 2 is not required to be given. The above is the clear intention of the statutory provisions of O 13, Rr. 1 and 2. Even where an application under O 13 R 2 CPC is made, then this application is not to be rejected.

●

72. SECTION 18 (2) (D) HINDU ADOPTION AND MAINTENANCE ACT & LIMITATION ACT ARTS. 58 & 105 :
1998 (1) MPLJ 672
KOMAL SINGH VS. SMT. KAPURI BAI

Right of maintenance is a constant right. Once it has started it accrues de die in diem, i.e. day to day. In such cases time will run when the claim is first denied.

●

73. MOTOR VEHICLE ACT : SECTIONS 146 & 147 AND SECTION 11 CONTRACT ACT MINOR OWNER OF THE VEHICLE :
1998 (1) MPLJ 676
NATIONAL INSURANCE COMPANY LTD. VS. KUSUM DEVI

The contract of insurance is in the nature of indemnity whereby the insurer undertakes to indemnify the insured on the happening of an uncertain event by use of motor vehicle which makes the insured liable to pay. No provision of Chapter XI of the Motor Vehicles Act, 1988 or any provision under Motor Vehicle Act, 1988, prohibits that the policy of insurance cannot be issued to a registered owner of the vehicle who is a minor. On the other hand a registered owner, who is minor or not, of a motor vehicle, which is to be used at a public place, such vehicle necessarily has to be insured against the third party risks under section 146 of the Act. The contract of insurance does not create any liability on the minor. Therefore, it would not be void. On the other hand the contract of insurance is for the benefit of the minor; hence it would not be void contract but it would be binding on the insurance company to indemnify the insured/owner of the vehicle and to pay compensation under the award.

Cases Referred :

A. Raghavamma Vs. A. Chenchamma, A.I.R. 1964 SC 136, New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani, AIR 1964 1736, Gopal Krishnaji Vs. Mohd. Haji Latif, AIR 1968 SC 1413. M/s Automobils Transport Vs. Dewlal, AIR 1977 Raj 121, Northern India General Insurance Co. Ltd. Vs. Kanwarjit Singh 1973 ACJ 119 (All.). Great American Insurance Co. Vs. Madanlal Sonulal. AIR 1938 Bombay 353 (363).

●

74. PUBLIC STREET : GRANTING LEASE OF : SECTION 323 M.P. MUNICIPALITIES ACT :
1998 (1) MPLJ 687
MADHUSUDHAN VS. STATE OF M.P.

Public street is to be used as a street and cannot be permitted to be used for any other purpose. Piece of land forming part of public street was allotted by C.M.O. to the petitioner for business purposes. Collector passed order under Section 323 staying allotment of the land. The order was upheld.

●

75. M.V. ACT, 1988, SECTION 166 AND 140 :
1998 (1) MPLJ 697
KRISHNA VS. J.P. SHARMA

Shiv Prasad, husband of the appellant Krishna was working as daily labourer (peon) in O.F.K. Government College, Khamaria, Jabalpur. He used to bring the Principal of the college who was cardiac patient on the scooter belonging to the principal. The daily wager was asked to fill up the fuel and check the air. On way back the deceased collided with the electric pole and died due to accident. There was no case of negligence here and the deceased not entitled to compensation. The claim petition was dismissed.

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76. SS. 23 (2) AND 28 HINDU MARRIAGE ACT
1998 (1) MPLJ 700
SATYAVATI VS. RAMDEO

Para 15 of the judgment is quoted here :

"Shri P.R. Bhave, appearing on behalf of the respondent submits that the said defect can be removed by the appellate court. When the matter was taken up on 26-6-1997, I have directed the husband and wife to be present personally. They have appeared on 29-7-1997 and an effort for reconciliation was made but failed. The defect as pointed out by Shri Ruprah appearing on behalf of the appellant can be rectified by the appellate court is writ large from the Judgment of the Patna High Court in case of ***Sushma Kumari Vs. Omprakash, AIR 1993 Patna 156*** wherein it has been held that "if the procedure under section 23 (2) has not been followed by the trial Court, same can be

followed by the appellate Court". Reconciliation having failed; defect as pointed out by Shri Ruprah no longer exists."

To conclude if the procedure under Section 23 (2) has not been followed by the trial Court same can be followed by the appellate Court. Reconciliation having failed, defect as pointed out no longer exists.

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77. ARMS ACT SECTION 25 & TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT SECTION 5 :
A.I.R. 1998 SC 1516
AJAIB SINGH VS. STATE OF PUNJAB

During the nakabandi, police noticed the appellant moving in suspicious circumstances. On personal search, the appellant was found carrying one. 32 bore revolver which was in working order. It was found loaded with one empty cartridge and five live cartidges. He was, therefore, prosecuted for the offence punishable under Section 25 of the Arms Act read with Section 5 of the TADA Act.

In order to prove its case, the prosecution examined the Investigating Officer-Joginder Singh, who was then an Inspector of Police and PW2-Karnail Singh,who was one of the recovery witnesses. Joginder Singh in his evidence stated that the said revolver was found from the person of the appellant and on examination it was found in working order. He also deposed that an attempt was made to procure attendance of two independent witnesses at the time of search and seizure but they were not available. He is fully supported by the evidence of PW2- Karnail Singh.

Held that the conviction of the accused was proper.

●

78. DYING DECLARATION, APPRECIATION OF; SECTION 32 EVIDENCE ACT:
A.I.R. 1998 SC 1515
BHOLA TURHA VS. STATE OF BIHAR

The appellant was convicted by the trial Court under Section 302 of the I.P.C. In appeal High Court altered his conviction and sentenced under Part I of Section 304 I.P.C. and sentenced him to 10 years rigorous inprisonment.

The conviction of the appellant was based solely upon the dying declaration. It was found to be reliable. It was made by the deceased within about 2 hours from the incident and a few hours before his death. In his dying declaration, he has clearly explained how he came to be injured by the appellant. Both the Courts came to the conclusion about the truthful version as regards the manner in which the injuries were caused to him. Before Supreme Court the learned counsel for appellant challenged the conviction on the ground that in view of inconsistency between the versions of the deceased and the witness the Courts ought not to have relied upon dying declaration without any independent corroboration. The eye withnesses did not support the prosecution and were

declared hostile. As they did not state anything about the spear blow given by the appellant, really there is no inconsistency between their evidence and the dying declaration. It was submitted by learned counsel that in the dying declaration, it is stated that the appellant after giving a spear blow had taken out the spear from the body of the deceased and had taken it away with him. P.W. 14 - another chowkidar on the other hand has stated in his evidence that he had produced the spear of the appellant before the Investigating Officer. That does not necessarily mean that he had recovered that spear from the place of offence.

The appeal was dismissed.

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79. DYING DECLARATION, APPRECIATION OF : SECTION 32 EVIDENCE ACT :
A.I.R. 1998 SC 1534
KAMLESH RANI VS. STATE OF HARYANA

The appellant challenged her conviction under Section 302 I.P.C. The conviction was based on the dying declaration made by the deceased Kavita. Kavita received burn injuries to the extent of 80%. In saving Kavita her husband also received burn injuries to the extent of 50%. The doctor treated the deceased summoned the Naib Tahsildar who was not available. Therefore, he recorded the statement of Kavita himself. It was contended by the counsel for accused that since Kavita received 80% burn injuries would not have been in a position to give a statement and more particularly after she was given an injection of Pathedine. He also submitted that she had breathed carbon-di-oxide and carbon-mono-oxide and therefore was having breathing difficulties. He further submitted that she was also suffering at times from hallucinations and therefore the evidence of the Doctor that she was in a fit condition to give the dying declaration should not have been accepted. We find that both the Doctors have positively stated that she was conscious when she gave her statement. Merely because she had 80% burns, it cannot be inferred that she was not in a position to speak. No good reason has been urged for not believing the evidence of two doctors who have positively stated that she was conscious. Doctor Sehgal has stated that he had put questions to her to find out how she got burns and whatever she had stated was taken down in the words spoken by her.

We do not find any evidence on the basis of which it can be said that she could not have made that statement. An attempt was made in the cross-examination of the doctor who had performed post-mortem to prove that she could not have made such a statement in view of the extent and degree of burns she had received. But the Doctor clearly stated that it was not possible to say that she must have become unconscious on receiving the burns and that she would not have given such a statement. We do not find any infirmity in the evidence of Doctor Sehgal. We do not agree with the learned counsel that his conduct suggest that he was not impartial.

●

HIGH COURT CIRCULARS

MEMO NO. 4112/III/I/12/36/F.NO. 5/2 III - 2 - 5/57 DTD. 21ST JUNE 1951
ADDRESSED TO ALL THE DISTRICT JUDGES :

Sub : Delay in delivery of Judgments.

I am to say that the Hon'ble the Chief Justice views with grave concern the increasing tendency to reserve Judgments in civil suits for more than 15 days and wants to impress on the Civil Judges that Judgments must be delivered within the time limit of 15 days.

I am to add that those Judges who fail to follow these instructions will do so at their own risk.

Registrar

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MEMO NO. 1877/III -1 -12/36/5/2 DTD. NAGPUR THE 29TH MARCH 1946.

Subject : Allowing Judges time off to write judgments in big cases.

It has been represented to the Honourable the Chief Justice that the instructions contained in rule 158 of the Rules and Orders (Civil) (Now old) cause undue hardship and impose a severe strain on Judges when they have to write judgments in big cases. The Honourable the Chief Justice considers that, where a judgment reasonably takes 2 or more days to write, it is proper that some concession should be given and that the Judge should be allowed time off to write the judgment, as he can hardly cope with such judgment adequately and expeditiously if he has to write it at such odd times as he can find. In such cases District Judges should use their Judgment and allow such concession as is reasonable.

●

MEMO NO. 7974/III- 1- 5/57 DTD. 7TH JUNE 1974
ADDRESSED TO ALL THE DISTRICT JUDGES :

Sub : Grant of copies of depositions and Judgments.

Consequent on the suggestions of some of the Bar Associations in the State for providing facilities for making application in advance for copies of depositions and judgments by taking out carbon copies, the Hon. the Chief Justice is pleased to order that when the Courts record a type-written deposition or deliver a type-written judgment or order and an application in advance has been made for supply of their copies, the Courts shall get carbon copies made of the depositions/ judgments/ orders and supply it immediately on payment of the prescribed fee chargeable for ordinary copies subject to the conditions prescribed in the Rules relating to preparation and Delivery of Copies.

●

**MEMO NO. FI/6078, II.3.225/ 57, VII DATED THE 9TH AUGUST, 1984
ADDRESSED TO ALL THE DISTRICT JUDGES**

Subject : Payment of Compensation amount to the claimants in M.A. Claim Cases.

I am directed to inform you to observe the following instructions while making payment of compensation amount to the claimants in Motor Accidents Claim Cases :

1. To strictly follow the direction given in C.R. No. 1449/83 (copy enclosed) (Reproduced here)
2. To get the account opened in a Scheduled Bank in the name of the District Judge M.A.C.T. for receipt and disbursement of the amount of compensation through the Bank directly to the claimants as per the direction in the aforesaid order.
3. Instead of showing these transactions in the C.C.D. Registers or in any other existing Register in the Nazarat, shall maintain a separate Register regarding the receipts and disbursement of the amount of compensation relating to claim cases, with necessary particulars.
4. Where there are more than one Tribunal in a Civil District, such account may be made operatable by all the members of the Tribunal, so that in absence of one member, the available members may receive or disburse, as per directions in the awards. I am also directed to add further that the M.A.C.Ts. should ensure payment of the money through Bank directly to the claimants without the involvement of an intermediary.

   This is essential in view of the increase in Complaints that the money does not really reach the claimants inspite of the award.

Registrar

●

CIVIL REVISION NO. 1449 OF 1983
LAXMI DEVI VS. N.M. HASWANI

ORDER IN ORDER SHEET

Dated 29-9-1983

Shri Y.S. Dharmadhikari with shri N.K. Modi for Shri N.M. Haswani. Shri Haswani is also present in person.

Shri Haswani has filed reply to the notice issued to him. Alongwith the reply, Shri Haswani has filed a document, which purports to be copy of a letter sent by Smt. Laxmi Devi to the Hon. the Chief Justice of the High Court. This document has been filed to show an admission of Smt. Laxmi Devi of her having received the amount of Rs. 64,010/- from Shri Haswani. Shri Haswani has stated orally before me that he had handed over the entire amount of Rs. 64,010/- to Smt. Laxmi Devi herself on 29-12-1982, out of which she had then paid him the sum of Rs. 4,010/- as Shri Haswani's remuneration inclusive of clerk-charges. Shri Haswani also states that the amount was actually paid to

him by the M.A.C.T. on 27-12-1982 and he had then kept it in cash with him till he handed over the amount in cash to Smt. Laxmi Devi on 29-12-1982.

In view of this reply of Shri Haswani to the notice given to him and his oral statement made today before me, I direct that a notice be given to Smt. Laxmi Devi requiring her to file her reply stating therein specifically whether the letter dated 23-9-1983 purporting to be from her to the Hon. the Chief Justice, of which a copy has been filed by Shri Haswani, has been sent by her. A copy of this order-sheet together with the reply filed by Shri Haswani be sent to her by registered post for this purpose.

Shri N.S. Kale and Shri D.M. Dharmadhikari who are present are requested to appear as amicus-curiae.

The case be listed for further hearing on 24-10-1983. This order is dictated in the presence of persons aforesaid.

Sd/- **J.S. VERMA**
Judge

LATER

A perusal of the reply filed by Shri N.M. Haswani shows that a substantial part of the total amount of compensation awarded to Smt. Laxmi Devi remains to be paid to her and that Shri N.M. Haswani continues to appear as her counsel in the case.

In order to protect the interest of Smt. Laxmi Devi, it is necessary to ensure payment of the remaining amount of compensation to her directly by a safe method without involving any intermediary, in view of the existing controversy relating to payment of Rs. 64,010/- a part of the compensation awarded to her.

Invariably, in every case of payment of compensation, it is the bounden duty of all M.A.C.Ts to ensure that the amount is paid directly to the claimants without the intervention of any intermediary. **With the existing bank facilities of payment by account payee cheques, demand draft and fixed deposits, there can be no difficulty in doing so.** It is expected that all such payments hereafter shall be made directly to the claimants by the MACTs adopting one of these fool proof methods to avoid the possibility of the victims of a misfortune suffering doubly. This has become necessary in view of the increasing number of such complaints.

It is, therefore, directed that the M.A.C.T., Gwalior shall itself ensure payment of the entire remaining amount of compensation directly to Smt. Laxmi Devi and that the payment shall not be made to her through any agent including Shri N.M. Haswani, who continues to appear for her for this purpose, the remaining amount of compensation shall be paid to her by depositing it in her name in a fixed deposit for three years in a scheduled Bank.

Sd/- **J.S. VERMA**
Judge

MEMO NO. A/2918/ III-2, 3/74-376/ JABALPUR, DATED THE 16TH MARCH, 1989. ADDRESSED TO ALL D.JS.

Sub : Reasons for awarding less sentence.

Of late, the High Court has come across several cases where offence u/s 376 IPC has been committed after December, 1983 and even after holding the accused guilty for the said offence, the trial Judges have failed to award the minimum jail sentence, provided under the Act. Such Judges have also omitted to give any justification in their judgement for not awarding the Statutory minimum punishment.

Kindly take steps to draw pointed attention of all the Additional Sessions Judges under you to the provisions of the Criminal Law (Amendment) Act, 1983 (43 of 83) for strict compliance.

●

D.O. NO. 30 JABALPUR, DTD. 9-1-96 ADDRESSED TO ALL D.JS.

Sub : Regarding holding of condolence meeting in sub-ordinate Court.

The above matter was considered by Hon'ble the Administrative Committee in its meeting held on 24th March 1994 and the following resolution was passed :

"Item No. 4 : To consider the matter relating to condolence observed by the District Bar on the death of Advocates."

"Resolved that condolence meeting in subordinate Courts with the participation of members of subordinate judiciary on the demise of members of the Bar should normally be held only at 4.00 p.m. after completion of the day's work."

I am directed to request you to kindly observe the above resolution strictly in your District.

●

D.O. NO. 3285/III-2-3/74 (F.I.R.) DATED 4th DECEMBER 1995 ADDRESSED TO ALL DISTRICT & SESSIONS JUDGES

Sub : Instructions to Magistrates regarding copy of F.I.R. sent to them by police.

As directed, I have to bring to your notice that Hon'ble the High Court has been pleased to pass the following order on above mentioned subject :

When a Police Officer delivers a copy of the F.I.R., to Courts, the same should be immediately placed before the Magistrate whether he is on the Bench or otherwise and the Magistrate should put his initial and the date on the copy and keep and preserve it and when the challan is filed, the copy of F.I.R. may be placed in the case Records.

●

MEMO NO. B/2/65....../III-2-23/96 JBP. DTD. 29th MARCH 1996 ADDRESSED TO ALL DJS. LETTER NO. 563/3.4.96.

Sub : Cross Cases (Counter Cases) How to try.

It has been observed by the Division Bench of this Hon'ble Court in its judgment dated 2-9-94 passed in Criminal Appeal No. 276/79 (Bench Gwalior) and also by a Single Bench in its order dated 27-9-95 passed in M.Cr.C. No. 169/95 (Bench Gwalior) that despite on well settled position of law on the point some of the Criminal Courts in the State have failed to follow the correct procedure laid down for trial of cross cases.

It is, therefore, directed that cross cases (counter cases) should be tried separately but simultaneously and contemporaneously by the same Court and should be disposed of by separate judgments on the same day.

A Division Bench of the M.P. High Court in ***Hakim Singh Vs. State of M.P.*** (1994 M.P.L.J. 306) held that where cross cases arise out of the same incident it is always desirable in the interest of justice that both the cases should be heard one after the other by the same judge and judgment should be delivered simultaneously after the completion of trial of both the cases to avoid conflicting findings, **though each case should be decided on the evidence led in each case.**

(Please refer to J.O.T.I. Vol. I Part 1 Oct. 1995)

Please also do see ***Mitthulal and other Vs. State of M.P. AIR 1975 SC. 149; Gajendra Singh Vs. State of U.P. AIR 1975 SC. 1703; Kewal Krishan Vs. Surajbhan AIR 1980 SC 1780.***

●

HIGH COURT OF M. P. MEMORANDUM

No. A/ 4266 / III-2-9-/40 pt. 1 F. No. 9

27th June 1998

EXTRACT COPY OF ORDER DATED 30-4-98 PASSED IN MISCELANEOUS APPEAL NO. 217/98 BY HON'BLE JUSTICE SHRI J. G. CHITRE

Litigants get faint, illegible certified copies which they file along with the appeals, revisions and other proceedings. That also causes lot of difficulties to many persons including High Court Judges, Lawyers. District Judges of all Districts should take care to see that litigants should get ligible certified copies of the Judgment/Orders so as to enable them to file it along the appeal so as to allow the High Court to read and understand the Orders or Judgments which are being assailed in the appeal. The Registrar is directed to circulate this order to the District Judges, who are functioning under territorial jurisdiction of this bench so as to avoid any future possible annoyance to the High Court.

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STATE BAR COUNCIL OF M.P. JABALPUR
HIGH COURT CAMPUS, JABALPUR
PIN - 482 007

Subject : Regarding Rule 39 of Section IV of Chapter II of Part VI of Bar Council of India, Rules.

Respected Sirs,

At the very out-set, as resolved by the State Bar Council of Madhya Pradesh, I am hereunder reproducing the Rule.39 of Section IV of Chapter II of Part VI of Bar Council of India, Rules Which deals with the professional conduct and ettquette of Advocates.:

Rule 39.

An Advocate shall not enter appearance in any case in which there is already a Vakalatnama or Memo of appearance filed by an Advocate engaged for a party except with his consent; in case such consent is not produced, he shall apply to the Court stating reasons why the said consent should not be produced and he shall appear only after obtaining the permission of the Court.

2. The State Bar Council of Madhya Pradesh in its Meeting dated 29th January 1995 has expressed its deep concern on the instances frequently taking place, when in a pending case; where already an Advocate is contesting the case on behalf of the party, the second lawyer files his Memo of appearance/vakalatnama on behalf of the same party and makes his appearance in the case on behalf of the same party without taking any consent form the Advocate already engaged by the party. Such instances are not only violation of obligation and of professional conduct and ettiquettes expected from the Lawyers, but also as the malpractices and toutism in the legal profession. Therefore, while expressing its deep concern, the Council has felt it necessary to draw the attention of your goodselves with a request to kindly observe these rules and also instruct the Presiding Officers working under your kind control to observe these rules and not allow the appearance of second Advocate until and unless he submits a written consent of the earlier Advocate engaged by the party or convinces the presiding officer of the Court concerned by stating reasons why such consent is NOT necessary.

3. On behalf of the council, I earnestly draw your kind attention for further needful in the matter.

SECRETARY

Note : H.C. endorsed the letter vide endt. No. A/6079 JBP Dtd. 9-8-1984.

व्यवहारिक लैटिन सुक्तियाँ

1. Bonus judex secundum aeqvum et bonim judicat, et acquitatem stricto juri praefect.
   A good judge decides a case in accordance with equity and state of affairs and prefers evidence to strict legal procedures.
   अच्छा न्यायाधीश नैतिकता एवं तथ्य के अनुरूप विनिश्चय करता है तथा मिष्ठुर, कठोर विधि नियमों की अपेक्षा साक्ष्य को अधिमानता देता है।
2. Boni judicis est causes litium dirimere.
   The duty of a good judge is to extinguish the causes of litigation.
   मुकदमेबाजी के कारणों को दूर करना अच्छे न्यायाधीश का कर्त्तव्य है।
3. Boni judis est judicim sine dilatione mandare executioni.
   It is the duty of a good judge to get the judgment executed without delay.
   अच्छे न्यायाधीश का कर्त्तव्य है कि वह निर्णय का कार्यान्वयन बिना विलंब के करावें।
4. Non refert quid notum sit judice, si notum sit in forma judicii.
   A judge should not allow his personal knowledge of facts to go into consideration of the cause.
   न्यायाधीश को चाहिए कि वह अपनी निजी तथ्य संबंधी जानकारी को विचाराधीन प्रकरण के परे रखे।
5. Optimus judex gui minimum.
   He is the best judge who depends the least on his personal opinion.
   वह न्यायाधीश सर्वोत्कृष्ट है जो अपनी निजी राय पर न्यूनतम अवलंबित है।
6. Odio et amore judex careat.
   A judge should be free form hatred and love.
   न्यायाधीश को घृणा और प्रेम से अनासक्त होना चाहिए।
7. Officia magistratus non debent esse venalia.
   Posts of magistrates (judges) should not be sold.
   विधि सम्मत कृत्य करना ही संप्रभू उचित मानता है। (न्यायादान विक्रय की वस्तु नहीं है।)
8. A ccipere quid justitiam facias not estamm accipere quam extorquere.
   Accceptance of presents for doing justice is not acceptance but extortion.
   न्याय करने के लिए किसी वस्तु का उपहार स्वीकार करना स्वीकरण नहीं है अपितु बलात ग्रहण (उद्दीपन) है।
9. Actus judiciarius corum not judice irritus babetur, de ministeriali autem a guocungue provenit ratum esto.
   Any judicial action has been taken without authority, the same would be

void (ineffective) but if the same is a ministerial action, its validity or invalidity would depend on circumstances.

यदि न्यायिक कार्यवाही बिना किसी प्राधिकार के की गई हों तो वह प्रभावहीन एवं अवैध व शून्य हो जाएगी परंतु यदि वह लिपिकवर्गीय कृत्य हो तो उसकी मान्यता अथवा अमान्यता परिस्थितियों पर निर्भर करेगी।

10. Niltam proprium est imperio Quam legibus.
Nothing is so becoming to an authority as to live according to the law.
विधि सम्मत कृत्य करना ही संप्रभू उचित मानता है।

11. Veritatem qui non librere pronunciate proditor est wertiatis.
One who does not tell the truth clearly defrauds the truth.
सत्य न कहना छल करना है।

12. Nemo praesumitur ludere in extremis.
No one is presumed to trifle at the point of death.
मृत्यु के समय व्यक्ति असत्य नहीं बोलता।

13. Nemo prohibetur pluri bus defensi onibus uti.
No one is prohibited from making use of several defences.
हर प्रकार से प्रतिरक्षा करने का अधिकार प्रत्येक को है।

14. Judex aequitatem semper spectare debet.
A judge should always pay attention to equity.
न्यायाधीश को सदैव साम्या की ओर ध्यान देना चाहिए।

15. Judex ante oculos aequitatem semper habere debet.
A judge should always have an eye on equity.
न्यायाधीश की एक दृष्टि हमेशा साम्या पर होनी चाहिए।

16. Judex bonus nihil ex arbitrio suo faciat, nec prepositione demesticae voluntatis sed juxta leges et jura pronunciet.
A good judge should not do anything arbitrarily or voluntarily rather he should pronounce judgment according to law and regulations.
अच्छे न्यायाधीश को अपनी मनमानी अथवा वैयक्तिक प्रेरणा से कुछ नहीं करना चाहिए। प्रत्युत उसे विधि और न्याय के अनुसार निर्णय देना चाहिए।

17. Judex debet judicare secundum allegata et probata.
A judge should base his decision on allegations and evidence.
न्यायाधीश को अभिकथनों और प्रमाणों के अनुसार निर्णय देना चाहिये।

18. Judicandum est legibus, non exemplise.
Judgment should be given according to laws, and not according to examples.
न्याय–निर्णय हमेशा नियम के अनुसार दिया जाना चाहिए न कि उदाहरण के अनुसार।

●

GENERAL INTELLIGENCE

Several correspondents have written to me to ask what is usually meant by the phrase **"general Intelligence"**.

"What", they say, "is the hall - mark of the intelligent man?"

Now this is not an easy question to answer; in fact, a good deal of difference of opinion exists as to what constitutes general intelligence, or whether there is such a thing at all.

My own view is that there is certainly a quality of the human machine that we can call ***general intelligence as distinct from special brilliance*** in any one direction.

My own opinion, too, is that this quality can best be described as ***a power to adapt oneself with rapidily and accuracy to one's environment.***

It is this power of fitting oneself with case and accuracy into the scheme of things that marks out the man whose intelligence is spread over the whole of his activities.

Such a man has other characteristics, of course. He is not impulsive, nor is he haphazard. He thinks before he acts, he weighs up a situation, and makes up his mind with promptitude. ***And having made up his mind he acts with decision.***

I venture to think that general intelligence can be developed by practice. Everybody who is in possesion of his normal faculties has a measure of intelligence. The way to develop and expand it is to check and stifle those qualities that make for impulse, obstinacy, faulty judgment, and so on.

I always come back to the same point-think, think hard, think with originality and think logically; but think and keep on thinking.

Courtesy : 'SECRETS OF SUCCESS'
by E.R. Thompson

Originality is Simply the Capacity to arrange familiar ideas into new relationships.

दोष निवारण

1. 'जोति' वर्ष 1995–96 एवं 1997 की वार्षिक अनुक्रमणिका के अंकों में अक्षर संयोजन सम्बन्धी दोषों को कृपया इस प्रकार सुधार लें।

   प्रत्येक अनुक्रमणिका के प्रथम पृष्ठ पर ANALEETS के स्थान पर ANALECTS पढ़ा जाना चाहिए।

2. 'जोति' खंड चार भाग तीन जून 1998 में निम्न सुधार कर लें।

   (अ) पृष्ठ क्र. 27 पर प्रश्न क्र. 10 में अ.सा. 2 डॉ. शर्मा के स्थान पर अ.सा. 2 हीरालाल करना है।

   (ब) वहीं पर प्रश्न क्र. 11 एवं 12 में एवं प्रश्न अ.सा. 2 डॉ. शर्मा के वहां अ.सा. 3 डॉ. शर्मा होगा।

   (स) पृष्ठ क्र. 28 पर प्रश्न क्र. 17 के पश्चात नीचे अनुसार प्रश्न क्र. 18 सम्मिलत हो।

   (द) प्रश्न 18 : तुम्हें और कुछ कहना है?

   उत्तर :

   (फ) पृष्ठ क्र. 28 पर ही प्रश्न क्र. 2 में एफ.एल.के वहां एफ.एस.एल. लिखा जाना है।

   (ग) पृष्ठ क्र. 29 पर प्रश्न क्र. 9 में द्वितीय पंक्ति में विदीर्श के स्थान पर विदीर्ण शब्द स्थापित किया जाना है।

दंड प्रक्रिया संहिता में म.प्र. संशोधन

दंड प्रक्रिया संहिता (म.प्र. संशोधन) अधिनियम, 1997 जिसे दिनांक 20 मई 1998 को राष्ट्रपति की अनुमति प्राप्त हुई एवं उक्त अनुमति म.प्र. राजपत्र (असाधारण) में दिनांक 30 मई 1998 को पृष्ठ 525 पर प्रकाशित किया गया। उक्त संशोधन द्वारा दंड प्रक्रिया संहिता की धारा 125 में संशोधन किया गया। इस अधिनियम की धारा 3 द्वारा निम्न संशोधन जोड़ा गया :

धारा 3 मूल अधिनियम की धारा 125 की उपधारा (1) में, शब्द **"पांच सौ रुपये"** के स्थान पर शब्द **"तीन हजार रुपये"** स्थापित किए जाएं।

Section 3 In Sub-section (1) of Section 125 of the Principal Act, for the words **"Five hundred rupees"** the word **"Three thousand rupees"** shall be substituted.

OPINIONS AND VIEW EXPRESSED IN THE MAGAZINE ARE OF THE WRITERS OF THE ARTICLES AND NOT-BINDING ON THE INSTITUTION AND FOR JUDICIAL PROCEEDING.