# JOTI JOURNAL AUGUST - 2014

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## PREVENTION OF CORRUPTION ACT, 1988

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# सम्पादकीय

**प्रदीप कुमार व्यास**
**अतिरिक्त संचालक**

सम्माननीय पाठक गण,

दिनांक 01.07.2014 से नया अकादमिक वर्ष (Academic year) शुरू हो चुका है इस वर्ष का कैलेंडर इस अंक में दिया गया है जिससे आपको इस वर्ष के कार्यक्रमों की जानकारी लग सकेगी।

विगत दो माह में एक 4 दिवसीय कार्यशाला अभिभाषकगण पर रखी गयी थी जो प्रायोगिक रूप से केवल जबलपुर के 45 अभिभाषकगण के लिए रखी गयी थी यह एक नवीन प्रयोग था। इस कार्यशाला में माननीय न्यायमूर्तिगण श्री आर. एस. झॉ साहब, श्री आलोक अराधे जी, श्री एन.के. गुप्ता साहब, श्री टी. के. कौशल साहब, श्री के. के. त्रिवेदी जी, रजिस्ट्रार जनरल माननीय श्री वेद प्रकाश जी, श्री एस. के. अवस्थी साहब, जिला न्यायाधीश (निरीक्षण) उच्च न्यायालय जबलपुर, एडव्होकेट जनरल, श्री आर. डी. जैन साहब, वरिष्ठ अभिभाषक, श्री रवीशचन्द्र अग्रवाल साहब एवं श्री मोहम्मद अली साहब ने प्रेरित उद्‌बोधन दिये, आगे भी ऐसी कार्यशाला किया जाना प्रस्तावित है।

श्री आर. डी. जैन साहब, एडवोकेट जनरल का एक लेख भी इस अंक में प्रकाशित किया जा रहा है जिससे मार्गदर्शन लिया जा सकता है।

इस अंक में माननीय सर्वोच्च न्यायालय द्वारा दिनांक 02.07.2014 को ***अरनेश कुमार विरूद्ध स्टेट ऑफ बिहार, दाण्डिक अपील 1277/2014*** में दिये गये निदेश शामिल किये गये हैं प्रदेश के सभी मुख्य न्यायिक मजिस्ट्रेट/न्यायिक मजिस्ट्रेट से आग्रह है कि वे किसी भी अप्रिय स्थिति से बचने के लिए इन निर्देशों का कड़ाई से पालन करें। मेरे मत में संबंधित जिले के माननीय जिला एवं सत्र न्यायाधीश महोदय के मार्गदर्शन में, मुख्य न्यायिक मजिस्ट्रेट अपने जिले के सभी संबंधित पुलिस अधिकारीगण की एक बैठक आयोजित कर सकते हैं और उसमें इन निर्देशों का अनुपालन सुनिश्चित करने के बारे में आवश्यक दिशा–निर्देश संबंधित को दिये जा सकते हैं।

मेरे मत में इन निर्देशों के कड़ाई से अनुपालन और अनुसंधान के लिए आवश्यक होने पर संदेही की गिरफ्तारी, दोनों के बीच उचित तालमेल बैठाना चाहिए क्योंकि दोनों ही बातें आवश्यक है इस

न्यायदृष्टांत का ***प्रकाशन 2014 (3) क्राइम्स 40 (एस.सी.)*** में भी हो चुका है। आशा है प्रदेश के सभी मजिस्ट्रेट इन निर्देशों को गंभीरता से लेंगे।

इस अंक में मध्यप्रदेश गौवंश प्रतिषेध अधिनियम पर तत्कालीन उपसंचालक महोदय का एक लेख शामिल किया गया है क्योंकि इस अधिनियम के प्रकरण विचारण न्यायालयों में अधिक संख्या में लम्बित हैं। इस लेख में इस अधिनियम की पूरी प्रक्रिया और संबंधित न्यायदृष्टांत बतलाये गये हैं जिनसे मार्गदर्शन लिया जा सकता है।

प्रकाशन की कठिनाइयों के कारण यह द्विमासिक पत्रिका आपके पास समय पर नहीं पहुंच पा रही है लेकिन हमने बेवसाइट पर पत्रिका को लोड कर दिया है जिसे पाठकगण देख सकते हैं।

संस्थान की गतिविधियों और इस पत्रिका के बारे में आपके अमूल्य सुझाव सादर आंमत्रित हैं।

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*आप कुछ भी कर पाने में सक्षम हैं चाहे वह आपकी सोच हो,*
*आपका जीवन हो या आपके सपने हों,*
*सब सच हो सकते हैं आप, जो चाहें वह कर सकते हैं*
*आप इस अनंत ब्रहमांड की,तरह अनंत संभावनाओं से परिपूर्ण हैं*

**–शेड हेल्मस्टेटर**

## APPOINTMENT OF ADDITIONAL JUDGE IN HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Alok Verma has been administered oath of office by Hon'ble the Chief Justice Shri A.M. Khanwilkar, High Court of Madhya Pradesh on 30th June, 2014 as Additional Judge of High Court of Madhya Pradesh in a Swearing-in-Ceremony held in the Conference Hall of South Block of High Court of M.P. at Jabalpur.

Hon'ble Shri Justice Alok Verma was appointed as Additional Judge of the High Court of Madhya Pradesh. Was born on 28th November, 1955 at Chhindwara, Madhya Pradesh. Obtained Bachelors Degree in Science in the year 1975 from Motilal Vigyan Mahavidyalaya, Bhopal. Obtained Post Graduate Degree in M.A. (History) in the year 1977 and LL.B. degree in 1978 from Hamidia Arts, Commerce & Law College, Bhopal.

Joined M.P. Judicial Services as Civil Judge Class II on 22nd September, 1981. Was promoted to the post of Additional District & Sessions Judge in the year 1994.

Worked as Competent Authority, M.P. Housing Board, Deputy Secretary, Law & Legislative Affairs Department, Govt. of M.P., Deputy Registrar, National Judicial Academy, President, District Consumer Forum, Seoni/Balaghat, Commissioner, Departmental Enquiry and also Director Public Prosecution, Bhopal. Worked in different capacities at Mhow, Narsinghpur, Sehore and Ujjain. Served as District & Sessions Judge Sheopur and Satna. Was Director, Public Prosecution, Bhopal prior to elevation.

While working as Judicial Officer, passed intermediate level of examination conducted by the Institute of Company Secretaries of India, New Delhi (ACS, inter) 1986, obtained degree of LL.M. in 2004 and Diploma on "Star: A Systematic Approach to Mediation Strategies" from Pepperdine University, Malibu, State of California, U.S.A., in 2012 with kind permission of Hon'ble High Court.

Took oath as Additional Judge, High Court of Madhya Pradesh on 30.06.2014.

We on behalf of JOTI Journal wish His Lordship a very happy and successful tenure.

***Courtesy: The M.P. High Court Today***

**Training-cum-Refresher Programme for Ubuntu Linux Master Trainers**

**(7th to 9th July, 2014 at MPSJA)**

**Workshop on – Claim cases under Motor Vehicles Act & Key issues relating to appeals & revisions (21st & 22nd June, 2014 at Ujjain)**

# PART - I

## ENHANCING CAPACITY FOR BETTER DELIVERY OF LEGAL SERVICES*

The jurists, politicians and also common men are very much perturbed and concerned with enormous delay which is being caused in disposal of cases before the law courts. Several attempts have been made to speed up the legal systems but it can hardly be said that there is any satisfactory improvement in the condition in spite of several years of independence.

In today's subjects there are two main expressions:-

(i) Capacity for better delivery;

(ii) Legal Services;

When we talk of better delivery system, it implies:-

(i) Just and legally sound decision;

(ii) Decision without delay;

(iii) Satisfaction of a common man in the system.

As regard the term 'Legal Service' we can refer Legal Service Authorities Act, 1987. In this Act the term 'Legal Service' has been defined in Sec. 2(i)(c). According to the definition the expression 'Legal Service' will include:

(i) Rendering of any service in conduct of a case before a court or the tribunal; and

(ii) Giving of advice on legal matters.

Now, let us first consider as to what are the factors which are hindering the process of just decision of the disputes. So far as I understand, the blameworthy conduct of the participants in the process, is responsible for the deterioration in the system.

So far as conduct of a case before a court is concerned, the main participants are litigants, advocates and judge.

The work of an advocate is not business. It is not even a profession in its strict sense, but in fact it is only service. With the passage of time this service element is disappearing and it is resulting in the delay being caused in the disposal of cases.

So far as judges are concerned, they are also to some extent responsible in the matter of delay being caused in deciding the matters, since on account of not taking firm stand and permitting adjournments casually delay is being caused.

So far as litigants are concerned, they are also responsible for delay to a greater extent. In certain cases, the litigants pay money to the Advocates for the purposes of taking adjournments, not permitting matters to be decided finally,

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*Lecture delivered by Shri R.D. Jain, Advocate General, Madhya Pradesh in the Advocates' Training held in the Academy from 10th to 13th July, 2014.

especially in landlord tenant matters, suits for money recovery and similar other matters, one of the parties is always interested in delaying the matter. All these difficulties can be surmounted if effective steps are taken and system of delivery of legal services is ameliorated.

In order to bring significant improvement in this system, the role of different constituents and the necessity to inculcate in them the habit of ensuring early resolution of dispute may be discussed. We have to consider the status of various constituents, need for changing their attitude and the resultant benefit the society will get thereby.

## ROLE OF AN ADVOCATE

Amongst others, the conduct of advocates is to some extent responsible in deterioration of the conditions which we are witnessing these days. The following factors are causing delay in disposal :-

(i) Senior Advocates do not distribute the work amongst the fellow advocates and several cases are adjourned for non-availability of the counsels;

(ii) Absence of keen desire to assist the courts by working in extra time. Working in summer vacations, attending night courts and enjoying lesser holidays may result in early disposal;

(iii) Conduct in the court should also be courteous and submissive so that undue skirmishes and conflicts may be avoided;

(iv) Advocates should have courage to advise the client for mediation, conciliation, etc.

(v) Advocates should not be touchy regarding their status and should avoid unpleasant situation.

## ROLE OF A JUDGE

In the matter of enhancing capacity for better delivery of legal service, the role of a judge also predominates. It is the duty of a judge to try, to settle the issue and for that his conduct should be such that he commands public confidence. A judge should not be spectator or a recording machine and whatever happens before him is scrutinized and recorded accordingly. It should be the quality of a judge to make efforts for the purposes of enhancing better delivery of legal service.

The independent and efficient judicial system is one of the basic structures of our Constitution. The role of a judge becomes utmost importance for mechanizing effective court management. For that purpose, a judge is required to bear the following responsibilities:

(i) Court management. There are following 5 types of persons who visit courts:
   (a) Lawyers: judge must show respect and courtesy towards lawyers and also maintain control over proceedings;
   (b) Witness: protection of witness is primary for every trial. Every judge has obligation to treat them with dignity;

(c) Court staff: the court management cannot succeed without the support of the staff, so the judge should maintain decorum and never create tension in the minds of the staff;

(d) Subordinate officers;

(e) Litigants: judges should not use hostile words towards litigants.

(ii) For all these purposes, the court is required to observe the following:
(a) It should have thorough knowledge of procedure.
(b) It should possess quality of giving proper hearing.
(c) It should handle prayer for adjournment considering all the factors and should not grant adjournments casually.
(d) Time management
(e) Bar management.
(f) Self management
(g) Judicial ethics which require honesty, integrity, judicial aloofness, judicial temperament and impartiality.

(iii) A judge is expected to reduce conflict and foster fraternity. It will help in solving the dispute with promptness.

## ROLE OF LITIGANTS

In every case, one of the parties is interested in delaying process. They spend money for achieving the goal of delaying the proceeding. They forget that they are also suffering in terms of money, time and peace of mind. If good sense prevails over them they may save money and at the same time serve the society by adopting the following methods:

(i) They may take advice from the senior persons about the ultimate fate of their case;

(ii) They may resort to the procedure of arbitration, Lok Adalat, mediation etc. They should know that in litigation one who wins looses everything and one who looses almost dies.

## REQUIREMENT OF PROVIDING LEGAL SERVICE AND THE PROCEDURE FOR THAT

For providing legal services, there are fundamental requirements which are expected to be observed in every case. They are as under:

(i) Providing free legal service to the poverty-stricken people;

(ii) Resorting to alternative dispute resolution system;

(iii) Establishment of institutions for achieving the goal of quick dispensation of justice.

## PROVIDING FREE LEGAL SERVICE

Looking to the plight of the people of our country, we find that people having no means to sustain a comfortable living are spending huge amount in litigations.

There are certain persons who are poverty stricken and who are not in a position to afford the expenditure of litigation. The State is under obligation to give free legal aid to them. In a criminal trial it is obligatory on the judge to provide free legal aid to the accused even if the accused does not ask for it. Of course, if the accused raises objection then it would not be necessary to provide free legal aid. However, judge should inform accused his fundamental right to get free legal aid and if fee legal aid is not provided then to record reasons for not providing the legal aid. In a case ***Raju v. State of M.P., (2012) SCC 553*** this issue was dealt with and it was emphasized that excepting in few types of cases free legal aid is essentially to be provided. The exceptions may be:

(i) Economic offences;

(ii) Offences against the law prohibiting prostitution;

(iii) Cases relating to child abuse.

These are some of the offences relating to social justice and therefore the Apex Court observed that in such cases free legal aid is not obligatory. However, it also requires consideration that a person is deemed to be innocent unless found to be guilty. At the stage when the trial commences it cannot be said with certainty that the offender has committed the offence. As such these exceptions require re-consideration.

A further question would be as to whether providing service of an advocate to the accused is simply a farce or meaningful. It has been observed that in cases where poor people are involved and free legal aid is provided then the services of a senior advocate is seldom available. As such, the purpose of providing legal aid is frustrated. There is yet another aspect of the case that if the service of an advocate of the choice of an accused is provided then it may create a funny situation. Some accused may demand for service of senior lawyer like Ram Jethmalani or Nani Palkhiwala. Similarly, accused are also in the habit of making impractical demands. In the famous case of ***Ajmal Kasab*** **[*Mohamad Ajmal Mohammad Amir Kasab alias Abu Mujahid v. State of Maharastra, (2012) 9 SCC 1],*** a dreaded terrorist who was a foreign national demanded the services of a Pakistani advocate which was refused. Therefore, demand of an advocate should be reasonable and practical and then only such a demand can be met.

## ALTERNATE DISPUTES RESOLUTION (ADR)

For enhancing capacity for better delivery of legal service, methods suggested under various enactments can also be resorted to. In this regard following provisions may be beneficially resorted to under Sec. 89 of CPC 1908:-

(i) Arbitration;

(ii) Conciliation;

(iii) Settlement through Lok Adalat;

(iv) Mediation.

For arbitration, there is Arbitration & Conciliation Act 1996.

Legal Services Authorities Act also provides for resolution through ADR mechanism. Under Sec. 19, Lok Adalat may also provide for forum to settle disputes amicably and without delay.

In Judicial settlement, reference may be made to the suitable person who can be treated as Lok Adalat for the purposes of settling disputes and finally, by mediation also disputes can be settled on the basis of compromise between the parties.

In this regard, there appears to be some confusion in the two methods; namely, judicial settlement and mediation. There appears to be mixing up to these methods. Mediation may be done by the court and judicial settlement by some independent institution. In this regard, provisions have been made in Order 10 Rules 1A, 1B & 1C of CPC. After the pleadings are complete the court directs the parties to opt for settlement outside the court in terms of Sec. 89 (1) CPC. When the parties so desire, the court fixes the date for appearance before the authority as may be opted by the parties and when the effort of resolution fails, matter is again remitted back to the court. It is expected from the courts that they should find out the possibility of settlement. After the pleadings are complete the court is required to consider if the settlement was possible and if it is not possible then reasons for the same may be stated. The following kinds of cases may be processed by these methods:

(i) Cases where public interest litigation is involved such as:
  (a) Encroachment on roads;
  (b) Election to public office or private institution.

(ii) Cases of Probate and letters of administration

(iii) Cases involving allegations of fraud and fabrication.

(iv) Cases involving prosecution for criminal offence.

Suits of civil nature of the following categories may also be resolved by this method:

(i) Cases relating to trade, commerce and contract such as cases between the bankers and customers, developers and builders, etc;

(ii) Cases arising out of strained relationship. In this category matrimonial disputes and cases regarding custody of children etc. may be decided;

(iii) Cases between neighbours relating to encroachment, nuisance etc;

These are cases where relationship between the parties requires continuation. In this category, falls cases regarding disputes between the employer and the employee and members of the society;

(iv) Cases relating to tortuous liability including claims of motor accident etc;

(v) All consumers dispute.

For resolving disputes of this category various steps which are required to be taken by the judge are:

(a) When pleadings are complete, before framing the issue preliminary hearing for appearance of parties should be fixed and judge should understand the nature of dispute;

(b) The court should consider if the case falls within any of the categories which may be resolved by ADR processes and if so how matter may be proceeded with;

(c) The court should also explain the choice of ADR process to the party to enable them to exercise their option;

(d) The court should also ascertain if parties are willing for arbitration of course, the cost of arbitration is to be borne by them. In case the parties do not agree, the court should also advice them regarding the possibility of dispute redressal by Lok Adalat etc;

(e) In case which can be completed in a single sitting the matter may be referred to the Lok Adalat;

(f) If ADR process fails, the court shall proceed for hearing of the suit as early as possible.

## RESORT TO MEDIATION

By mediation a dispute can be resolved in a better way rather than by the procedure of the court. The mediation has following advantages:

(i) The parties formulate realistic solution to their conflict.

(ii) They may communicate with the opposite party in a non-hostile atmosphere.

(iii) Conciliation by mediation can be shaped and adjusted to suit the requirement of the parties.

(iv) The process is simple and confidential.

## OTHER METHODS FOR RESOLVING DISPUTES

The dispute can be resolved out of the court or in the court by applying certain other methods also;

(i) Establishment of fast track court;

(ii) Establishment of mobile court;

(iii) Lok Adalat;

(iv) Plea bargaining.

However, it is also to be understood that the courts and the parties should understand and distinguish the cases which are referable to the mechanism of ADR and which are to be considered by court. It is not that for every case matter may be decided by the ADR process. Similarly, it is also to be understood that every case does not need handling by the courts only. In this regard, courts should be aware of the pros and cons of adopting one or the other method.

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# म.प्र. गौवंश प्रतिषेध अधिनियम – एक परिचय

**अवधेश कुमार गुप्ता**
**तत्कालीन उपसंचालक,**
**व्यवहार न्यायाधीश वर्ग प्रथम, सागर**

म.प्र. गौवंश वध प्रतिषेध अधिनियम, 2004 साम्प्रदायिक सद्भाव एवं शांति बनाए रखने एवं गौवंश के सदस्यों के वध का प्रतिषेध करने के उद्देश्य से अधिनियमित किया गया है। इस अधिनियम में वर्ष 2011 में संशोधन किया गया है।

**इस अधिनियम में कुल 18 धाराऐं हैं।** अधिनियम के समस्त प्रावधान किसी न किसी रूप में गौवंश वध प्रतिषेध से संसक्त है। इस अधिनियम की धारा–2 निर्वचन खण्ड है जिसमें इस अधिनियम में प्रयुक्त विविध पदों को परिभाषित किया गया है। अधिनियम की धारा–2 (ख) के अधीन गौवंश में गाय, सांड, बैल और गाय के बछड़े सम्मिलित किए गए हैं। धारा–2 (क) के अनुसार गौमांस से आशय गौवंश जिसके वध का प्रतिषेध इस अधिनियम के अधीन किया गया है, के मांस से है। इसके अधीन गौवंश की मृत्यु कारित करने की कोई भी पद्धति के अतिरिक्त ऐसी शारीरिक उपहति या अंगभंग भी सम्मिलित किया गया है जिसके परिणाम स्वरूप सामान्य अनुक्रम में गौवंश की मृत्यु हो जाएगी। वर्ष 2011 में संशोधन द्वारा गौवंश की अप्राकृतिक मृत्यु कारित करने के आशय से कोई कार्य करना भी इसमें सम्मिलित किया गया है। इस संशोधन के परिणामतः खेतों में पशुओं से फसल की रक्षा हेतु लगाए गए सुअर बम से गौवंश की मृत्यु भी वध की परिधि में आए हैं।

## गौवंश के संबंध में दायित्व

इस अधिनियम की धारा 4, 5, 6, 6–क, 6–ख के अधीन प्रत्येक व्यक्ति पर गौवंश के वध न करने, गौमांस न रखने एवं उसका परिवहन न करने, वध हेतु गौवंश का परिवहन न करने, बिना अनुज्ञा गौवंश का निर्यात न करने तथा बिना अनुज्ञा म.प्र. से होकर गौवंश का परिवहन न करने का दायित्व अधिरोपित किया गया है। इनमें से किसी भी दायित्व के उल्लंघन, उसके प्रयत्न और उसके दुष्प्रेरण को अधिनियम की धारा 9 के अधीन दण्डनीय बनाया गया है।

सुसंगत प्रावधान निम्नवत् है :–

**''धारा–4 – गौवंश के वध का प्रतिषेध** – कोई भी व्यक्ति किन्हीं भी साधनों से किसी गौवंश का न तो वध करेगा न वध करवाएगा और न उन्हें वध के लिए देगा और न उन्हें वध के लिए दिलवाएगा।''

इस धारा के अधीन चार बातें प्रतिषिद्ध की गई हैं :–

(1) गौवंश का स्वयं वध करना;

(2) किसी अन्य व्यक्ति से वध करवाना;

(3) गौवंश का वध करने के लिए उसे स्वयं किसी अन्य को देना;

(4) किसी अन्य व्यक्ति से ऐसे वध करने हेतु गौवंश दिलवाना;

वर्ष 2011 में इस धारा को विस्तार देने हेतु ''किन्हीं भी साधनों से'' पद इस धारा में अंतर्विष्ट किया गया है। फलतः गौवंश का वध किस साधन से किया गया है यह प्रश्न महत्वपूर्ण नहीं रह गया है।

**''धारा–5 गौमांस रखने का प्रतिषेध और उसके परिवहन का प्रतिषेध –** कोई भी व्यक्ति इस अधिनियम के उल्लंघन में वध किए गए किसी गौवंश के गौमांस को अपने कब्जे में नहीं रखेगा या उसका परिवहन नहीं करेगा।''

इस धारा के अधीन गौमांस (Beef) को अपने आधिपत्य में रखने का प्रतिषेध किया गया है। वर्ष 2011 के संशोधन के पूर्व गौमांस के परिवहन का प्रतिषेध नहीं था। वर्तमान में गौमांस का परिवहन भी प्रतिषिद्ध कर दिया गया है।

परिवहन (Transport) एवं परिवाहक (Transporter) को अधिनियम की धारा **2 (ड.क)** तथा **2 (ड. ख)** में परिभाषित किया गया है, सुसंगत प्रावधान निम्नवत् है–

(ड.क) ''परिवहन'' से अभिप्रेत है, **सिवाय उस स्थिति के, जबकि ऐसा परिवहन वास्तविक कृषि या अनुषांगिक प्रयोजनों के लिए किया जा रहा हो,** गौवंश को एक स्थान से दूसरे स्थान पर या तो किसी यान द्वारा या पैदल ले जाना;

(ड.ख) ''परिवाहक'' से अभिप्रेत है और उसमें सम्मिलित है वह व्यक्ति, –

(एक) जो गौवंश या गौमांस का परिवहन करने वाले **यान का स्वामी है,** यदि गौवंश या गौमांस उसके अनुदेश से या उसकी जानकारी में बुक किया गया है;

(दो) जो गौवंश या गौमांस का परिवहन करने वाले **यान का तत्समय प्रभारी तथा उसका सहायक है;**

(तीन) जो गौवंश तथा गौमांस का परिवहन करने वाली **परिवहन कंपनी का तत्समय प्रभारी** है, यदि बुकिंग उसके अनुदेश से या उसकी जानकारी में की गई है;

(चार) जो किसी **परिवहन फर्म का भागीदार** है, यदि बुकिंग उसके अनुदेश से या उसकी जानकारी में की गई है।''

इस अधिनियम के अधीन अभियोज्य परिवहन में गौवंश के एक स्थान से दूसरे स्थान तक परिचालन को सम्मिलित किया गया है, चाहे वह किसी यान द्वारा हो या पैदल। मात्र एक अपवाद ''वास्तविक कृषि एवं आनुषांगिक प्रयोजनों हेतु'' है। कोई परिवहन इस अधिनियम द्वारा अनुध्यात् परिवहन नहीं है यह प्रमाणित करने हेतु प्रतिरक्षा पक्ष द्वारा ऐसी साक्ष्य अभिलेख पर जानी चाहिए जिससे साबित हो कि गौवंश का परिवहन कृषि या उससे जुड़े किसी प्रयोजन हेतु किया जा रहा था तथा ऐसा परिवहन सद्भाविक (Bonafide) था।

**धारा–6 क** में गौवंश का निर्यात प्रतिषिद्ध किया गया है तथा 6 ख में मध्यप्रदेश से होकर गौवंश के परिवहन हेतु अनुज्ञा पत्र की अपेक्षा की गई है। यह धाराएं निम्नवत है

**''6 क. गौवंश के निर्यात का प्रतिषेध और अनुज्ञापत्र का मंजूर किया जाना–**

(1) **कोई भी व्यक्ति, जिसमें परिवाहक भी सम्मिलित है,** किसी गौवंश का स्वयं या अपने एजेंट, नौकर द्वारा या उसके निमित्त कार्य करने वाले किसी अन्य व्यक्ति के द्वारा **उपधारा (2) में यथा उपबंधित अनुज्ञापत्र के बिना** राज्य के किसी स्थान से राज्य के बाहर के किसी स्थान को निर्यात नहीं करेगा या निर्यात नहीं करवाएगा;

(2) सक्षम प्राधिकारी, ऐसी रीति में, जैसा कि विहित किया जाए, **कृषि या डेयरी उद्योग के प्रयोजनों के लिए या किसी पशु–मेले में भाग लेने के लिए और इसी प्रकार के प्रयोजनों के लिए जो वध के प्रयोजन से भिन्न हों,** मध्यप्रदेश से गौवंश का निर्यात करने के लिए इस निमित्त आवेदन प्रस्तुत किए जाने के सात दिन के भीतर अनुज्ञापत्र मंजूर कर सकेगा;

(3) उपधारा (2) के अधीन अनुज्ञापत्र की वांछा करने वाला कोई व्यक्ति, जो सक्षम प्राधिकारी के आदेश से व्यथित है, आदेश की प्राप्ति की तारीख से तीस दिन के भीतर संभागीय आयुक्त को आवेदन कर सकेगा, और संभागीय आयुक्त ऐसा आवेदन किया जाने पर, किसी आदेश की शुद्धता, उसकी वैधता या औचित्य के बारे में अपना समाधान करने के प्रयोजन के लिए मामले के अभिलेख मंगा सकेगा और उनका परीक्षण कर सकेगा तथा ऐसा आदेश पारित कर सकेगा जो वह न्याय संगत और उचित समझे और संभागीय आयुक्त द्वारा पारित आदेश अंतिम होगा और किसी सिविल न्यायालय में प्रश्नगत नहीं किया जाएगा।

**6 ख. मध्यप्रदेश से होकर गौवंश के परिवहन का प्रतिषेध और अभिवहन अनुज्ञापत्र का दिया जाना– कोई भी व्यक्ति, जिसमें परिवाहक भी सम्मिलित है,** मध्यप्रदेश राज्य से होकर गौवंश का परिवहन नहीं करेगा और यदि कोई व्यक्ति, जिसमें परिवाहक भी सम्मिलित है, एक राज्य से दूसरे राज्य को मध्यप्रदेश राज्य से होकर किसी गौवंश का परिवहन करना चाहता है तो वह सक्षम प्राधिकारी से ऐसी रीति में, जैसी कि विहित की जाए, अभिवहन अनुज्ञापत्र प्राप्त करेगा।''

धारा–6 में वध के प्रयोजन से गौवंश का परिवहन प्रतिषिद्ध किया गया है। यह प्रावधान निम्नवत् है –

## ''धारा – 6 वध के लिए गौवंश के परिवहन पर प्रतिषेध –

कोई भी व्यक्ति जिसमें परिवाहक भी सम्मिलित है, किसी गौवंश का, इस अधिनियम के उपबंधों के उल्लंघन में, उसके वध के प्रयोजन के लिए या यह जानते हुए कि उसका इस प्रकार वध किया जाएगा या उसके वध किए जाने की संभावना है, राज्य के भीतर या राज्य के बाहर, स्वयं या अपने एजेंट, नौकर द्वारा, या उसके निमित्त कार्य करने वाले किसी अन्य व्यक्ति के द्वारा, परिवहन नहीं करेगा या उसे परिवहन के लिए नहीं देगा या उसका परिवहन नहीं करवाएगा।''

इस धारा के अधीन धारा–2 (ख) में यथा परिभाषित गौवंश के वध हेतु अथवा ऐसी संभावना के अधीन म.प्र. राज्य के भीतर या राज्य के बाहर स्वयं/अभिकर्ता द्वारा/नौकर द्वारा/किसी अन्य व्यक्ति द्वारा परिवहन किया जाना/परिवहन करवाना/परिवहन हेतु देना प्रतिषिद्ध किया गया है। इस धारा का मूल प्रयोजन गौवंशीय पशुओं को वध के प्रयोजन से म.प्र. के भीतर एवं बाहर ले जाने पर रोक लगाना है। यह उल्लेखनीय है कि ऐसे परिवहन हेतु देने वाले व्यक्ति को संबंधित गौवंशीय पशु के वध की संभावना का ज्ञान मात्र इस धारा को आकर्षित करने के लिए पर्याप्त है।

धारा–9 पूर्वोक्त कर्त्तव्यों के उल्लंघन हेतु दण्ड विहित किया गया है। यह प्रावधान निम्नवत् है –

**''धारा–9 शास्ति :–** (1) जो कोई धारा 4 के उपबंधों का **उल्लंघन करेगा** या **उल्लंघन का प्रयास करेगा** या उसका **दुष्प्रेरण करेगा** वह कारावास से जो एक वर्ष से कम का नहीं होगा, किन्तु जो सात वर्ष तक का हो सकेगा और जुर्माने से, पांच हजार रूपये से कम का नहीं होगा, दण्डित किया जाएगा।

(2) जो कोई धारा 5, 6, 6–क, और 6–ख के उपबंधों का उल्लंघन करेगा या उल्लंघन का प्रयास करेगा या उसका दुष्प्रेरण करेगा, वह कारावास से जो छह मास से कम का नहीं होगा, किन्तु जो तीन वर्ष तक का हो सकेगा और जुर्माने से, जो पांच हजार रूपये से कम का नहीं होगा, दण्डित किया जाएगा।''

इस धारा के अधीन धारा 4, 5, 6, 6–क तथा 6–ख के अधीन अधिरोपित दायित्व के उल्लंघन/उल्लंघन के प्रयास/उसके दुष्प्रेरण को दण्डनीय बनाया गया है।

संक्षेप में अधिनियम के अधीन दण्डनीय अपराध एवं विहित दण्ड निम्नवत् है –

| **क्र.** | **अपराध** | **धारा** | **दण्ड** | **प्रकृति** |
|---|---|---|---|---|
| 1. | गौवंश का वध (कार्य/प्रयत्न/दुष्प्रेरण) | (धारा – 4 सहपठित धारा 9 (1)) | कारावास जो 1 वर्ष से कम नहीं होगा तथा जो सात वर्ष तक का हो सकेगा और ऐसे जुर्माना से जो पांच हजार से कम नहीं होगा। | संज्ञेय तथा अजमानतीय |
| 2. | गौमांस का आधिपत्य में पाया जाना अथवा गौमांस का परिवहन (कार्य/प्रयत्न/दुष्प्रेरण) | (धारा – 5 सहपठित धारा 9 (2)) | कारावास जो 6 माह से कम नहीं होगा किन्तु तीन वर्ष तक का हो सकेगा और जुर्माना जो पांच हजार से कम नहीं होगा। | '' |
| 3. | परिवाहक या किसी अन्य व्यक्ति द्वारा गौवंश का वध हेतु परिवहन (कार्य/प्रयत्न/दुष्प्रेरण) | (धारा – 6 सहपठित धारा 9 (2)) | कारावास जो 6 माह से कम नहीं होगा किन्तु तीन वर्ष तक का हो सकेगा और जुर्माना जो पांच हजार से कम नहीं होगा। | '' |
| 4. | बिना अनुज्ञा गौवंश का निर्यात करना (कार्य/प्रयत्न/दुष्प्रेरण) | (धारा – 6 क सहपठित धारा 9 (2)) | कारावास जो 6 माह से कम नहीं होगा किन्तु तीन वर्ष तक का हो सकेगा और जुर्माना जो पांच हजार से कम नहीं होगा।'' | '' |
| 5. | बिना अभिवहन अनुज्ञा के गौवंश का मध्यप्रदेश से होकर परिवहन करना (कार्य/प्रयत्न/दुष्प्रेरण) | (धारा–6 ख सहपठित धारा 9 (2)) | कारावास जो 6 माह से कम नहीं होगा किन्तु तीन वर्ष तक का हो सकेगा और जुर्माना जो पांच हजार से कम नहीं होगा। | '' |

# आरोपों की विरचना

## धारा–4 के उल्लंघन हेतु आरोप का प्रारूप

आपने दिनांक ..... को ..... बजे या उसके लगभग (या दिनांक ..... से दिनांक ... ..... के मध्य की किसी अवधि में किसी समय) स्थान ..... या उसके समीप गौवंश का वध किया/वध करवाया/वध करने के लिए दिया/दिलवाया और इस प्रकार आपने ऐसा कार्य किया जो मध्य प्रदेश गौवंश वध प्रतिषेध अधिनियम, 2004 की धारा–4 का उल्लंघन है तथा इसी अधिनियम की धारा–9 (1) के अधीन दंडनीय अपराध है एवं इस न्यायालय के संज्ञान के अंतर्गत है।

## धारा–5 के उल्लंघन हेतु आरोप का प्रारूप

आपने दिनांक ..... को ..... बजे या उसके लगभग स्थान ..... या उसके समीप वध किए गए गौवंश का मांस अपने आधिपत्य में रखा/का परिवहन किया और इस प्रकार आपने ऐसा कार्य किया जो मध्य प्रदेश गौवंश वध प्रतिषेध अधिनियम, 2004 की धारा–5 का उल्लंघन है तथा इसी अधिनियम की धारा–9 (2) के अधीन दंडनीय अपराध है एवं इस न्यायालय के संज्ञान के अंतर्गत है।

## धारा–6 के उल्लंघन हेतु आरोप का प्रारूप

आपने दिनांक ..... को ..... बजे या उसके लगभग स्थान ..... या उसके समीप गौवंश वध किए जाने के प्रयोजन के लिए या यह जानते हुये कि उसका वध किए जाने की संभावना है मध्यप्रदेश राज्य के भीतर/बाहर स्वयं (या अपने अभिकर्ता या सेवक द्वारा या अपने लिए कार्य करने वाले किसी व्यक्ति द्वारा) परिवहन किया (या परिवहन के लिए दिया/परिवहन करवाया) और इस प्रकार आपने ऐसा कार्य किया जो मध्य प्रदेश गौवंश वध प्रतिषेध अधिनियम, 2004 की धारा–6 का उल्लंघन है तथा इसी अधिनियम की धारा–9 (2) के अधीन दंडनीय अपराध है एवं इस न्यायालय के संज्ञान के अंतर्गत है।

## धारा–6–क के उल्लंघन हेतु आरोप का प्रारूप

आपने दिनांक ..... को ..... बजे या उसके लगभग (या दिनांक .....से दिनांक .. ..... के मध्य की किसी अवधि में किसी समय) स्वयं (या अपने अभिकर्ता या सेवक द्वारा या अपने लिए कार्य करने वाले किसी व्यक्ति द्वारा) अधिनियम कि धारा–क (2) के अधीन यथा उपबंधित अनुज्ञा–पत्र के बिना गौवंश का ..... (मध्यप्रदेश स्थित स्थान का नाम) से ..... (मध्यप्रदेश के बाहर स्थित स्थान का नाम) को निर्यात किया/करवाया और इस प्रकार आपने ऐसा कार्य किया जो मध्य प्रदेश गौवंश वध प्रतिषेध अधिनियम, 2004 की धारा–6 क (1) का उल्लंघन है तथा इसी अधिनियम की धारा–9 (2) के अधीन दंडनीय अपराध है एवं इस न्यायालय के संज्ञान के अंतर्गत है।

## धारा–6–ख के उल्लंघन हेतु आरोप का प्रारूप

आपने दिनांक ..... को ..... बजे या उसके लगभग (या दिनांक ..... से दिनांक ..... के मध्य की किसी अवधि में किसी समय) गौवंश का विहित अभिवहन अनुज्ञापत्र

के बिना मध्यप्रदेश राज्य से होकर परिवहन किया और इस प्रकार आपने ऐसा कार्य किया जो मध्य प्रदेश गौवंश वध प्रतिषेध अधिनियम, 2004 की धारा–6 ख का उल्लंघन है तथा इसी अधिनियम की धारा–9 (2) के अधीन दंडनीय अपराध है एवं इस न्यायालय के संज्ञान के अंतर्गत है।

**नोट –** धारा– 5, 6, 6–क, एवं 6–ख के उपबंधों के उल्लघंन का प्रयत्न अथवा दुष्प्रेरण धारा (9) 2 के अधीन दंडनीय अपराध है। इस हेतु यथा परिवर्तन के साथ आरोप विरचित किया जाना चाहिए।

## विचारण

**धारा –9** के अधीन दण्डनीय अपराध का दण्ड प्रक्रिया संहिता के अध्याय 10 में विहित वारंट मामलों के विचारण की रीति से विचारण किया जा सकता है।

**धारा–13–क** के अधीन सबूत का भार अभियुक्त पर डाला गया है। यह प्रावधान निम्नवत् है–

**''13–क सबूत का भार अभियुक्त पर होगा** – जहां कोई व्यक्ति, इस अधिनियम के उपबंधों के अधीन किसी अपराध के लिए अभियोजित किया जाता है, वहां यदि अभियोजन प्रथमतः उसके विरूद्ध प्रथम दृष्ट्या साक्ष्य प्रस्तुत करने की स्थिति में है तो वह साबित करने का भार उस व्यक्ति पर होगा कि उसने इस अधिनियम के उपबंधों के अधीन कोई अपराध कारित नहीं किया है।''

इस प्रकार जहां अभियोजन मामले में अभियुक्त के विरूद्ध प्रथम दृष्ट्या साक्ष्य प्रस्तुत करने की स्थिति में है वहां अपराध की उपधारणा की जायेगी तथा यह साबित करने का भार अभियुक्त पर होगा कि उसने कोई अपराध नहीं किया है। यह धारा अभियोजन पक्ष को साक्ष्य प्रस्तुति के दायित्व से उन्मुक्त नहीं करती है। अभियुक्त पर यह साबित करने का भार कि उसने कोई अपराध नहीं किया है तभी स्थानांतरित होगा जब अभियोजन पक्ष अभिलेख पर सफलतापूर्वक इतनी विश्वास योग्य साक्ष्य प्रस्तुत कर दे कि अभियुक्त के विरूद्ध अभियोज्य अपराध के मूलभूत तत्व विद्यमान है।

## प्रतिभूति

**धारा –10** के अधीन इस अधिनियम के अंतर्गत दण्डनीय अपराध संज्ञेय तथा अजमानतीय घोषित किए गए है। अतएव इस अधिनियम के अधीन दण्डनीय अपराधों में पुलिस दोषी व्यक्ति को बिना वारंट के गिरफ्तार करने के लिए सशक्त है।

इस अधिनियम के अधीन दण्डनीय अपराध अजमानतीय श्रेणी के है। अतएव दोषी व्यक्ति को दण्ड प्रक्रिया संहिता के अध्याय 33 की धारा–437 के प्रावधानों के अधीन प्रतिभूति पर स्वतंत्र किया जा सकता है।

सामान्य रूप से गौवंश से संबंधित अपराधों के मामले में जन आक्रोश एवं जन भावनाओं के साथ ही लोक प्रशान्ति भंग होने का खतरा आसन्न रहता है। ऐसी स्थिति के विद्यमान होने पर जन सामान्य, सामान्य जनता तथा राज्य के हित को भी अभियुक्त को प्रतिभूति पर स्वतंत्र किये जाते समय विचार में लिया जाना चाहिए। यह सामान्य रूप से स्थापित है कि अजमानतीय अपराध में प्रतिभूति पर स्वतंत्र किये जाने के पूर्व न्यायालय को जनता, समाज एवं राज्य के हित को दृष्टिगत रखना तथा अभियुक्त के हित, सामान्य जनता लोक हित के मध्य संतुलन को बनाये रखना आवश्यक है। प्रतिभूति आवेदन

के निराकरण के समय इन कारकों को भी विचार में लिया जाना चाहिए। राज्य विरूद्ध कैप्टन जगदीश सिंह, ए.आई.आर. 1962 एस.सी. 253 के मामले में यह प्रतिपादित किया गया है कि प्रतिभूति प्रदान किये जाने के प्रश्न के विनिश्चय के समय निम्नलिखित कारकों को विचार में लेना चाहिए–

''अपराध की गंभीरता एवं प्रकृति, साक्ष्य का स्वरूप, अभियुक्त से संबंधित विशिष्ट परिस्थितियाँ, विचारण के समय अभियुक्त के अनुपस्थित हो जाने की युक्तियुक्त संभावना, साक्षियों को प्रभावित करने की प्रत्याशंका, जनता का बृहत्तर हित एवं ऐसे ही अन्य कारक''।

यही सिद्धांत राज्य विरूद्ध जसपाल सिंह गिल, ए.आई.आर. 1984 एस.सी. 1503 के न्यायदृष्टांत में माननीय उच्चतम न्यायालय ने प्रतिपादित किया है।

## संपत्ति का निराकरण

म.प्र. गौवंश वध प्रतिषेध अधिनियम की धारा 11 (5) में अभिगृहीत संपत्ति के अधिहरण हेतु प्रावधान किया गया है। धारा – 11 (5) में यह प्रावधित किया गया है कि धारा–4, 5, 6, 6–क तथा 6–ख के किसी उल्लंघन की दशा में पुलिस किसी यान, गौवंश और गौमांस को अभिगृहीत करने के लिए सशक्त होगी और जिला मजिस्ट्रेट ऐसे यानों, गौवंश तथा गौमांस का ऐसी रीति से अधिहरण (Confiscation) करेगा जैसा कि विहित किया जाए। अधिनियम के अधीन राज्य सरकार द्वारा निर्मित नियमों में अधिहरण हेतु कोई विशिष्ट प्रक्रिया विहित नहीं की गई है और न ही अधिनियम के किसी प्रावधान के अधीन न्यायालय को अभिगृहीत संपत्ति का व्ययन करने से रोका गया है अतएव यदि जिला मजिस्ट्रेट द्वारा ऐसे किसी यान या गौवंश के अधिहरण की कार्यवाही प्रारंभ कर दी है तो भी विचारण न्यायालय द्वारा ऐसे यान या गौवंश को आवेदक को अंतरिम अभिरक्षा में प्रदान किया जा सकता है, क्योकि अधिनियम में न्यायिक मजिस्ट्रेट की शक्ति पर कोई विनिर्दिष्ट निर्बंधन आरोपित नहीं किया गया है। इस संबंध में यह अधिनियम वन अधिनियम, म.प्र. आबकारी अधिनियम, वन्य जीवन संरक्षण अधिनियम, आवश्यक वस्तु अधिनियम, आदि से भिन्न है। जिनमें विनिर्दिष्ट प्रावधान द्वारा न्यायालय द्वारा सम्पत्ति को अंतरिम अभिरक्षा में दिए जाने को निर्बंधित किया गया है (कृपया देखें–मो. इस्लाम विरूद्ध म.प्र. राज्य, आई.एल.आर. 2013 म.प्र. 2265 2013 इंडला म.प्र. 98।)

अभिगृहीत संपत्ति के व्ययन हेतु दण्ड प्रक्रिया संहिता के सामान्य सिद्धांत ही प्रयोज्य है। दण्ड प्रक्रिया संहिता के अध्याय 34 की धारा 451, 452, एवं 457 से संपत्ति के व्ययन के प्रावधान विहित है। यह उल्लेखनीय है कि धारा 451 के प्रावधान जांच एवं विचारण के समय संपत्ति की अंतरिम अभिरक्षा से संबंधित है जबकि धारा 452 के प्रावधान विचारण की समाप्ति पर अभिगृहीत संपत्ति के अंतिम निराकरण से संबंधित है। धारा 457 के प्रावधान अन्वेषण के अनुक्रम में अभिगृहीत संपत्ति की अंतरिम अभिरक्षा से संबंधित है।

संपत्ति के निराकरण को सामान्य रूप से दो भागों के विभाजित किया जा सकता है :–

1. अन्वेषण, जांच एवं विचारण के समय अभिगृहीत संपत्ति का व्ययन।
2. विचारण की समाप्ति पर संपत्ति का निराकरण।

1. अधिनियम के अधीन अभिगृहीत सम्पत्ति में गौवंशीय पशु एवं वाहन सामान्य रूप से अभिगृहीत किये जाते है। जहां तक अभिगृहीत वाहन का संबंध है, उसे अन्वेषण, जांच विचारण एवं विचारण की समाप्ति पर उसके पंजीकृत स्वामी को प्रदान कर दिया जाना चाहिए। अभिगृहीत वाहन के निराकरण के संबंध में सुन्दर भाई अम्बालाल देसाई विरूद्ध गुजरात राज्य, ए.आई.आर. 2003 एस.सी. 638 के न्याय दृष्टांत में प्रतिपादित सिद्धांत सामान्य रूप से प्रयोज्य है।

जहां तक अभिगृहीत पशुओं का संबंध है, उनकी अंतरिम अभिरक्षा के प्रश्न के निराकरण के समय गौवंशीय पशुओं की सुरक्षा पर ध्यान देना चाहिए तथा उनके वध की आशंका को भी ध्यान में रखा जाना आवश्यक है। अभिगृहीत पशुओं की अंतरिम अभिरक्षा एक अस्थाई व्यवस्था है, जिसका मुख्य उद्देश्य विचारण के लंबित रहने तक संपत्ति की रक्षा करना है या उसे सुरक्षित रखना है। अंतरिम अभिरक्षा के अनुक्रम में धारक का आधिपत्य न्यायालय के प्रतिनिधि के रूप में होता है, किसी स्वतंत्र अधिकार के रूप में नहीं। धारक न्यायालय द्वारा अधिरोपित शर्तों एवं निष्पादित बंध पत्र से आबद्ध है।

माननीय उच्चतम न्यायालय द्वारा प्रबंधक पिंजर पोल विरूद्ध चाक राम मोराजी नट, ए.आई.आर. 1998 सी.आर.एल.जे. 4082 के मामले में पशुओं की अंतरिम अभिरक्षा के संबंध में ध्यातव्य कारकों का निर्देश दिया गया है। इन्हीं सिद्धांतों को माननीय म.प्र. उच्च न्यायालय द्वारा नब्बू विरूद्ध म.प्र. राज्य, 2005 आई.एल.आर. (एम.पी.) 733 = 2003 (3) एम.पी.एच.टी. 348 = 2005 (3) एम.पी.एल.जे. 512 तथा सोनाराम विरूद्ध म.प्र. राज्य अपील क्रमांक 304/2006 (दिनांक 11.05.2006) के मामलों में गौवंश के संबंध में अनुसरित किया गया है। यह सिद्धांत निम्नवत् है :–

''सामान्य रूप से किसी भी संस्था द्वारा गौवंश को अभिरक्षा में प्राप्त करने के संबंध में पशुओं के स्वामी पर अधिमानी अधिकार नहीं है। गौवंश की अंतरिम अभिरक्षा उसके स्वामी, जो कि अधिनियम के अधीन अभियोजन का सामना कर रहा है, अथवा किसी संस्था को प्रदान की जाए, इसके विनिश्चय में निम्नलिखित कारक सुसंगत होंगे :–

1. स्वामी के विरूद्ध आक्षेपित अपराध की प्रकृति एवं गंभीरता;
2. क्या आक्षेपित अपराध प्रथम अपराध है अथवा वह पूर्व में भी ऐसे ही अपराध के लिए दोष सिद्ध किया जा चुका है;
3. स्वामी का प्रथम अभियोजन होने पर अभियोजन के अनुक्रम में गौवंश की अभिरक्षा के संबंध में स्वामी का दावा बेहतर समझा जाएगा;
4. निरीक्षण एवं अभिग्रहण के समय गौवंश जिस स्थिति में पाया गया था, वह स्थिति;
5. गौवंश को पुनः वध के अध्यधीन किये जाने की संभावना।''

अंतरिम अभिरक्षा में देते समय धारक पर अपेक्षा के अनुसार निम्नलिखित शर्तें अधिरोपित की जा सकती है यह शर्तें विभिन्न मामलों में माननीय उच्च न्यायालय द्वारा आरोपित की गई है –

1. सुपुर्दगीनामा के साथ समान राशि की सक्षम प्रतिभूति ली जाये जो कि आवेदक के निवास स्थान के किसी व्यक्ति की हो सकेगी।
2. आवेदक पशुओं को वध के प्रयोजन से न तो हटायेगा और न ही विक्रय करेगा।

3. विचारण के लंबन के अनुक्रम मे आवेदक किसी भी रीति से पशुओं को अंतरित नहीं करेगा।

4. आवेदक पशुओं को संबंधित आरक्षी केन्द्र की सीमाओं से नहीं हटायेगा।

5. आवेदक संबंधित आरक्षी केन्द्र के माध्यम से प्रत्येक सप्ताह न्यायालय को पशुओं की स्वास्थ्य संबंधी जांच किसी पशु चिकित्सक द्वारा करा कर उसका प्रतिवेदन प्रेषित करेगा तथा यह प्रतिवेदन संबंधित आरक्षी केन्द्र द्वारा प्रतिवेदन की विशिष्टियों से अपनी असहमति तथा अपनी स्वतंत्र एवं पृथक जांच के साथ न्यायालय को प्रेषित किये जाने के अधीन होगा।

6. पशुओं को सुपुर्दगी पर प्राप्त करने के पूर्व आवेदक अपने व्यय पर प्रत्येक पशु पर उसकी पहचान का पृथक चिन्ह आरक्षी केन्द्र के भारसाधक अधिकारी द्वारा अंकित कराएगा तथा उसका विवरण न्यायालय को प्रेषित किया जायेगा एवं विवरण की एक प्रति संबंधित आरक्षी केन्द्र द्वारा अपने अभिलेख में रखी जायेगी।

7. किसी भी पशु की मृत्यु की दशा में आवेदक संबंधित आरक्षी केन्द्र एवं न्यायालय को इस तथ्य की सूचना देने हेतु आबद्ध होगा तथा न्यायालय के निर्देशानुसार ही उसका अंतिम संस्कार किया जा सकेगा।

8. आवेदक की ओर से किसी भी शर्त के व्यतिक्रम पर संबंधित आरक्षी केन्द्र पशुओं को अपनी अभिरक्षा में लेने तथा विधि के अनुसार अग्रसर होने हेतु सशक्त होगा।

9. अंतरिम अभिरक्षा पर दिये जाने के पूर्व किसी गौशाला, कांजी हाउस या संस्था द्वारा पशुओं के अनुरक्षण में किये गये व्यय का भुगतान आवेदक द्वारा किया जायेगा।

(कृपया अवलोकन करें सोनाराम विरूद्ध म.प्र. राज्य, क्रिमिनल अपील नं. 304/2006 दिनांक 11.05. 2006, नब्बू विरूद्ध म.प्र. राज्य, 2006(3) एम.पी.एच.टी. 348, मो. शफी विरूद्ध आंध्रप्रदेश राज्य, आपराधिक पुनरीक्षण क्रमांक 662/2006 दिनांक 20.02.2006 (आंध्रप्रदेश उच्च न्यायालय), राजू सिंह विरूद्ध उ.प्र. राज्य 2002 सी.आर.एल.जे. 124)

यदि न्यायालय की यह संतुष्टि होती है कि पशुओं को वध के प्रयोजन से परिवहन किया जा रहा था तो वह आवेदक को पशुओं की अंतरिम अभिरक्षा अस्वीकार कर सकता है। न्यायालय की संतुष्टि मामले के घटनाक्रम के अधीन हो सकती है। उदाहरणार्थ एक मामले में पशुओं को अत्यंत दयनीय अवस्था में ले जाया जा रहा था। कुल 27 पशुओं में से 4 पशु मृत पाए गए पशुओं के क्रय के कोई दस्तावेज प्रस्तुत नहीं किए गए। मामले यह प्रकट होना पाया गया कि पशुओं को वध हेतु ले जाया जा रहा था तथा अंतरिम अभिरक्षा अस्वीकार किया जाना उचित अवधारित किया गया। (मो. अजीम खान विरूद्ध म.प्र. राज्य. आई.एल.आर. 2010 एम.पी. 1187)

## संपत्ति का अंतिम निराकरण –

विचारण की समाप्ति पर यदि अभियुक्त दोषमुक्त किया जाता है तब पशु अभियुक्त को प्रदान कर दिया जाना चाहिए परंतु यदि विचारण का परिणाम अभियुक्त की दोषसिद्धि में होता है तो पशु अभियुक्त को नहीं दिया जाना चाहिए। ऐसे पशु किसी गौशाला या अन्य संस्था को प्रदान किये जा सकते हैं।

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## DIRECTIONS ISSUED BY HON'BLE THE APEX COURT IN *ARNESH KUMAR V. STATE OF BIHAR & ANR.* (CRIMINAL APPEAL NO. 1277 OF 2014, DATED 02.07.2014)

Our endeavour is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/ producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

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# MADHYA PRADESH STATE JUDICIAL ACADEMY, HIGH COURT OF M.P., JABALPUR
## TRAINING CALENDAR FOR THE ACADEMIC YEAR 2014-2015 (JULY 2014–JUNE 2015)

## PART-A: REGULAR TRAINING PROGRAMMES

**(Programmes conducted under the funds provided by the State Government for Training)**

| S. No. | Name of the Programme | Target Group | Date & Duration | Venue | Theme |
|---|---|---|---|---|---|
| 1. | First Refresher Course | Civil Judges Class II of 2012 Batch | 14.07.2014 to 18.07.2014 (five days) | MPSJA | Civil Judges Class II of 2012 Batch has to be impar ted five days Refresher Course for continuous judicial education purpose as per the approved scheme |
| 2. | Second Refresher Course | Civil Judges Class II of 2011 Batch | 22.07.2014 to 26.07.2014 (five days) | MPSJA | As at S.No. 1 |
| 3. | Advance Course for Additional District Judges | 16 ADJs promoted in the year 2014 | 01.08.2014 to 07.08.2014 (one week) | MPSJA | In this year, 16 ADJs were promoted. At this level, Judges are supposed to deal with not only sessions trials but also act as appellate/ revisional Court for which a short term Institutional Training as continuous judicial education is required. |
| 4. | Foundation Course for Additional District Judges | Newly appointed ADJs from the Bar | 01.08.2014 to 14.08.2014 (two weeks) | MPSJA | In this year, 16 ADJs were promoted. At this level, Judges are supposed to deal with not only sessions trials but also act as appellate/ revisional Court for which a short term Institutional Training as continuous judicial education is required. |

| S. No. | Name of the Programme | Target Group | Date & Duration | Venue | Theme |
|---|---|---|---|---|---|
| 5. | Induction Training Programme (First Phase) | Newly Appointed Civil Judges Class II of 2014 Batch | 01.09.2014 to 27.09.2014 (four weeks) | MPSJA | In this year, High Court has selected 40 candidates for interview for the post of Civil Judges Class II and MPSJA has to impar t Induction Training after their appointment as per the approved Training Scheme, in three phases after regular interval of field training |
| 6. | Induction Training Programme (Second Phase) | Newly Appointed Civil Judges Class II of 2014 Batch | 15.12.2014 to 10.01.2015 (four weeks) | MPSJA | After the First Phase Induction Training, these Civil Judges are imparted field training for a period of three months. Thereafter, these Judges have to be imparted second phase induction training |
| 7. | Induction Training Programme (Third Phase) | Newly Appointed Civil Judges Class II of 2014 Batch | 13.04.2015 to 09.05.2015 (four weeks) | MPSJA | After the Second Phase Induction Training, these Civil Judges are imparted field training for a period of three months. Thereafter, these Judges have to be imparted Third Phase Induction training |

## PART- B: Under the approved Scheme of Grant-in-Aid recommended by the XIII Finance Commission

**(Programmes to be conducted under the Grant-in-aid recommended by FC-XIII)**

| S. No. | Name of the Programme | Target Group | Date & Duration | Venue | Theme |
|---|---|---|---|---|---|
| **Specialized Training Programmes** | | | | | |
| 8. | Workshop on – Role of various Stakeholders under the Juvenile Justice (Care & Protection of Children) Act, 2000 | 40 members consisting of Principal Magistrates, Members of the Juvenile Justice Board, Juvenile Police Officers, Child Welfare Officer, Member of Child Welfare Committee, Warden/ Incharge of various homes | 30.08.2014 (one day) | MPSJA | The Institute had organized many programmes on Juvenile Justice for Principal Magistrates and Members of the Juvenile Justice Boards. However, as per the feedback received from them, other stakeholders like police officers of Child Welfare Committee, Warden/ Incharge of Special Homes constituted under the Act may also be made participants in this programme so that the functionaries of the Juvenile Justice Board can work smoothly with the spirit of Juvenile Justice. Therefore, two programmes on Juvenile Justice may be designed and organized in which these people may be imparted training |
| 9. | Specialized Training Programme at State Forensic Science Laboratory, Sagar | Newly appointed/ promoted Judges of HJS Cadre | 20.09.2014 to 22.09.2014 (three days) | Sagar | Specialized Training Programmes were organized at Forensic Science Laboratory, Sagar during last two years. Till the end of the last financial year, six programmes were held at Forensic Science Laboratory, Sagar in which 240 participants were imparted training. The remaining Judges of the HJS cadre will be imparted training in this Academic Year. |

| S. No. | Name of the Programme | Target Group | Date & Duration | Venue | Theme |
|---|---|---|---|---|---|
| 10. | Specialized Training Programme at State Medico-Legal Institute, Bhopal | Newly appointed/ promoted Judges of HJS Cadre | 15.11.2014 to 17.11.2014 (three days) | Bhopal | Specialized Training Programmes were organized at Medico-Legal Institute, Bhopal during last three years. Till the end of the last financial year, nine programmes were held at Medico Legal Institute, Bhopal, in which 270 Judges of HJS cadre participated. As some Judges have been promoted, they will be imparted training in this Academic Year |
| 11. | Two Days Course on – Cyber Laws | 40 Judges of all cadre | 15.11.2014 & 16.11.2014 (two days) | MPSJA | The issues relating to cyber crime has increased tremendously and in most of the cases, evidence in form of electronic/digital evidence has been adduced. Therefore, to address these issues, there is an urgent need to provide adequate training to the judges of the subordinate judiciary of the State. |
| 12. | Advance Course Programme for the Presiding Officers of the Labour Courts | Presiding Officers of Labour Courts & Judicial Officers posted on deputation | 22.11.2014 & 23.11.2014 (two days) | MPSJA | As per the resolution of meeting of Hon'ble Special Committee held on 08.10.2013, two days Advance Course Programme for the Presiding Officers of the Labour Courts has to be conducted for acquainting them with the nuances of the Labour Laws and to bring them into the mainstream. |
| 13. | Specialized Training Programme for Advocates | Advocates enrolled in the Bar | 06.12.2014 & 07.12.2014 (two days) | Gwalior | As directed by Hon'ble the Chief Justice, educational programmes have to be conducted for the Advocates to improve their knowledge base |

| S. No. | Name of the Programme | Target Group | Date & Duration | Venue | Theme |
|---|---|---|---|---|---|
| 14. | Workshop on – Role of various Stakeholders under the Juvenile Justice (Care & Protection of Children) Act, 2000 | 40 members consisting of Principal Magistrates, Members of the Juvenile Justice Board, Juvenile Police Officers, Child Welfare Officer, Member of Child Welfare Committee, Warden/ Incharge of various homes | 24.01.2015 (one day) | MPSJA | As at S.No. 8 |
| 15. | Specialized Training Programme for Advocates | Advocates enrolled in the Bar | 07.02.2015 & 08.02.2015 (two days) | Bhopal | As directed by Hon'ble the Chief Justice, educational programmes have to be conducted for the Advocates to improve their knowledge base |
| 16. | Two Days Course on – Cyber Laws | 40 Judges of all cadre | 07.02.2015 & 08.02.2015 (two days) | MPSJA | The issues relating to cyber crime has increased tremendously and in most of the cases, evidence in form of electronic/ digital evidence has been adduced. Therefore, to address these issues, there is an urgent need to provide adequate training to the judges of the subordinate judiciary of the State. |

| S. No. | Name of the Programme | Target Group | Date & Duration | Venue | Theme |
|---|---|---|---|---|---|
| **Regional Training Programme** | | | | | |
| 17. | Two days Workshop on –<br>(i) Key issues of recent laws relating to Crime against Women & Children<br>(ii) Key issues relating to appeals and revisions | 40 Judges of HJS cadre | 05.07.2014 & 06.07.2014 (two days) | Bhopal | Crime against women has been on the rise and through this workshop an attempt is made to focus on various issues on the subject to enable the Judges to work with proper mindset and sensitization as they have a pivotal role in this respect and are expected to respond to the needs of the society |
| 18. | Two days Workshop on – Key issues under the Prevention of Corruption Act, 1988 | All Special Judges of the State appointed under the Act | 23.08.2014 & 24.08.2014 (two days) | Jabalpur | The idea behind organizing this Workshop is to equip the Special Judges dealing cases under the Act with requisite knowledge of various legal issues and skills for effective and expeditious dispensation of justice in cases involving corruption by public servants |
| 19. | Two days Workshop on – Land Acquisition Act, 1894 | 40 Judges of HJS Cadre | 11.10.2014 & 12.10.2014 (two days) | Indore | As there has been a flood of cases under this Act, the Judges are required to be sensitized in this particular area of law |
| 20. | Two days Colloquium on – Issues and Challenges relating to cases under the Electricity Act | Special Judges dealing with cases under the Act | 08.11.2014 & 09.11.2014 (two days) | Bhopal | As there has been a flood of cases under this Act, the Judges are required to be sensitized in this particular area of law |

| S. No. | Name of the Programme | Target Group | Date & Duration | Venue | Theme |
|---|---|---|---|---|---|
| 21 | Two days Workshop on – Land Acquisition Act, 1894 | 40 Judges of HJS Cadre | 17.01.2015 & 18.01.2015 (two days) | Bhopal | As at S.No.17 |
| 22 | Two days Workshop on – Family Laws | 40 Judges of HJS cadre | 31.01.2015 & 01.02.2015 (two days) | MPSJA | As there has been a flood of cases under Family Laws, the Judges are required to be sensitized in this particular area of law |
| 23 | Two days Workshop on –<br>(i) Claim Cases under Motor Vehicles Act<br>(ii) Key issues relating to appeals and revisions | Judges of the State appointed under the Act | 21.02.2015 & 22.02.2015 (two days) | MPSJA | As there has been a flood of cases under this Act, the Judges are required to be sensitized in this particular area of law |
| **Tours to other States/Foreign Country for Study of Best Practices** | | | | | |
| 24 | Study of District Courts at State of Karnataka (Bangalore) | 5 Judges of all cadre | 05.10.2014 to 11.10.2014 (one week) | Courts at Karnataka | In the Academic Years 2011-2012, 2012-2013 and 2013-2014 some groups of Judges of District Judiciary were sent to Maharasthra (Mumbai, Pune and Nashik) Delhi, Gujarat (Ahmedabad, Bharuch and Surendranagar), Tamil Nadu (Madurai, Chennai and Coimbatore) and Kerala (Ernakulum, Allapuzha and Kotttayam). Hence, this year also Judges of District Judiciary will be sent to some other States and Singapore to study the best practices on the basis of productivity of such States/Country |

| S. No. | Name of the Programme | Target Group | Date & Duration | Venue | Theme |
|---|---|---|---|---|---|
| 25. | Study of District Courts at State of Delhi | 5 Judges of all cadre | 09.11.2014 to 15.11.2014 (one week) | Courts at Delhi | |
| 26. | Study of Courts at Singapore | 5 Judges of all cadre | Schedule is to be finalized | | |
| **Tours to other States/Foreign Country for Study of Best Practices** | | | | | |
| 27. | Two days Programme for Training of Court Staff at District Judiciary Level in the following districts:<br>1. Chhatarpur<br>2. Chhindwara<br>3. Dewas<br>4. Guna<br>5. Gwalior<br>6. Hoshangabad<br>7. Indore<br>8. Raisen<br>9. Rajgarh (Biora)<br>10. Sehore<br>11. Shajapur<br>12. Shivpuri<br>13. Vidisha<br>14. Mandleshwar | Court Staff of the District Judiciary | Closed Saturday or Sunday as per the discretion of the District & Sessions of the concerned district | Concerned District Headq-uarters | Being an important part of the District Judiciary, the working skills of the staff have to be enhanced, for which such type of trainings were taken up from the last two years |

# PART - II
## NOTES ON IMPORTANT JUDGMENTS

**166. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 16 and 45**
**CIVIL PROCEDURE CODE, 1908 – Sections 9 and 20**
**CONTRACT ACT, 1872 – Sections 23 and 28**

**(i) Civil Court – Jurisdiction – Suit to declare deed as void – Deed in dispute containing arbitration clause providing that arbitration would be at Singapore – Also providing that parties can seek equitable relief in courts at Singapore or other courts having jurisdiction on parties – Deed executed in India at place "B" – Fraudulent inducement to executed deed took place at "B" – Deed was rescinded at place "B" – Cause of action having arisen at place "B", Court at "B" had jurisdiction to entertain suit – Principle of comity of courts has no application as there was no foreign decision or law to which deference had to be shown.**

**(ii) Court when need not refer parties to suit to arbitration – Arbitration becoming inoperative or incapable of performance – Allegations of fraud made against arbitration agreement – Does not make it inoperative or incapable of performance – Court cannot refuse to refer matter to arbitration on the ground that court alone can decide such issues.**

**(iii) Arbitration agreement restricting right of parties to approach court – Not opposed to public policy – Cannot also be said to be in restraint of legal proceedings in view of Exception 1 of section 28 of the Contract Act.**

**(iv) Arbitration dispute – Arbitration agreement contained in facilitation deed – All disputes touching upon or relating to facilitation deed as well as its scope stipulated to be referred to ICC for arbitration – Dispute as to whether deed was as a result of misrepresentation and fraud – Falls within the scope of arbitration agreement – Ought to be referred to arbitrator.**

**World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd.**

**Judgment dated 24.01.2014 passed by the Supreme Court in Civil Appeal No. 895 of 2014, reported in AIR 2014 SC 968**

**Extracts from the judgment:**

We are unable to accept the first contention of the learned senior counsel for the appellant that as Clause 9 of the Facilitation Deed provides that any party may seek equitable relief in a court of competent jurisdiction in Singapore, or such other court that may have jurisdiction over the parties, the Bombay High Court had no jurisdiction to entertain the suit and restrain the arbitration

proceedings at Singapore because of the principle of Comity of Courts. In Black's Law Dictionary, 5th Edition, Judicial Comity, has been explained in the following words:

> "Judicial comity. The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect."

Thus, what is meant by the principle of "comity" is that courts of one state or jurisdiction will give effect to the laws and judicial decisions of another state or jurisdiction, not as a matter of obligation but out of deference and mutual respect. In the present case no decision of a court of foreign country or no law of a foreign country has been cited on behalf of the appellant to contend that the courts in India out of deference to such decision of the foreign court or foreign law must not assume jurisdiction to restrain arbitration proceedings at Singapore. On the other hand, as has been rightly submitted by the learned senior counsel for the respondent, under Section 9 of the CPC, the courts in India have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. Thus, the appropriate civil court in India has jurisdiction to entertain the suit and pass appropriate orders in the suit by virtue of Section 9 of the CPC and Clause 9 of the Facilitation Deed providing that courts in Singapore or any other court having jurisdiction over the parties can be approached for equitable relief could not oust the jurisdiction of the appropriate civil court conferred by Section 9 of the CPC. We find that in para 64 of the plaint in suit No. 1828 of 2010 filed before the Bombay High Court by the respondent, it is stated that the Facilitation Deed in which the arbitration clause is incorporated came to be executed by the defendant at Mumbai and the fraudulent inducement on the part of the defendant resulting in the plaintiff entering into the Facilitation Deed took place in Mumbai and the rescission of the Facilitation Deed on the ground that it was induced by fraud of defendant has also been issued from Mumbai. Thus, the cause of action for filing the suit arose within the jurisdiction of the Bombay High Court and the Bombay High Court had territorial jurisdiction to entertain the suit under Section 20 of the CPC.

Applying the principle of separability to the facts of this case, the respondent rescinded the Facilitation Deed by notice dated 25.06.2010 to the appellant on the following grounds stated in the said notice by its lawyers:

> "1. Reference is made to the Deed for the Provision of Facilitation Services dated March 25, 2009 (the "Deed") between World Sport Group (Mauritius) Limited ("WSGM") and our client. Under the Deed, which is styled as a facilitation agreement, our client agreed to pay WSGM "facilitation" fees for the "facilitation" services stated thereunder to have been provided by WSGM. The underlying

consideration for the payments by our client to WSGM, in fact were the representation made by WSGM that: (a) WSGM, had executed in India ("BCCI") whereunder WSGM had been unfettered Global Media Rights ("the said rights"), including the Indian Subcontinent (implying thereby as natural corollary that the earlier Media Rights agreement dated March 15, 2009 between WSGM and BCCI along with its restrictive conditions had been mutually terminated); (b) WSGM could thereafter relinquish the Media Rights for the Indian Subcontinent in favour of our client for said valuable consideration to enable our client to enter into a direct agreement with BCCI; (c) the said rights were subsisting with WSGM at the time of execution of the Deed i.e., March 25, 2009; and (d) WSGM had relinquished those rights in favour of BCCI to enable BCCI and our client to execute a direct Media Rights License Agreement for the Indian Subcontinent.

2. BCCI has recently brought to the attention of our client that the Global Media Rights agreement between WSGM and BCCI dated March 23, 2009 does not exist and in terms of Clause 13.5 of the agreement dated March 15, 2009, after expiry of the 2nd extension the media rights had automatically reverted to BCCI at 3 a.m. on March 24, 2009 and thus at the time of execution of the Deed, WSGM did not have any rights to relinquish and/or to facilitate the procurement of Indian Subcontinent media rights for the IPL from BCCI and thus no facilitation services could have been provided by WSGM.

3. In view of the above, it is evident that the representation by WSGM that WSGM relinquished its Indian Subcontinent media rights for the IPL in favour of our client to pay the "facilitation" fees under the Deed.

4. Taking cognizance of the same, BCCI's Governing council at its meeting held at Mumbai, India on June 25, 2010 appropriately executed an amendment to Media Rights License Agreement dated March 25, 2009 between BCCI and our client by deleting, inter alia clause 10.4 thereof.

5. On its part, and in view of the false representations and fraud played by WSGM, the Deed is voidable at the option of our client and thus our client rescinds the Deed with immediate effect."

The ground taken by respondent to rescind the Facilitation Deed thus is that the appellant did not have any right to relinquish and/or to facilitate the procurement of Indian Subcontinent media rights for the IPL from BCCI and no

facilitation services could have been provided by the appellant and therefore the representation by the appellant that the appellant relinquished its Indian subcontinent media rights for the IPL in favour of the respondent for which the appellant had to be paid the facilitation fee under the deed was false and accordingly the Facilitation Deed was voidable at the option of the respondent on account of false representation and fraud. This ground of challenge to the Facilitation Deed does not in any manner effect the arbitration agreement contained in Clause 9 of the Facilitation Deed, which is independent of and separate from the main Facilitation Deed does not get rescinded as void by the letter dated 25.06.2010 of the respondent. The Division Bench of the Bombay High Court, therefore, could not have refused to refer the parties to arbitration on the ground that the arbitration agreement was also void along with the main agreement.

Thus, the arbitration agreement does not become "inoperative or incapable of being performed" where allegations of fraud have to be inquired into and the court cannot refuse to refer the parties to arbitration as provided in Section 45 of the Act on the ground that allegations of fraud have been made by the party which can only be inquired into by the court and not by the arbitrator. ***N. Radhakrishnan v. Maestro Engineers & Ors., 2010 AIR SCW 331*** and ***Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak, AIR 1962 SC 406*** were decisions rendered in the context of domestic arbitration and not in the context of arbitrations under the New York convention to which Section 45 of the Act applies. In the case of such arbitrations covered by the New York Convention, the Court can decline to make a reference of a dispute covered by the arbitration agreement only if it comes to the conclusion that the arbitration agreement is null and void, inoperative or incapable of being performed, and not on the ground that allegations of fraud or misrepresentation have to be inquired into while deciding the disputes between the parties.

The Division Bench of the High Court has further held that Clause 9 of the Facilitation Deed insofar as it restricted the right of the parties to move the courts for appropriate relief and also barred the right to trial by a jury was void for being opposed to public policy as provided in Section 23 of the Indian Contract Act, 1872 and was also void for being an agreement in restraint of the legal proceedings in view of Section 28 of the said Act. Parliament has made the Arbitration and Conciliation Act, 1996 providing domestic arbitration and international arbitration as a mode of resolution of disputes between the parties and Exception 1 to Section 28 of the Indian Contract Act, 1872 clearly states that Section 28 shall no render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred. Clause 9 of the Facilitation Deed is consistent with this policy of the legislature as reflected in the Arbitration and Conciliation Act, 1996 and is saved by Exception 1 to Section 28 of the Indian Contract Act, 1872. The right to jury

trial is not available under Indian laws. The finding of the Division Bench of the High Court, therefore, that Clause 9 of the Facilitation Deed is opposed to public policy and is void under Sections 23 and 28 of the Indian Contract Act, 1872 is clearly erroneous.

The Division Bench of the High Court has also held that as allegations of fraud and serious malpractices on the part of the appellant are in issue, it is only the court which can decide these issues through furtherance of judicial evidence by either party and these issues cannot be properly gone into by the arbitrator. As we have already held, Section 45 of the Act does not provide that the court will not refer the parties to arbitration if the allegations of fraud have to be inquired into. Section 45 provides that only if the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed, it will decline to refer the parties to arbitration.

We make it clear that we have not expressed any opinion on the dispute between the appellant and the respondent as to whether the Facilitation Deed was voidable or not on account of fraud and misrepresentation. Clause 9 of the Facilitation Deed states inter alia that all actions or proceedings arising in connection with, touching upon or relating to the Facilitation Deed, the breach thereof and/or the scope of the provisions of the Section shall be submitted to the ICC for final and binding arbitration under its Rule of Arbitration. This arbitration agreement in clause 9 is wide enough to bring this dispute within the scope of arbitration.

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**167. CIVIL PROCEDURE CODE, 1908 – Section 11**

***Res judicata* – Correctness or otherwise of earlier judgment – Not relevant for applying rule of *res judicata* – Only exception to the rule is fraud.**

**R. Unnikrishnan and another v. V. K. Mahanudevan and others**

**Judgment dated 10.01.2014 passed by the Supreme Court in Civil Appeal No. 3468 of 2007, reported in AIR 2014 SC 1201**

**Extracts from the judgment:**

In ***Mathura Prasad v. Dossibai, AIR 1971 SC 2355,*** this Court held that for the application of the rule of res judicata, the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue is on purely of fact decided in the earlier proceedings by a competent Court must in any subsequent litigation between the same parties be recorded as finally decided and cannot be re-opened. That is true even in regard to mixed questions of law and fact determined in the earlier proceeding between the same parties which cannot be revised or reopened in a subsequent proceeding between the same parties. Having said that we must add that the only exception to the doctrine of res-judicata is "fraud" that vitiates the decision and renders it a nullity. This Court has in more than one decision held that fraud renders any judgment,

decree or orders a nullity and non-est in the eyes of law. In ***A.V. Papayya Sastry v. Government of A.P., AIR 2007 SC 1546*** fraud was defined by this Court in the following words.

> "Fraud may be defined as an act of deliberate deception with the design of securing some unfair or underserved benefit by taking undue advantage of another. In fraud one gains at the loss and cost of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.

To the same effect is the decision in ***Raju Ramsingh Vasave v. Mahesh Deorao Bhivapurakar and Ors., 2008 AIR SCW 6184,*** where this Court held:

> "If a fraud has been committed on the court, no benefits therefrom can be claimed on the basis of thereof or otherwise."

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**168. CIVIL PROCEDURE CODE, 1908 – Section 96 and Order 22 Rule 4**

**(i) Appeal filed against deceased plaintiff, maintainability of – Appeal is not maintainable and is a nullity – Further held, provisions of Order 22 Rule 4 CPC would not apply for substitution of heirs of sole deceased plaintiff, if he died prior to the filing of appeal.**

**(ii) Delay in filing appeal, condonation of – Fabricated facts misleading in nature stated in the application and they are inconsistent with the affidavit filed in support of the application – Applicant also did not come to the Court with clean hands – Held, application for condonation liable to be rejected.**

**Brijesh Kumar Gupta v. Mahendra Kumar Jain (deceased) through LRs.**

**Judgment dated 11.10.2013 passed by the High Court of M.P. in Second Appeal No. 352 of 2013, reported in 2014 (1) MPLJ 665**

**Extracts from the judgment:**

The contention of the respondent that plaintiff had expired on 18.03.2013 the appeal filed on 04.04.2013 against the judgment and decree dated 28.02.2013 against a dead person ought to have been held maintainable. The Court ought to have allowed the application under Order 12 Rule 4, instead of returning the memo of appeal. In the opinion of this Court, the argument is misconceived and misdirected.

A bare perusal reveals that Order 22 Rule 4 of Civil Procedure Code has no application to the facts in hand. The said provision will be applicable only in such eventuality where during the pendency of proceedings the sole respondent had died. It follows that the said provision will not apply if death of the sole respondent occurred prior to the filing of the appeal. The Division Bench of this Court in the case of ***Hindusthan General Insurance Society Ltd. v. Kedarnarayan, AIR 1956 Madhya Bharat 76*** has ruled as under:

> "The substitution of the heirs of the deceased defendant in a suit or respondent in appeal is permissible where the defendant or respondent was alive at the date of the institution. A suit or appeal filed against a sole defendant or respondent who was dead on the date of the institution is a nullity and the Court has no jurisdiction to substitute the heirs of the deceased under O.22 Rule 4 Civil Procedure Code or add their names in exercise of the powers conferred upon it by Order 1 Rule 10 Civil Procedure Code."

Besides, in another case ***Smt. Agrawal wd/of G.S. Agrawal and another v. Arya Vidhya Sabha and another, 2000 (3) MPLJ 412*** the Court has held that if defendant had died before the institution of suit, the provision of Order 22 Rule 4 will not apply. Legal representative of sole defendant cannot be brought on record by way of amendment. The entire proceedings are nullity and void. Suit filed against a dead person cannot be deemed to be proper suit. Hence, this Court is of the opinion that the submission made in this behalf is devoid of substance and deserves to the rejected.

Furthermore, the First Appellate Court while passing the order dated 04.05.2013 in Civil Appeal No. 16A/2013 did not commit any mistake to return the appeal memo to the appellant under Order 41 Rule 3 of Civil Procedure Code with liberty to present the same in accordance with law, excluding the period from the date of institution of appeal till passing of the order dated 04.04.2013 to 04.05.2013 as excluded for computation of limitation.

In the instant case, the trial Court has passed the decree on 28.02.2013 in favour of the respondent plaintiff Mahendra Kumar Jain. Mahendra Kumar Jain died on 18.03.2013 whereas the first appeal was filed on 04.04.2013. As such there was no occasion for bringing the legal representatives of Mahendra Kumar Jain during the pendency of the suit. The case law cited viz. ***Ramjeewan v. Chand Mohammed, AIR 1976 Rajasthan 65*** wherein Second Appeal was filed against one Chand Mohammad, who had died during the pendency of First Appeal in the lower Appellate Court and his legal representatives have been brought on record. By mistake Cause Title in the Lower Appellate Court was, however, not amended and the decree sheet was drawn mentioning the name of Chand Mohammad as appellant instead of his legal representatives. This error resulted into filing the appeal by H.M. Parikh against Chand Mohammad dead person. Under these circumstances, the Court found that the description of respondent

was due to bona fide mistake committed and in advertence showing to dead person as respondent and it is held that mistake committed was curable.

Facts in case cited in ***Henjangam Kukki v. Taichung Tangkhul, AIR 1972 Manipur 3 (V-59 C-2)*** are entirely distinguishable hence, the same cannot be pressed into service.

In view of the aforesaid, enunciation of law as propounded by this High Court, I am of the opinion that Order 22 Rule 4 has no application to the facts in hand inasmuch as, the suit having been decreed on 28.02.2013, the respondent plaintiff died on 18.03.2013 and thereafter on 04.04.2013 appeal was filed. Hence, appeal filed against a dead person was nullity and not maintainable as rightly held by the ADJ, Gwalior vide order dated 04.05.2013.

In the opinion of this Court, the appellant has not come to the Court with clean hands, he has not been vigilant in pursuing the matter to file appeal. He lacked bona fide, fabricated facts misleading in nature while filing application under section 5 of the Limitation Act. The averments made in the application and the description made in the memo of appeal and affidavit filed in support of the application under section 151 of Civil Procedure Code on 16.09.2013 are contrary in as much as in the application he pleaded to have retired from service whereas in the affidavit he mentioned as aged 45 years and occupation in service.

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**169. CIVIL PROCEDURE CODE, 1908 – Section 100**
**COURT FEES ACT, 1870 – Section 7 and Schedule II Article 17**
**Suit for declaration of sale deed as null and void and not binding on non-executant plaintiff – Court fees, payment of – If a person not a party to the sale deed seeking declaration of a sale deed as null and void and the same is not binding on him, he is only required to pay fixed court fees – Where executant to the sale deed seeks conciliation of the sale deed as null and void, he is required to pay *ad valorem* court fees.**

## Baijnath Singh and another v. Jagdish and others

**Judgment dated 22.04.2014 passed by the High Court of M.P. in Second Appeal No. 307 of 2004, reported in 2014 (3) MPHT 163**

**Extracts from the judgment:**

It has been found that plaintiffs have sought declaration of sale deed dated 13/3/1995 as null and void. Admittedly, the plaintiffs were not party to the aforesaid sale deed and therefore, plaintiffs were not required to affix ad valorem court fees on the value of the sale deed shown. Instead fix court fees was rightly paid and affixed by the plaintiffs. As such the trial Court had pecuniary jurisdiction up to Rs. 50,000/- to try the suit. Of course, if the plaintiffs were party to the sale deed, they were required to pay ad valorem

court fees in terms of Section 7(iv) (d) of the Court Fees Act, but that is not the case here and

therefore, the trial Court has committed error of law having dismissed the suit for want of pecuniary jurisdiction. At this stage, reference may also be made over to the judgment of Supreme Court in the case of ***Suhrid Singh alias Sardool Singh v. Randhir Singh and others, (2010) 12 SCC 112***; wherein; in para 7 it has been held as below:-

> "7. Whether the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently, A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fees on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17 (iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fees as provided under Section 7 (iv) (c) of the Act."

Thus, in the light of aforesaid judgment, if the person non-executant seeking declaration of a sale deed as null and void and the same is not binding on him, he is only required to pay the fix court fees whereas, in a case where a person/executant to the sale deed seeks cancellation of the sale deed as null and void, he is required to pay ad valorem court fees.

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**170. CIVIL PROCEDURE CODE, 1908 – Sections 151 and 152**

**Decree, rectification of – If an error is committed by a party in the pleading, it does not amount to an error committed by the Court while drawing the decree – Further held, if the plaintiff has asked for something which is granted and has omitted to ask for something which was**

**not included in the decree, then no mistake is committed on the part of the Court and same cannot be corrected in exercise of powers either under section 151 or 152 CPC.**

## Muniya Bai v. Golman and others

**Judgment dated 25.10.2013 passed by the High Court of M.P. in Civil Revision No. 86 of 2012, reported in 2014 (1) MPLJ 607**

**Extract from the judgment:**

On a perusal of the plaint contained in Annexure A1 with the revision, it is clear that the specific stand taken by the applicant before the Civil Court was that the original holder of the land by name Ronya was having agriculture land in village Malajpur bearing Kh. Nos. 319, 400 and 406. It is the specific contention raised that after the death of said Ronya, the property devolved in between the applicant and other legal heirs of Ronya. It was alleged by the applicant that a partition had taken place in between the family members on 19-6-1994 and the land of Kh. No. 319 are 0.891 hectare and land of Kh. No. 400 area 0.235 hectare fall in share of the applicant/plaintiff. It was her stand that this land was eversince in her possession. It was alleged that a part of the land was tried to be sold after getting the mutation of the said land done by a registered sale deed dated 3-7-1997. It was her stand that the land in this particular Khasra number was never devolved in between the legal heirs of Ronya except applicant. Specific relief was claimed in this manner in the plaint. If there was an error in making the description of the Khasra number, it was open for the applicant to move appropriate application before the trial Court for correction in the pleadings in plaint. There is nothing to indicate that any such attempt was made. It is also clear that during trial evidence was produced by the applicant and certain revenue records were also produced, which were taken note of by the Court below. Even when the issues were framed and decided, the specific Khasra numbers were mentioned, but no attempt was made by the applicant to get the correction done in the Khasra numbers of the land. The assessment of evidence was also done by the Court below on the basis of Khasra entries, as referred in the plaint and the statements of witnesses. Now, if an error was committed by the applicant for making such a claim, it cannot be said that an error of making description of the property in the decree, was committed by the Court below by passing the decree. Provisions of section 152, Civil Procedure Code are for the amendment in judgment, decree or orders, where it is specifically provided that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either on its own motion or on the application of any of the parties. From the description of such facts, as have been given hereinabove, it is neither a clerical or arithmetical error committed by the Court below in mentioning the Khasra numbers in the judgment or decree not could it be said that it was on account of any accidental slip or omission. In fact, it was a deliberate description of the land in dispute shown by the applicant, which was accepted by the Court

below to be correct after recording of the evidence and it has been held that the applicant is the owner of such land. In view of this, the provisions of section 152, Civil Procedure Code would not be attracted at all for correcting the khasra numbers of the land in dispute in the judgment or decree.

Now the question would be whether provisions of Order 6, Rule 17, Civil Procedure Code or even the provisions of section 151, Civil Procedure Code are attracted in such a case for correction of a mistake committed in pleadings. The Order 6, Rule 17, Civil Procedure Code authorizes amendment in the pleadings at any stage of the proceedings if it is considered to be just for the purpose of determining the real questions in controversy between the parties. In fact, right from the very beginning the applicant was of the view that she is the owner of the land in Kh. No. 319 and this was the specific pleading raised by her in the plaint. Not only this, during trial she produced the evidence to prove such a fact. At what point of time she came to know that there was a mistake in description of survey number of suit land and that was required to be corrected is relevant for the purpose of determining the controversy involved in the present revision. It is true that after passing of judgment and decree in the suit filed by the applicant, she did nothing except waiting for a decision in the appeal preferred against the judgment and decree by the respondent No. 1 was it not her duty to verify the correctness of the claim made by her? Was it not her responsibility to make the pleadings in effective manner and to prove the same? If this was done with deliberate knowledge, it was incorrect on the part of applicant to say that there was some mistake or slip on account of which wrong figure was mentioned in respect of khasra number of the land in dispute. This cannot be said to be a bona fide mistake at any rate. Therefore, the provisions of Order 6, Rule 17, Civil Procedure Code would not be attracted in such a case. Now it has to be seen whether something, which cannot be done under the specific provisions of law made under Order 6, Rule 17, Civil Procedure Code, can still be done in exercise of inherent powers by the Courts under section 151, Civil Procedure Code. True it is that the inherent powers of the Courts are not limited, but the factual aspect is required to be taken into consideration. The fact remains that the applicant was not only claiming ownership over the land giving particular description, but was also proving the same by adducing the evidence. Therefore, it cannot be said that still the Court can exercise inherent powers to correct such mistake of the applicant. In other words, if the claim of the applicant was with respect to the land bearing kh. No. 339/1, it was her duty to prove her title on the said land and it was the right available to the defendants to rebut such evidence produced by the applicant. By omitting the description of particular khasra number and by giving details of particular khasra entries, such right of the respondents/defendants has been jeopardized as since nothing was claimed with respect to the land kh. No. 339/1 they have not adduced any evidence in trial with respect to ownership of such land. Since there was no evidence adduced in this respect, it was neither assessed nor appreciated and no findings were recorded by the Court below in that respect. The Appellate Court has also not

scrutinized or reevaluated the evidence adduced by the parties in this respect, therefore, in case such an amendment is allowed, it would be nothing but reopening of the entire proceedings, directing corrections in the khasra number of the land in dispute in plaint, with further opportunity of adducing evidence to the parties concerned after raising the pleadings in that respect and appreciation of such evidence afresh which will mean nothing but reopening of the entire trial, which is not permissible under the law in such circumstances.

Learned counsel for the applicant placing reliance in the case of ***Peethani Suryanarayana and anr. v. Repaka Venkata Ramana Kishore and ors., AIR 2009 SC 2141*** contended that as per the law laid down by the Apex Court there is no doubt that the principles of natural justice require to be complied with, but since the identity of the suit land will not be changed, the application submitted by the applicant for correction in the description or survey number or the land in dispute should not have been rejected. The entire submission made by the learned counsel for the applicant is misconceived. In paragraph-11 of the report in the case of ***Peethani Suryanarayana***. (supra), the Apex Court has categorically held that Court should allow such an application for amendment of plaint only in circumstances, when it is seen that the application is made bona fidely or the same should not cause any injustice to the other side and it should not affect the right already accrued to the defendants. By not making a claim with respect to the particular land of particular khasra number by the applicant in plaint, the right accrued to the defendants in respect of other land, which was not claimed by the applicant as her own, would be jeopardized. Secondly, as has been described hereinabove, the application made by the applicant cannot be said to be bona fide. At any rate, reopening of the entire trial will no doubt cause injustice to the defendants. Therefore, the law laid down by the Apex Court in the case of ***Peethani Suryanarayana***. (supra) would not be attracted in the case of applicant. It is further contended by the applicant that in view of the law laid down by the Apex Court in the case of ***Niyamat Ali Molla v. Sonargon Housing Co-operative Society Ltd. and ors., AIR 2008 SC 225*** the correction in the decree could be done at any stage in exercise of powers under section 152, Civil Procedure Code. Again it has to be held that such a contention is misconceived. Here the mistake is not in the judgment or in the decree, as has been described hereinabove. The mistake is committed in the pleadings, which cannot be corrected in exercise of powers either under section 152 or 151, Civil Procedure Code. The Apex Court has nowhere said that when a mistake is committed in giving description of the disputed land or the suit property and a decree is drawn according to such pleadings on the basis of evidence adduced by the parties, still the power under section 151 or 152 Civil Procedure Code can be exercised to correct such description in the decree. In view of the aforesaid, the law laid down by the Apex Court in the case of ***Niyamat Ali Molla*** (supra) is also not attracted at all in the present case.

Learned counsel for the respondents No.2 and 3 has vehemently contended that in fact right available to the defendants to oppose the claim on the disputed property in the plaint was jeopardized by the applicant by giving wrong description of the property in dispute. Had the right description of the disputed property would have been given by the applicant in the plaint, the respondents would have pointed out whether the applicant/plaintiff had any right over such a piece of land or not. It is not that only change in khasra number or figure of the survey number of land had taken place and accordingly the same was to be incorporated in the decree. Therefore, in view of the law laid down by the Apex Court in the case of ***State of Punjab v. Darshan Singh, 2004 (2) MPLJ 302***, it would not be permissible to the Court to correct the description of the land in dispute in the decree in exercise of powers under section 152, Civil Procedure Code. It is further contended by the learned counsel for the respondents No. 2 and 3 that well settled law is that such correction is permissible only if there is arithmetical or clerical mistake committed in making description of the disputed property in exercise of powers under section 151 or 152, Civil Procedure Code. No addition or alteration in the disputed property is permissible, as has been held by this Court in the case of ***Devakinandan Yadav v. State Bank of Indore, Sagar and another, 2001 (4) MPLJ 402***.

After consideration of the rival submission of the learned counsel for the parties and in view of the well settled law as described by this Court in the case of ***Devakinandan Yadav*** (supra) and by the Apex Court in the case of Darshan Singh (supra) there is no scope to interfere in the order passed by the Court below and direct correction in the decree with respect to the description of the land or the change of survey number of the land in decree. The applicant was responsible to make a specific claim and declaration in the plaint, which she did. Not only this, she has produced the evidence in respect of the claim. It was rightly appreciated by the Court below and the same was conferred on the applicant. If the applicant has asked for something which is granted to her and has not asked for something which has not been included in the decree, it cannot be said that there is any mistake committed by the Court below while drawing the decree and therefore such correction would be necessary. Reopening of the trial is not permissible under the law by allowing the application for amendment in plaint after a decree is passed and, therefore, the amendment in the pleadings is rightly not considered necessary. Therefore, no case is made out to interfere in the order passed by the Court below.

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**171. CIVIL PROCEDURE CODE, 1908 – Order 2 Rule 2**

**When bar under Order 2 Rule 2 C.P.C. is attracted? Held, where the cause of action on which the previous suit was filed forms the foundation of the subsequent suit, when the plaintiff could have claimed the relief sought in the subsequent suit which was in the earlier suit, and the parties are same in both the suits, then bar under Order 2 Rule 2 C.P.C. is attracted.**

## Coffee Board v. Ramesh Exports Private Limited

**Judgment dated 09.05.2014 passed by the Supreme Court in Civil Appeal No. 5527 of 2014, reported in (2014) 6 SCC 424**

**Extracts from the judgment :**

The Rules are offshoots of the ancient principle that there should be an end to litigation traced in the Full Bench decision of the Court in ***Lachhmi v. Bhulli, ILR (1927) 8 Lah 384***, and approved by this Court in many of its decisions. The principle which emerges from the above is that no one ought to be vexed twice for the same cause. In light of the above, from a plain reading of Order 2 Rule 2, it emerges that if different reliefs and claims arise out of the same cause of action then the plaintiff must place all his claims before the court in one suit and cannot omit one of the reliefs or claims except without the leave of the court. Order 2 Rule 2 bars a plaintiff from omitting one part of claim and raising the same in a subsequent suit.

The bar of Order 2 Rule 2 comes into operation where the cause of action on which the previous suit was filed, forms the foundation of the subsequent suit; and when the plaintiff could have claimed the relief sought in the subsequent suit, in the earlier suit; and both the suits are between the same parties. Furthermore, the bar under Order 2 Rule 2 must be specifically pleaded by the defendant in the suit and the trial court should specifically frame a specific issue in that regard wherein the pleading in the earlier suit must be examined and the plaintiff is given an opportunity to demonstrate that the cause of action in the subsequent suit is different. This was held by this Court in ***Alka Gupta v. Narendra Kumar Gupta, (2010) 10 SCC 141***, which referred to the decision of this Court in ***Gurbux Singh v. Bhooralal, AIR 1964 SC 1810***, wherein it was held that:

> "..... '6. In order that a plea of a bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out: (1) that the second suit was in respect of the same cause of action as that on that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar."

The courts in order to determine whether a suit is barred by Order 2 Rule 2 must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits. Considering the technicality of the plea of Order 2 Rule, 2, both the plaints must be read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order 2 Rule 2.

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**172. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17**

**Amendment after commencement of pre and post trial, permissibility of – Since lesser degree of prejudice to the other party is caused in pre trial amendments, same should be allowed more liberally – However, in case of post trial amendments, greater degree of prejudice is caused, therefore, Court must be satisfied that the application for amendment would not be made at an earlier point of time despite due diligence.**

## Sonu Dubey v. Virendra Kumar Rai and others

**Judgment dated 03.04.2014 passed by the High Court of M.P. in Writ Petition No. 15988 of 2013, reported in 2014 (2) MPLJ 433**

**Extracts from the judgment:**

In ***Gautam Sarup v. Leela Jetly and others, 2008 (4) MPLJ (S.C.) 113 = (2008) 7 SCC 85,*** it has been held that while dealing with the prayer for amendment in the written statement, the discretion has to be exercised judicially. In ***Chander Kanta Bansal v. Rajinder Singh Anand, 2008 (4) MPLJ (S.C.) 269 = (2008) 5 SCC 117,*** the Supreme Court has considered the expression "due diligence", used by the Legislature in proviso to Order 6, Rule 17 of the Code of Civil Procedure and has held that due diligence means such diligence as a prudent man would exercise in conduct of his own affairs. In ***Rajkumar Gurawara (dead) through LRs. v. S.K. Sarwagi and Company Private Limited and another, (2008) 14 SCC 364,*** it has been held that since lesser degree of prejudice is caused in pre-trial amendments, therefore, the same should be allowed more liberally. If in case of post-trial amendments, greater degree of prejudice is caused and, therefore, the Court should be satisfied that the application for amendment would not be made at earlier point of time despite due diligence.

In the backdrop of aforesaid well settled legal position, facts of the case may be seen. In the instant case, the suit was filed on 9-11-2004. The plaintiffs closed their evidence in January, 2009. Thereafter, the case was fixed for defendants' evidence for the first time on 29-1-2009. The defendants No. 2 to 5 did not adduce evidence for a period of approximately four years and thereafter, they filed an application under Order 6, Rule 17 of the Code of Civil Procedure

on 18-6-2013 by which amendment in the written statement was sought. In the application, it has only been stated that the document was discovered by them in the month of June, 2013. However, the date of discovery of the documents has not been mentioned in the application. Thus, in the considered opinion of this Court, the defendants have failed to show that notwithstanding exercise of due diligence, they could not file the application for amendment before the trial commenced in the suit.

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**173. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17 Proviso**
**Amendment after commencement of trial, permissibility of – Post trial amendment is permissible only if it is shown that inspite of due diligence, such amendment could not be sought earlier.**

**Pratap and others v. Ganeshram and others**
**Judgment dated 11.02.2014 passed by the High Court of M.P. in Writ Petition No. 7403 of 2013, reported in 2014 (2) MPLJ 464**

**Extracts from the judgment:**

The main ground of attack on the impugned order is that in view of judgment of ***Baldev Singh and others v. Manohar Singh and anr., (2006) 5 SCC 943*** the trial has not begun. In the considered opinion of this Court, the amendment prayed for before commencement of the trial and after commencement of the trial needs to be decided on different principles. This is because of insertion of proviso to Order 6 Rule 17 C.P.C. w.e.f. 2002. No doubt, in ***Baldev Singh*** (supra), the Apex Court opined about commencement of the trial, the said judgment was considered in a subsequent judgment reported in ***Vidyabai and others v. Padmalatha and another, (2009) 2 SCC 409***. In ***Vidyaba***i (supra), the Apex Court considered its earlier judgment in ***Kailash v. Nanhku, (2005) 4 SCC 480***. In ***Kailash*** (supra), the Apex Court gave a finding that:

> " in a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial".

After considering this judgment, the Apex Court opined that filing of an affidavit in lieu of examination-in-chief of the witness, in our opinion, would amount to "commencement of proceeding" (para 11). In para 16 of this judgment, the Apex Court considered the view in ***Baldev Singh*** (supra) and opined that it is not authority for the proposition that the trial would not be deemed to have commenced on the next date of first hearing. It is further opined that in the said case, documents were yet to be filed and in those circumstances, the Apex Court opined in that manner.

In ***State of Madhya Pradesh v. Union of India and another, (2011) 12 SCC 268*** the Apex Court opined in para 7 that the proviso curtails absolute discretion to allow amendment at any stage. If application is filed after

commencement of trial, it must be shown that in spite of due diligence, such amendment could not have been sought earlier.

In ***Abdul Rehman and anr. v. Ruldu and others, (2012) 11 SCC 341*** the Apex Court opined as under:-

> "The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

In the light of aforesaid judgments, it is clear that the judgment of ***Baldev Singh*** (supra) has no assistance to the petitioner. Admittedly, the affidavits under order 18 Rule 4 CPC are already filed and trial has commenced. Thus, Court below has not erred in holding that trial has commenced and, therefore, in absence of showing 'due diligence' amendment cannot be allowed. The judgment of this Court cited by the petitioner is of no assistance to him in the facts and circumstances of the case.

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**174. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17 and Order 8 Rule 6-A Whether it is permissible to entertain counter-claim at the fag end of the trial? Held, No – Filing of counter-claim at the stage of conclusion of defence evidence is not permissible.** ***Ramesh Chand v. Anil Panjwani (2003) SCC 350*****, relied on.**

**Ali Hussain (died) by L.Rs. v. Shabbir Hussain and others**

**Order dated 12.03.2014 passed by the High Court in W.P. No. 1343 of 2004, reported in 2014 (3) MPHT 423**

**Extracts from the order:**

The Apex Court considered this issue in ***Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350***. In Para 28 the Apex Court opined that "Generally speaking, a counter claim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced. The aforesaid finding was given by the Apex Court on the consideration that if the consequence of permitting a counter claim either by way of amendment or by way of subsequent pleading would be prolonging the trial, complicating the otherwise smooth flow of the proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the Court, the Court would be justified in not exercising its discretion in favour of permitting a belated counter claim. The framers of the law never intended pleading by way of counter claim to be utilized as an instrument for

forcing the reopening of the trial by pushing back the progress of the proceedings.

The Apex Court in ***Rohit Singh and others v. State of Bihar and others, (2006) 12 SCC 734,*** has held that "a counter claim, no doubt, could be filed even after the written statement is filed, but that does not mean that a counter claim can

be raised after issues are framed and the evidence is closed. Therefore, the entertaining of the so-called counter claim of defendant No. 3 to 17 by the Trial Court, after framing of issues for trial, was clearly illegal and without jurisdiction. On that short ground the so-called counter claim, filed by the defendant No. 3 to 17 has to be held to be not maintainable".

In view of plain reading of Order 8 Rule 6-A, CPC and the judgments of Supreme Court in ***Ramesh Chand Ardawatiya*** (Supra) and ***Rohit Singh*** (Supra), it is clear that filing of counter claim at the stage of conclusion of defence evidence is not permissible. This point needs to be decided in favour of the plaintiff. As analysed above, the Court below has erred in even partially allowing the counter claim at the stage of almost conclusion of defence evidence. To this extent, the order needs to be interfered with.

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***175. CIVIL PROCEDURE CODE, 1908 – Order 9 Rule 7**

**Ex parte proceedings, setting aside of.**

***Facts of the case:***

**Trial Court proceeded *ex parte* against the defendant for non-appearance on 22.03.2013 – Defendant preferred an application for setting aside ex parte proceedings on 09.05.2013 alongwith affidavit in support – Trial Court rejected the application on the ground that no application for condonation of delay is filed alongwith the said application – Held, when the application is supported by affidavit, there is no justification in disbelieving the same – Looking to the sufficient cause shown in the application, application under Order 9 Rule 7 holding that the Trial Court rejected the application mechanically without assigning reasons for disbelieving the grounds stated in the application [*Delhi Development Authority v. Shanti Devi and another, AIR 1982 (Delhi) 159* relied on] in which it was held :**

**"Where the Counsel for the defendant alongwith an application under Order 9 Rule 7 filed his own affidavit that he was busy in his personal matter and, therefore, he could not attend the Court at the time when the suit was called by the Court and also stated that when he reached the Court at 10.55 a.m. he came to know about ordering of ex parte proceedings, the order proceeding *ex parte* would be liable to be set aside, as there was good cause for the absence of the Counsel."**

**Madho Singh and others v. Ramkali and others**

**Judgment dated 24.03.2014 passed by the High Court of M.P. in Writ Petition No. 4136 of 2013, reported in 2014 (2) MPHT 101**

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**176. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 89**
**LIMITATION ACT, 1963 – Article 127**
**It is a condition precedent to deposit the requisite amount for filing an application under Order 21 Rule 89 C.P.C. to set aside sale – In the absence of any separate prescribed period for making deposit, time for making the deposit and for filing of the application would be the same i.e. 60 days as mentioned in Article 127 of the Limitation Act, 1963.**

**Annapurna v. Mallikarjun and another**
**Judgment dated 11.04.2014 passed by the Supreme Court in Civil Appeal No. 4469 of 2014, reported in (2014) 6 SCC 397**

**Extracts from the judgment** :

A careful perusal of the provisions in Rules 89 and 92 of Order 21 CPC and Article 127 of the Limitation Act leaves no manner of doubt that although Order 21 Rule 89 CPC does not prescribe any period either for making the application or the required deposit, Article 127 of the Limitation Act now prescribes 60 days as the period within which such an application should be made. In absence of any separate period prescribed for making the deposit, as per the judgment of the Constitution Bench in ***Dadi Jagannadham v. Jammulu Ramulu, (2001) 7 SCC 71,*** the time to make the deposit and that for making the application would be the same.

In ***Ram Karan Gupta v. J.S. Exim Ltd., (2012) 13 SCC 568,*** it has been held, after considering the Constitution Bench judgment (supra) and other relevant case laws, that deposit of the requisite amount in the court is a condition precedent or a sine qua non to application for setting aside the execution of sale and such an amount must be deposited within the prescribed time for making the application otherwise the application must be dismissed.

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**177. CIVIL PROCEDURE CODE, 1908 – Order 22 Rule 9**
**Appointment of Commissioner, object of – Commission cannot be issued to collect evidence.**

**Ghasiram Dehariya v. Anakhlal Dehariya**
**Judgment dated 13.09.2013 passed by the High Court of M.P. in Writ Petition No. 15288 of 2013, reported in 2014 (2) MPLJ 387**

**Extracts from the judgment:**

The impugned suit is at the initial stage. Even the process to record the evidence of parties has not been stated. It is settled preposition of law that no party can be permitted to use the procedure of the Court to collect the evidence in support of his case as laid down by this Court long back in the matter of ***Laxman v. Ram Singh,*** reported in ***1982 MPWN 255*** and in the matter of ***Ashok Kumar Patel and another v. Ram Niranjan and other,*** reported in ***2007 (3) MPHT 419 = 2007 (III) MPWN 123,*** as mentioned by the trial Court in the impugned order. In such premises, the impugned order does not require any interference at this stage.

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**178. CIVIL PROCEDURE CODE, 1908 – Order 22 Rules 3 and 11**
**LIMITATION ACT, 1963 – Section 5**
**Application under Order 22 Rule 3 C.P.C., to bring LRs. on record – Dismissed by the High Court looking to the inordinate delay of 7 years.**

## Karam Kaur v. Jalandhar Improvement Trust and another

**Judgment dated 28.04.2014 passed by the Supreme Court in Civil Appeal No. 4915 of 2014, reported in (2014) 6 SCC 409**

**Extracts from the judgment :**

Ramesh Chander, the original plaintiff, appellant before the second appellate court, died on 14-12-2003; the appellant is the widow of Ramesh Chander and she had knowledge of the pendency of the second appeal. Her plea that she was told by her husband that the counsel would inform about the hearing of the application, cannot be a ground to entertain the application for condonation of delay of more than seven years for preferring the petition for substitution. A petition for substitution was filed by Respondents 2 and 3 before the second appellate court. Respondents 2 and 3 had the knowledge of the death of Ramesh Chander and, therefore, they filed petition for substitution vide CM No. 4841-C of 2010. However, they withdrew the aforesaid application for substitution which was followed by petition for substitution filed by the appellant Karam Kaur. In the petition for substitution filed on behalf of Respondents 2 and 3, it was not stated that vide deed of family settlement dated 21-01-2010 executed between the LRs of Nasib Chand (including Respondents 2 to 5 to the appeal) and other legal heirs of Ramesh Chander the right to sue survived only on the appellant Karam Kaur. Apart from the fact that the aforesaid family settlement was not brought on record by Respondents 2 and 3 before the second appellate court while the petition for substitution was filed, so-called family settlement dated 21-1-2010 cannot be relied upon to exclude the other legal heirs who had a right to be substituted due to the death of the original plaintiff Ramesh Chander.

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**179. CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 5(3)**
**ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 13 (1)**
**Decree for eviction and arrears of rent with mesne profit, stay of – Appellate Court is not bound to grant an order of stay merely because the appeal has been preferred and an application for an order of stay has been made – Appellant who comes to the Court for seeking a stay order must do equity for seeking equity – Further held, although direction for payment of mesne profit/damages on the basis of present market rate of rent cannot be issued against the appellant, however, while granting an order of stay under Order 41 Rule 5 of the Code, the Appellate Court does have the jurisdiction to put parties seeking the stay order on such terms as would in its opinion reasonably compensate the decree holder for the loss occasioned by delay in execution of the decree by grant of stay order.**

**Bhupendra Kant Bharadwaj and others v. Rameshchandra Goyal**
**Judgment dated 27.01.2014 passed by the High Court of M.P. in First Appeal No. 349 of 2011, reported in 2014 (2) MPLJ 286**

**Extracts from the judgment:**

From provisions of Order 41, Rule 5 of the Civil Procedure Code, it is amply clear that the Appellate Court is not bound to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. The petitioner who comes to the Court for seeking a stay order must do equity for seeking equity. While granting an order of stay under Order 41, Rule 5 of the Civil Procedure Code, the Appellate Court does have the jurisdiction to put the parties seeking the stay order on such terms, as would in its opinion reasonably compensate the decree holder, for the loss occasioned by the delay in the execution of the decree by the grant of stay order.

As regards claim made by the plaintiff for receiving higher rent on the basis of present market rate, same has been answered in the case of ***Shabbir Hussain and ors v. Ram Dayal and others, 2011 (1) MPLJ 366,*** as under:-

> "10. The scope of Order 41, Rule 5, Civil Procedure Code has been taken into consideration in the decision of Supreme Court ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705*** in which an earlier decision of Supreme Court ***Marshall Sons and Co. (I) Ltd.v. Sahi Oretrans (P) Ltd., (1992) 2 SCC 325*** has been relied upon in which Apex Court has directed to deposit mesne profits at quite higher rate looking to the facts and circumstances that tenant was inducted long back and if during those days quite lesser rate of rent was prevailing, it cannot be equated with present rate of rent. These decisions are fully applicable in present case also."

Further on the point of stay whether it is to be granted or not while exercising discretion by the Appellate Court and what would be guiding factors, in ***Atma Ram Properties (P) Ltd.*** (supra), at page 712: the Hon'ble Apex Court held as follows:-

> "8. It is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the Court below. A prayer for the grant of stay of proceedings or on the execution of decree or order appealed against has to be specifically made to the Appellate Court and the Appellate Court has discretion to grant an order of stay or to refuse the same. The only guiding factor, indicated in Rule 5 aforesaid, is the existence of sufficient cause in favour of the appellant on the availability of which the Appellate Court would be inclined to pass an order of stay. Experience shows that the principal consideration which prevails with the Appellate Court is that

in spite of the appeal having been entertained for hearing by the Appellate court the appellant may not be deprived of the fruits of his success in the event of the appeal being allowed. This consideration is pitted and weighed against the other paramount consideration: why should a party having succeeded from the Court below be deprived of the fruits of the decree or order in his hands merely because the defeated party has chosen to invoke the jurisdiction of a superior forum. Still the question which the Court dealing with a prayer for the grant of stay asks itself is: why the status quo prevailing on the date of the decree and/or the date of making of the application for stay be not allowed to continue by granting stay and not the question why the stay should be granted.

9. Dispossession, during the pendency of an appeal of a party in possession, is generally considered to be "substantial loss" to the party applying for stay of execution within the meaning of clause (a) of sub-rule (3) of Rule 5 of Order 41 of the Code. Clause (c) of the same provision mandates security for the due performance of the decree or order as may ultimately be passed being furnished by the applicant for stay as a condition precedent to the grant of order of stay. However, this is not the only condition which the Appellate Court can impose. The power to grant stay is discretionary and flows from the jurisdiction conferred on an Appellate Court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant. So also, an Appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of stay must do equity for seeking equity. Depending on the facts and circumstances of a given case, an Appellate Court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal.....

11. In the case of ***Chander Kali Bai v. Jagdish Singh Thakur, (1977) 4 SCC 402*** the tenancy premises were situated in the State of Madhya Pradesh and provisions of the M.P. Accommodation Control Act, 1961 applied. The suit for eviction was filed on 8-3-1973 after serving a notice on the tenant terminating the contractual tenancy w.e.f. 31-12-1972. The suit came to be dismissed by the trial Court but decreed in the first appeal decided on 11-8-1975. One

of the submissions made in this Court on behalf of the appellant tenant was that no damages from the date of termination of the contractual tenancy could be awarded; the damages could be awarded only from the date when an eviction decree was passed. This Court took into consideration the definition of tenant as contained in section 2(i) of the M.P. Act which included “any person continuing in possession after the termination of his tenancy” but did not include “any person against whom any order or decree for eviction has been made”. The Court, persuaded by the said definition, held that a person continuing in possession of the accommodation even after the termination of his contractual tenancy is a tenant within the meaning of the M.P. Act and on such termination his possession does not become wrongful until and unless a decree for eviction is passed. However, the Court specifically ruled that the tenant continuing in possession even after the passing of the decree became a wrongful occupant of the accommodation. In conclusion the Court held that the tenant was not liable to pay any damages or mesne profits for the period commencing from 1-1-1973 and ending on 10-8-1975 but he remained liable to pay damages or mesne profits from 11-8-1975 until the delivery of the vacant possession of the accommodation. During the course of its decision this Court referred to a decision of the Madhya Pradesh High Court in ***Kikabhai Abdul Hussain v. Kamlakar, 1974 MPLJ 485*** wherein the High Court had held that if a person continues to be in occupation after the termination of the contractual tenancy then on the passing of the decree for eviction he becomes a wrongful occupant of the accommodation since the date of termination. This Court opined that what was held by the Madhya Pradesh High Court seemed to be a theory akin to the theory of “relation back” on the reasoning that on the passing of a decree for eviction, the tenant’s possession would become unlawful not from the date of the decree but from the date of the termination of the contractual tenancy itself. It is noteworthy that this Court has not disapproved the decision of the Madhya Pradesh High Court in ***Kikabhai Abdul Hussain*** case (supra) but distinguished it by observing that the law laid down in ***Kikabhai Abdul Hussain*** case (supra) was not applicable to the case before it in view of the definition of “tenant” as contained in the M.P. Act and the provisions which came up for consideration of the High Court in ***Kikabhai Abdul Hussain*** case (supra) were different.

13. In ***Shyam Charan v. Sheoji Bhai, (1977) 4 SCC 393*** this Court has upheld the principle that the tenant continuing in occupation of the tenancy premises after the termination of tenancy is an unauthorised and wrongful occupant and a decree for damages or mesne profits can be passed for the period of such occupation, till the date he delivers the vacant possession to the landlord. With advantage and approval, we may refer to a decision of the Nagpur High Court. In ***Bhagwandas Lakhamsi v. Kokabai, AIR 1953 Nag 186*** the learned Chief Justice of the Nagpur High Court held that the Rent Control Order, governing the relationship of landlord and tenant, has no relevance for determining the question of what should be the measure of damages which a successful landlord should get from the tenant for being kept out of the possession and enjoyment of the property. After determination of the tenancy, the position of the tenant is akin to that of a trespasser and he cannot claim that the measure of damages awardable to the landlord should be kept tagged to the rate of rent payable under the provisions of the Rent Control Order. If the real value of the property is higher than the rent earned then the amount of compensation for continued use and occupation of the property by the tenant can be assessed at the higher value. We find ourselves in agreement with the view taken by the Nagpur High Court.

16. We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.

19. To sum up, our conclusions are:

(1) While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the Appellate Court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss

occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.

(2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (1) of section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of decree.

(3) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date."

Direction for payment of mesne profits/damages against the appellants under Order 41, Rule 5 of Civil Procedure Code on the basis of present market rate of rent of the building cannot be issued when the appeal is pending. However, the appellants/tenants can be put on such reasonable terms for due performance of such decree or order as may ultimately be binding upon them as prescribed under Order 41, Rule 5 (3) of Civil Procedure Code as well as section 13 (1) of the M.P. Accommodation Control Act, 1961.

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**180. CIVIL PROCEDURE CODE, 1908 – Order 41 Rules 17, 19 and 21**

**Whether a civil appeal can be dismissed on merits, where appellant fails to appear? Held, No – The court is not empowered to dismiss the appeal on merits where appellant is absent but where respondent does not appear, appeal can be heard on merits.**

**Remedy is provided under Order 41 Rule 19 for appellant and under Order 41 Rule 21 for respondent, who fails to appear at the time of hearing of an appeal.**

**Harbans Pershad Jaiswal (Dead) By Legal Representatives v. Urmila Devi Jaiswal (Dead) By Legal Representatives**

**Judgment dated 21.04.2014 passed by the Supreme Court in Civil Appeal No. 4656 of 2014, reported in (2014) 5 SCC 723**

**Extracts from the judgment :**

An appeal can be heard on merits if the respondent does not appear, in case the appellant fails to appear it is to be dismissed in default. The Explanation makes it clear that the court is not empowered to dismiss the appeal on the merits of the case. As different consequences are provided, in case the appellant does not appear, in contradistinction to a situation where the respondent fails to appear, as a fortiori, Rule 19 and Rule 21 are also differently worded. Rule 19 deals with readmission of appeal "dismissed for default", where the appellant does not appear at the time of hearing, Rule 21 talks of "rehearing of the appeal" when the matter is heard in the absence of the respondent and ***ex parte*** decree made. In ***Abdur Rahman v. Athifa Begum, (1996) 6 SCC 62,*** this Court made it clear that because of non-appearance of the appellants before the High Court, the High Court could not have gone into the merits of the case in view of specific course of action that court be chartered (viz. dismissal of the appeal in default above) continued in the Explanation to Order 41 Rule 17 CPC and by deciding the appeal of the appellants on merits, in his absence. It was held that the High Court had transgressed its limits in taking into account all the relevant aspects of the matter and dismissing the said appeal on merits, holding that there was no ground to interfere with the decision of the trial court.

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**181. CONSTITUTION OF INDIA – Article 21**

**Witness protection – Police authorities and prosecution, duties of – The police authorities and prosecution is obliged not only to protect the life, liberty and dignity of a witness from being in danger but also to provide protection of his family members.**

## Mala Devi v. State of M.P. and others

**Judgment dated 20.01.2014 passed by the High Court of M.P. in Writ Petition No. 8926 of 2013, reported in 2014 (2) MPLJ 82**

**Extracts from the judgment:**

The police authorities are duty bound to protect life, liberty and dignity of all citizens especially when the said citizen is a complainant eye-witness of incident of murder and as such is a prime witness of the prosecution on whom depends the fate of the prosecution case.

The prosecution thus obliged not only to protect the life, liberty and dignity of the said eye-witness from being endangered but also to provide protection to all members of the family of the said eye-witness so that the eye-witness is assured of an environment of safety against the offenders to enable the eye-witness to depose in a free and fair manner before the Court.

The police authorities who are the custodians of law and order are constitutionally obliged to instill a sense of security in the heart and mind of every common man and create an environment where the righteous can roam free with their head held high, while the accused or the offender dare not even

think of repeating their culpable misdemeanors. When a prosecution witness is threatened, the entire investigative agency is under threat. Prosecution story predominantly depends upon the prosecution witnesses. If the police fails to provide an atmosphere free from insecurity of life and liberty to its witnesses, then acquittals shall become a rule and conviction exceptions. Out of fear and sense of insecurity, witnesses turn hostile and resile from their earlier stand rendering the entire investigation unsuccessful. When offence does not lead to punishment, then the victim is left cheated, law and order injured and trust of the common man in legal institutions eroded. This kind of situation if allowed to continue unchecked can lead to anarchy. The Superintendent of Police of the district concerned is thus duty bound to at least ensure creation of atmosphere free from any apprehension from the offenders/accused to enable the prosecution witnesses to depose fearlessly before the Court.

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**182. CONSTITUTION OF INDIA – Articles 21 and 47**

**Medical reimbursement – Behind scheme/policy/governing provisions, permissibility of – Held, no one can get reimbursement which is behind the scheme, policy or governing provisions.**

## Kirti Saxena (Dr.) v. State of M.P. and others

**Judgment dated 24.10.2013 passed by the High Court of M.P. in Writ Petition No. 1868 of 2009, reported in 2014 (1) MPLJ 700**

**Extracts from the judgment:**

In the considered opinion of this Court, it is not in dispute that the petitioner was required to undergo the treatment and implantation because of extreme emergency. Thus, in that situation, it cannot be expected to obtain either prior permission or to travel to a recognized hospital at Indore in which implantation is recognized or made permissible for reimbursement. Putting it differently, the petitioner while attending the enquiry in her official capacity as Presenting Officer, suffered heart attack and she was taken to hospital in critical condition. In that event, the need of the hour was to provide her immediate treatment and implantation of pacemaker. It cannot be expected from such patient to travel to other hospital situated in other cities where implantation is permissible. Thus, on this court, the stand of the respondents is unjustifiable and impermissible. The ancillary question is whether petitioner is entitled to get the entire amount of Rs. 1,69,520/- refunded? This point was considered by the Supreme Court in ***State of Punjab and others v. Ram Lubhaya Bagga and others, (1998) 4 SCC 117***. The Apex Court opined as under:-

> "No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has

to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.

Any State endeavour for giving best possible health facility has direct co-relation with finances. Every State for discharging its obligation to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect.

No right could be absolute in a welfare State. A man is a social animal. He cannot live without the co-operation of large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of public at large. Not every fundamental right under Part III of the Constitution is not absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget account of financial stringencies. But we do hope that Government will give due consideration and priority to the health budget in future and render what is best possible."

In view of aforesaid legal position, it is clear that the claim of reimbursement must be in accordance with and to the extent of the limit prescribed in the policy. The State can reimburse the amount to the extent it is feasible and in consonance with the rule/provision in vogue. In ***State of Punjab and others v. Mohan Lal Jindal, (2001) 9 SCC 217*** the litigant undergone bypass surgery from a hospital other than AIIMS due to long queue in later hospital for bypass surgery. The expense incurred for the said surgery was beyond the permissible limit for such surgery at AIIMS. The Apex Court opined that the reimbursement at AIIMS has already been made to him. Thus, a representation was directed to be made to the State. The Apex Court did not grant relief of reimbursement of the entire amount.

In ***Suman Rakheja v. State of Haryana and another, (2004) 13 SCC 562*** the Apex Court opined that in emergency cases where the Government servant had rushed to a hospital in emergency, which is not a recognized and approved hospital, the claimant would be entitled to get refund of medical expenses at the AIIMS rate. Thus, on the basis of aforesaid judgments, the petitioner, at best is entitled to get amount of implantation refunded to the extent it is permissible in the Government policy.

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**183. CONTRACT ACT, 1872 – Section 4**

**(i) Contract, when complete? If acceptance of proposal is communicated then the contract stands completed – Further held, acceptance of proposal may be presumed from the circumstances of the case.**

**(ii) Statutory tenant, connotation of – Non-registration of lease deed, effect of – Tenancy since long, though not renewed from time to time, the tenant becomes a statutory tenant and non-execution/registration of a lease deed makes no difference.**

## State Bank of India v. Tasneem Hussain

**Judgment dated 26.08.2013 passed by the High Court of M.P. in First Appeal No. 908 of 2005, reported in 2014 (2) MPLJ 626**

**Extracts from the judgment:**

It is apparent that the officers of the Bank gave a proposal of enhancement of rent in two parts without any condition and it is also proposed that if the plaintiff does not accept the proposal then an intimation be given upto 15.02.2000 and if no intimation is received upto that date then the officers of the Bank will presume that the proposal was accepted by the plaintiff. Under such circumstances, it was a proposal which was to be finalized. No denial is received from the side of the plaintiff upto 15.12.2000 and the plaintiff wrote a letter Ex. P/6 on 26.05.2001 in which the proposal was accepted but from October, 2000, she claimed a rent of Rs. 22,000/- per month. According to the provisions of section 4 of the Contract Act, if acceptance is communicated then the contract stands completed. In this case acceptance was not required from the side of the plaintiff but her denial was to be expected up to a given period. She did not give any denial up to that period and therefore, the proposal of the appellant was accepted by the plaintiff. In the judgment passed by the Division Bench of the Kolkatta High Court in the case of ***Murlimal Santram and Co. v. Bata India Limited, AIR 2013 Calcutta 102*** has directed that if the proposal is accepted then it was the rent agreed between the parties and the tenant was liable to pay the agreed rent.

Hon'ble the Apex Court in the case of ***Anthony v. K.C. Ittoop and Sons, (2000) 6 SCC 394*** dealt the matter relating to non-registration of the lease deed. However, in this matter it was laid that after commencement of Kerala Buildings (Lease and Land Control) Act, 1965 such a person became a statutory tenant and could not be evicted except on a statutory application moved before the Rent Controlling Authority. In the present case the appellant was the tenant in the suit accommodation since long and his lease was renewed from time to time. Therefore, if the lease was not renewed then the appellant became a statutory tenant and therefore, non-execution of a registered lease deed makes no difference in the case. In the case of ***Agrawal Medical Agencies v. Govind Prasad, 2012 (2) MPLJ 147,*** the Single Bench of this Court has observed that mere non-renewal of lease after the said period would not give up the right of the

landlord to enhance the rent after a particular period as agreed by the defendant. Under such circumstances, where the appellant became a statutory tenant and for enhancement of rent, consent of both the parties was important. Non-execution of registered lease deed has no role to play. Thereafter, in enhancement of the rent that was the formality of Bank so that the officers of the Bank could produce the matter before the higher authorities for payment of the rent. However, in the present case, it is proved that the proposal was given by the appellant itself which was accepted by the plaintiff and therefore, the appellant is estopped to say contrary to that proposal whereas it enjoyed the suit accommodation for more that the term of three years and vacated it by its own will.

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***184. CONTRACT ACT, 1872 – Section 19-A**

**Voidable contract – Right to get the contract declared voidable – Contract based on fraud, coercion, undue influence and misrepresentation is a voidable contract – It is only the party to the contract who has right to get the contract declared voidable.**

**Raghunath Singh v. Bhogiram and others**

**Judgment dated 18.10.2013 passed by the High Court of M.P. in First Appeal No. 99 of 2000, reported in 2014 (1) MPLJ 568**

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**185. CRIMINAL PROCEDURE CODE, 1973 – Section 125**

**MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986 – Sections 3 and 5**

**(i) Whether a Muslim divorced woman's application for maintenance u/s 125 Cr.P.C. is to be restricted to the date of divorce and as an ancillary to it? Held, No.**

**(ii) Whether filing of an application under section 3 of the Act of 1986 for *mahr* and return of gifts after divorce, would disentitle her to sustain the application under section 125 Cr.P.C.? Held, No.**

**Shamim Bano v. Asraf Khan**

**Judgment dated 16.04.2014 passed by the Supreme Court in Criminal Appeal No. 820 of 2014, reported in 2014 (2) Crimes 234 (SC)**

**Extracts from the judgment :**

The aspect which has to be kept uppermost in mind is that when the marriage breaks up, a woman suffers from emotional fractures, fragmentation of sentiments, loss of economic and social security and, in certain cases, inadequate requisites for survival. A marriage is fundamentally a unique bond between two parties. When it perishes like a mushroom, the dignity of the female fame gets corroded. It is the law's duty to recompense, and the primary obligation is that of the husband. Needless to emphasise, the entitlement and the necessitous provisions have to be made in accordance with the parameters of law.

Under these circumstances, regard being had to the dictum in ***Khatoon Nisa v. State of U.P. and others, 2002 (6) SCALE 165,*** seeking of option would not make any difference. The High Court is not correct in opining that when the appellant-wife filed application under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act 1986, she exercised her option. As the Magistrate still retains the power of granting maintenance under Section 125 of the Code to a divorced Muslim woman and the proceeding was continuing without any objection and the ultimate result would be the same, there was no justification on the part of the High Court to hold that the proceeding after the divorce took place was not maintainable.

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**186. CRIMINAL PROCEDURE CODE, 1973 – Sections 125, 126 and 127 MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986 – Section 3**

**Provisions under sections 125 to 128 of the Code, applicability to divorced Muslim women – Law stated – After the commencement of the Muslim Women (Protection of Rights on Divorce) Act, 1986, applicability of sections 125 to 128 is not excluded – It is the option of the parties to take recourse under sections 125 to 128 of the Code even after filing an application under section 3 (2) of the Act of 1986 – If the Muslim divorced woman or man, as the case may be, on notice on the first date of hearing opted to take recourse to proceed under sections 125 to 128 of the Code, then the Court cannot restrict them from the said course and cannot direct them to proceed under the Act of 1986.**

**Qureshia Bi v. Abdul Hameed**

**Judgment dated 19.07.2013 passed by the High Court of M.P. in Misc. Cri. Case No. 8446 of 2011, reported in 2014 (2) MPLJ 137**

**Extracts from the judgment:**

It is clear that after commencement of the Muslim Women (Protection of Rights of Divorce) Act, 1986 the applicability of sections 125 to 128 of Criminal Procedure Code is not excluded. It is the option to the parties to take recourse under sections 125 to 128 of Criminal Procedure Code even on filing an application under section 3 (2) of the Act of 1986. Bare reading of section 5 of the Act of 1986, if the Muslim divorced woman or husband, as the case may be, on notice on the first date of hearing opted to take recourse or want to proceed under sections 125 to 128 of Criminal Procedure Code then the Court cannot restrict them from the said recourse, and cannot direct them to take recourse only under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

It is to be noted that the law laid down in the judgment of ***Mohd. Ahmed Khan v. Shah Bano Begum and others, AIR 1985 SC 945*** by the Constitutional

Bench of the Apex Court has been approved while declaring the Act of 1986 as intra vires. In the case of ***Danial Latift and another v. Union of India, (2001) 7 SCC 740***, the Hon'ble Apex Court concluded that under the Act of 1986 in section 3 (1) (a) words "reasonable and fair provision" and "maintenance" are having two distinct areas and further referring section 4 thereof held that to make a "reasonable and fair Provision" is different than "maintenance" awardable to divorced Muslim wife by a husband. Section 4 further offers a reasonable provision for maintaining a divorced Muslim wife be the family members or by the Wakf Board as the case may be, in the circumstances prevalent so. The ratio of the said two decisions have been reiterated in the case of ***Iqbal Bano v. State of U.P. and another, (2007) 6 SCC 785*** and ***Shabana Bano v. Imran Khan, (2010) 1 SCC 666*** by the Supreme Court as mentioned herein above. Thus, to conclude as per the said precedent and in the light of the codified provisions of the Act of 1986, it is to be held that hike application filed by a divorced Muslim woman under section 3 (2) of the Act would not debar her to take recourse of sections 125 to 128 of Criminal Procedure Code which is a secular provision irrespective to religion or caste. In case the application has been filed by a divorced Muslim woman under section 3 (2) of the Act and on issuance of the notice to the husband, on such application on the first date of hearing, as per declaration or affidavit in writing it be decided accordingly, by the Magistrate. This confers that on submitting an application, the magistrate shall proceed according to the option of either party. The transitional provision made in section 7 do not affect the provision of section 5 of the Act because the transitional provision is only to deal the contingency regarding pendency of the application under section 125 of Criminal Procedure Code on the date of commencement of the Act subject to section 5 of the Act of 1936.

In view of forgoing discussion and looking to the facts of the present case, it is apparent that the applicant has filed an application under section 127 of Criminal Procedure Code seeking alteration of the allowance awarded to her by the trial Court about two decades before on an application under section 125 of Criminal Procedure Code. It is not brought on record that after service of notice, husband has submitted any option or declaration to opt for provisions of the Act of 1986. In such circumstances, the wife herself opted to proceed as per sections 125 to 128 of Criminal Procedure Code, however, the Court cannot direct that such application is not maintainable in view of commencement of the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

In view of analytical detailed discussions made hereinabove referring various provisions of the Act of 1986, which are considered in various judgments of the Hon'ble Apex Court, including the two Constitutional Bench judgments, referred herein above, this Court is bound by the ratio laid down in the said judgments of the Apex Court. As per Article 141 of the Constitution of India law declared by the Supreme Court is binding on all Courts. It includes the High Courts and subordinate Courts. However, the judgments of this Court in the

cases of ***Abdul Rashid (Dr.) v. Mst. Farida, 1994 MPLJ 583, Julekha Bi v. Mohammad Fazal, 1999 (2) MPLJ 64*** and ***Munni alias Mubarik v. Shahbaz Khan, 2002 (2) MPLJ 340*** are hereby ignored. However, the findings and the order passed by the trial Court and revisional Court relying upon the judgments of this Court holding that the application under section 127 filed by the applicant is not maintainable, are hereby set aside.

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**187. CRIMINAL PROCEDURE CODE, 1973 – Section 154**
**INDIAN PENAL CODE, 1860 – Sections 376 and 506**

**(i) Whether medical evidence of rupture of hymen is necessary to prove offence of rape? Held, No – Prosecutrix stated that the accused forcibly committed sexual assault/rape on her against her wish, so non-rupture of hymen is insignificant.**

**(ii) Delay of 22 days in lodging of F.I.R. – Accused threatened prosecutrix for non-disclosing the incident to anyone – She attempted to commit suicide – After narrating incident to her father, brother and doctor, F.I.R. was lodged – Delay clearly explained – Defence of false implication improbable.**

**(iii) Prosecutrix, after the incident, had gone to the extent of committing suicide due to the trauma of rape – Held, defence of concocted story and consent found not sustainable in the light of Section 114-A of the Evidence Act.**

**Puran Chand v. State of Himachal Pradesh**

**Judgment dated 23.04.2014 passed by the Supreme Court in Criminal Appeal No. 1708 of 2010, reported in (2014) 5 SCC 689**

**Extracts from the judgment :**

In fact, in an incident of this nature where a doubt is sought to be created by the defence relying upon the lacuna in the medical evidence which could not establish the incident in view of non-committal statement of the doctor regarding the hymen being intact, the prosecution version cannot be brushed aside totally and will have to be judged by the other attending circumstances brought on record. The defence no doubt has taken the plea that the girl had attempted suicide due to the examination fear and not on account of the rape alleged to have been committed on her but the same does not stand the test of scrutiny. This defence version, in our view, is not worth placing reliance for the victim girl immediately on regaining consciousness had narrated the story to the Doctor, father and her brother at which stage it was not possible to indulge in concoction of the story of this nature in such a mental state. It is equally not possible to overlook or ignore the trauma that the victim girl must have suffered for 22 days after the sexual assault/rape committed on her specially when she could not divulge the incident to anyone. We find the defence of the appellant extremely unworthy of reliance so as to demolish the version of the prosecutrix supported by circumstantial evidence. The version of the victim girl who was suffering the

trauma of rape and was provoked to take the extreme step of consuming poison, cannot be doubted ignoring even the fact that a girl would put herself to disrepute and go to the extent of supporting her parents to lodge a false case merely due to some enmity with the family of the accused putting her honour at stake in a precarious mental state. In fact, we are prone to infer with reason that if the prosecution had an intention of really planting a false story of rape, it is highly improbable that they would have created a story having a huge time gap between the date of incident and the date of lodgement of the FIR leaving the scope of weakening the prosecution case. If it were a well thought out concocted story so as to lodge a false case, obviously the prosecution would not have taken the risk of giving a time gap of more than 20 days between the incident and the lodgment of the FIR. This clinching circumstantial evidence demolishes the defence version and inspires much confidence in what has been stated by the victim girl.

Section 114-A no doubt addresses on the consent part of the woman only when the offence of rape is proved but it also impliedly would be applicable in a matter of this nature where the victim girl had gone to the extent of committing suicide due to the trauma of rape and yet is sought to be disbelieved at the instance of the defence that she weaved out a concocted story even though she suffered the risk of death after consuming poison. If this were to be accepted, we fail to understand and lament as to what is the need of incorporating an amendment into the Indian Evidence Act by incorporating Section 114A which clearly has been added to add weight and credence to the statement of the victim woman who suffers the offence of rape and a claustrophobic interpretation of this amended provision cannot be made to infer that the version of the victim should be believed relating merely to consent in a case where the offence of rape is proved by other evidence on record. If this view of the matter is taken into account relying upon the amended Section 114-A of the Indian Evidence Act which we clearly do, then even if there had been a doubt about the medical evidence regarding non rupture of hymen the same would be of no consequence as it is well settled by now that the offence of rape would be held to have been proved even if there is an attempt of rape on the woman and not the actual commission of rape. Thus, if the version of the victim girl is fit to be believed due to the attending circumstances that she was subjected to sexual assault of rape and the trauma of this offence on her mind was so acute which led her to the extent of committing suicide which she miraculously escaped, it would be a travesty of justice if we were to disbelieve her version which would render the amendment and incorporation of Section 114A into the Indian Evidence Act as a futile exercise on the part of the Legislature which in its wisdom has incorporated the amendment in the Indian Evidence Act clearly implying and expecting the Court to give utmost weightage to the version of the victim of the offence of rape which definition includes also the attempt to rape.

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***188. CRIMINAL PROCEDURE CODE, 1973 – Section 156 (3)**
**INDIAN PENAL CODE, 1860 – Sections 406 and 420**
**Complaint with regard to offence under sections 406 and 420 of IPC – Power under section 156 (3) CrPC, exercise of.**

***Facts of the case:***

**Complainant filed complaint under sections 406 and 420 of IPC stating that the accused entered into an agreement of sale and a sum of Rs. 2 lakh received from him in pursuance of the agreement as earnest money – It was argued that the accused neither executed sale deed nor the advance money was returned back to the complainant – On complaint being filed, the Magistrate allowing the application under section 156 (3) of the Code forwarded the complaint to the concerned Police Station to register FIR and investigate the case – Quashing the FIR it was held that the entire dispute appears to be of civil nature and no ingredients for any offence is made out.**

**Manoj Jain v. State of M.P. and another**

**Judgment dated 08.01.2014 passed by the High Court of M.P. in Misc. Criminal Case No. 4179 of 2013, reported in 2014 (3) MPHT 302**

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**189. CRIMINAL PROCEDURE CODE, 1973 – Section 197**
**PREVENTION OF CORRUPTION ACT, 1988 – Section 19**

**(i) Order of sanction to prosecute, grant of – Sanctioning authority has to do complete and conscious scrutiny of whole record placed before it – Sanction order should show that authority has considered all relevant facts and applied its mind – Prosecution is under obligation to place entire record before sanctioning authority and satisfy Court that authority has applied its mind.**

**(ii) Sanction to prosecute – Power of competent authority – Cannot be delegated – Sanction cannot also be granted on the basis of report given by some other officer or authority.**

**(iii) Stage of challenge to prosecution sanction – In view of section 19 (3) of the P.C. Act, 1988, it can be challenged only at the time of trial and not at the stage of inquiry or pre-trial stage.**

**C.B.I. v. Ashok Kumar Aggarwal**

**Judgment dated 22.11.2013 passed by the Supreme Court in Criminal Appeal No. 1838 of 2013, reported in AIR 2014 SC 827**

**Extracts from the judgment:**

The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts

and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge-sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter-alia on the ground that the order suffers from the vice of total non-application of mind.

(Vide: ***Gokulchand Dwarkadas Morarka v. King, AIR 1949 PC 82; Jaswant Singh v. State of Punjab, AIR 1958 SC 124; Mohd. Iqbal Ahmed v. State of A.P., AIR 1979 SC 677; State through Anti-Corruption Bureau, Govt. of Maharashtra v. Krishanchand Khushalchand Jagtiani, AIR 1996 SC 1910: State of Punjab v. Mohd. Iqbal Bhatti, 2010 AIR SCW 1186; Satyavir Singh Rathi, ACP v. State, AIR 2011 SC 1748;*** and ***State of Maharashtra v. Mahesh G. Jain, 2013 AIR SCW 3174***.

In view of the above, the legal propositions can be summarised as under:

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

In view of the above, we do not find force in the submissions advanced by the learned ASG that the competent authority can delegate its power to some other officer or authority, or the Hon'ble Minister could grant sanction even on the basis of the report of the SP. The ratio of the judgment relied upon for this purpose in ***A. Sanjeevi Naidu etc. v. State of Madras & Anr., AIR 1970 SC 1102,*** is not applicable as in the case of grant of sanction, the statutory authority has to apply its mind and take a decision whether to grant sanction or not.

Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pretrial stage.

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**190. CRIMINAL PROCEDURE CODE, 1973 – Section 204**
**INDIAN PENAL CODE, 1860 – Section 504**

**(i) Issuance of process in criminal cases – Magistrate, at this stage, is expected to examine *prima facie* the truth or falsehood of the allegations made in the complaint – Not expected to embark upon a detailed discussion of merits or demerits of the case.**

**(ii) Ingredients of offence of section 504 IPC – (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break public peace or to commit any other offence – There should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under section 504 IPC.**

**(iii) (a) Whether actual words or language should figure in the complaint alleging offence under section 504 IPC? Held, No. It is not the law that the actual words or language should**

**figure in the complaint – One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of section 504 IPC.**

**(b) Whether during examination, complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence? Held, No.**

**The background facts, circumstances, the occasion. the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under section 504 IPC.**

## Fiona Shrikhande v. State of Maharashtra and another

**Judgment dated 22.08.2013 passed by the Supreme Court in Criminal Appeal No. 1231 of 2013, reported in AIR 2014 SC 957**

**Extracts from the Judgment:**

We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In ***Nagawwa v. Veeranna Shivalingappa Konjalgi and others, AIR 1976 SC 1947,*** this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have.

Section 504 IPC comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accuse must intend or know that such provocation would cause another tobreak the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the

public peace or to commit any other offence. The person who intentionally insults intending or working it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.

We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504, IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504, IPC.

We have already extracted the relevant portions of the complaint. If they are so read in the above legal settings in our view, a prima facie case has been made out for initiating proceedings for the offence alleged under Section 504, IPC.

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**191. CRIMINAL PROCEDURE CODE, 1973 – Sections 311 and 301**
**EVIDENCE ACT, 1872 – Section 165**
**Reconciliation between sections 301 and 311 of Cr.P.C. – Under section 301(2), the right of a private person to participate in criminal proceedings has got its own limitations, in the conduct of the proceedings, while the ingredients of section 311 empowers the trial Court in order to arrive at a just decision to resort to an appropriate measure befitting the situation in the matter of examination of witnesses – If in the consideration of the trial Court invocation of section 301 (2) is not permissible, then scope for invoking section 311 of Cr.P.C. should be examined to set right the position.**

**Sister Mina Lalita Baruwa v. State of Orissa and others**

**Judgment dated 05.12.2013 passed by the Supreme Court in Criminal Appeal No. 2044 of 2013, reported in AIR 2014 SC 782**

**Extracts from the judgment :**

Having referred to the statutory provisions, we could discern that while under Section 301(2) the right of a private person to participate criminal

proceedings has got its own limitations, in the conduct of the proceedings, the ingredients of Section 311 empowers the trial Court in order to arrive at a just decision to resort to an appropriate measure befitting the situation in the matter of examination of witnesses. Therefore, a reading of Sections 301 and 311 together keeping in mind a situation like the one on hand, it will have to be stated that the trial Court should have examined whether invocation of Section 311 was required to arrive at a just decision. In other words even if in the consideration of the trial Court invocation of Section 301(2) was not permissible, the anomalous evidence deposed by PW-18 having been brought to its knowledge should have examined the scope for invoking Section 311 and set right the position. Unfortunately, as stated earlier, the trial Court was in a great hurry in rejecting the appellant's application without actually relying on the wide powers conferred on it under Section 311, Cr.P.C. for recalling PW-18 and ensuring in what other manner, the grievance expressed by the victim of a serious crime could be remedied.

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***192. CRIMINAL PROCEDURE CODE, 1973 – Section 320**

**INDIAN PENAL CODE, 1860 – Section 324**

**Amendment in procedural law, effect of – Offence under section 324 IPC may not be compoundable after Amendment Act, 2005 w.e.f. 31.12.2009, prior to that offence was compoundable – The alleged offence under section 324 IPC was committed on 16.11.2006 when the same was compoundable – Trial Court rejected on 02.08.2010 the application for permission to compound the offence under section 324 IPC as on the date of presentation of the application for permission to compound the offence, as the same is not compoundable anymore w.e.f. 31.11.2009 – Held, Trial Court committed an error in refusing to compound the offence under section 324 IPC as the same on the date of offence has been made non-compoundable w.e.f. 31.12.2009 and on the date of its commission, it was compoundable.**

**Shamsher Bahadur Singh Chandel @ Golend Singh v. State of M.P.**

**Judgment dated 11.04.2014 passed by the High Court of M.P. in Criminal Revision No. 339 of 2012, reported in 2014 (3) MPHT 139**

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***193.CRIMINAL PROCEDURE CODE, 1973 – Section 389 (i)**

**Power of suspension of sentence by Appellate Court, exercise of – Suspension of sentence is discretionary relief – However, the power is to be exercised judicially – The Appellate Court is required to record reasons in writing therefor – Appellate Court is empowered to impose conditions while granting suspension of execution of sentence which are reasonable and commensurate or proportionate to the sentence imposed – The appellate Court is required to consider nature and gravity of circumstances, the position and status of the accused with**

**reference to the victim and the witnesses, the likelihood of the accused fleeing from justice for repeating the offence and jeopardizing his own life and thereafter being faced with the grim prospect of possible conviction in the case and tampering with the evidence.**

**Suresh Chand Pathak and others v. State of M.P.**

**Judgment dated 06.09.2013 passed by the High Court in Criminal Appeal No. 379 of 2012, reported in 2014 (2) MPHT 64 (DB)**

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**194. CRIMINAL PROCEDURE CODE, 1973 – Section 451**

**Seizure of vehicle involved in forest offence, release of – In serious offences relating to forest laws, court must refrain itself from releasing the vehicle during trial.**

**Vikramaditya Singh v. State of M. P.**

**Judgment dated 28.02.2014 passed by the High Court of M.P. in Misc. Cri. Case No. 684 of 2014, reported in 2014 (3) MPHT 142**

**Extracts from the judgment:**

At the outset, the contention of the applicant regarding parity deserves to be rejected as the facts involved in the present case are totally different from the facts involved in the case relied upon by the applicant. Quite apart from the above, the reliance placed by the applicant on the Full Bench decision in the case of ***Madhukar Rao v. State of M.P. 2000, (1) MPLJ 289*** which has subsequently been affirmed by the Supreme Court in the case of ***State of M.P. and others v. Madhukar Rao, (2008) 14 SCC 624,*** is also misplaced and misconceived as the aforesaid case dealt with final confiscation and declaration of property as Government property without conducting any enquiry or taking up proceeding by misinterpreting the provisions of Section 39 of the Wild Life Protection Act, whereas the present case is not one of confiscation or declaration property without enquiry. On the contrary, in the present case, the applicant's tractor and trolley have been seized during the pendency of the investigation before the authority and the applicant has filed an application under Section 457 Cr.PC for release of the seized property during the enquiry or trial and the Court while taking into consideration the facts prevalent in the applicant's case has rejected the application under Section 457, Cr.PC and has refused to grant interim custody of the tractor and vehicle to the applicant.

The Supreme Court in the case of ***State of Karnataka v. K. Krishnan, (2000) 7 SCC 80***, has held that a liberal approach for release of vehicles or implements involved in forest offences should not be adopted by the Courts and the same should not normally be returned to a party till the culmination of the proceedings in respect of such offence including confiscatory proceedings except in exceptional cases, in the following terms:-

> "7……. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother-earth and the atmosphere surrounding it. The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere. We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come."

The same view has again been reiterated and reaffirmed by the Supreme Court in the cases of ***State of W.B v. Gopal Sarkar, (2002) 1 SCC 495*** and ***State of West Bengal and another v. Mahua Sarkar, (2008) 12 SCC 763*** and in fact the Supreme Court has gone on to state that the High Courts concerned had wrongly released the vehicles.

In view of the law laid down by the Supreme Court in the aforesaid cases and looking to the peculiar facts of the present case and the seriousness of the offence and the antecedents of the petitioner, I do not find any illegality or infirmity in the impugned order passed by the Court below rejecting the petitioner's application for release of the vehicle.

I also do not find any substance in the submission of the learned counsel for the petitioner that the vehicle be permitted to be released on furnishing adequate security looking to the antecedents of the petitioner; the fact that several cases have been registered against him; the act of beating up Government officers while undertaking proceedings against him and the possibility of the petitioner again using the vehicle for commission of forest offences. Any such approach would be contrary to the law laid down by the Supreme Court in the above cited cases.

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**195. EVIDENCE ACT, 1872 – Sections 3 and 32**

**(i) Appreciation of evidence – Dying declaration not recorded directly from the actual words of the deceased but as dictated by PW 36 – It creates suspicion about credibility – Sanctity is attached to a D.D. because it comes from the mouth of a dying person.**

**(ii) Appeal against acquittal – Principles which must bear in mind, explained.**

**Muralidhar @ Gidda and another v. State of Karnataka**

**Judgment dated 09.04.2014 passed by the Supreme Court in Criminal Appeal No. 551 of 2011, reported in (2014) 5 SCC 730**

**Extracts from the judgment :**

The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in ***Tulsiram Kanu v. State, AIR 1954 SC 1, Madan Mohan Singh v. State of U.P., AIR 1954 SC 637, Atley v. State of U.P., AIR 1955 SC 807, Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217, Balbir Singh v. State of Punjab, AIR 1957 SC 216, M. G. Agarwal v. State of Maharashtra, AIR 1963 SC 200, Noor Khan v. State of Rajasthan, AIR 1964 SC 286, Khedu Mohton v. State of Bihar, (1970) 2 SCC 450, Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, Lekha Yadav v. State of Bihar, (1973) 2 SCC 424, Khem Karan v. State of U.P., (1974) 4 SCC 603, Bishan Singh v. State of Punjab, (1974) 3 SCC 288, Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228, K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355, Tota Singh v. State of Punjab, (1987) 2 SCC 529, Ram Kumar v. State of Haryana, 1995 (cri), Madan Lal v. State of J & K, (1997) 7 SCC 677, Sambasivan v. State of Kerala, (1998) 5 SCC 412, Bhagwan Singh v. State of M.P., (2002) 4 SCC 85, Harijana Thirupala v. Public Prosecutor, (2002) 6 SCC 470, C. Antony v. K. G. Raghavan Nair, (2003) 1 SCC 1, State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291, State of Goa v. Sanjay Thakran, (2007) 3 SCC 755, Chandrappa v. State of Karnataka, (2007) 4 SCC 415.*** It is not necessary to deal with these cases individually.

Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a

reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on re-appreciation and reevaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

The sanctity is attached to a dying declaration because it comes from the mouth of a dying person. If the dying declaration is recorded not directly from the actual words of the maker but as dictated by somebody else, in our opinion, this by itself creates a lot of suspicion about credibility of such statement and the prosecution has to clear the same to the satisfaction of the court. The trial court on overall consideration of the evidence of PW 25, PW 30 and PW 36 coupled with the fact that there was overwriting about the time at which the statement was recorded and also insertion of two names by different ink did not consider it safe to rely upon the dying declaration and acquitted the accused for want of any other evidence. In the circumstances, in our view, it cannot be said that the view taken by the trial court on the basis of evidence on record was not a possible view. The accused were entitled to the benefit of doubt which was rightly given to them by the trial court.

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**196. EVIDENCE ACT, 1872 – Section 115**

**CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17**

**(i) Principle of estoppel, object of – Estoppel is to prevent fraud and secure justice between parties by promotion of honesty and good faith and by preventing them from approbating and reprobating at the same time.**

**(ii) Amendment, permissibility of – Prayer for amendment after a period of twenty eight years since filing of the suit – Appears to have filed with an object to fill up lacunae – Amendment is impermissible in law.**

**Vijay Bahadur Singh v. Rameshwar and others**

**Judgment dated 11.10.2013 passed by the High Court of M.P. in Second Appeal No. 672 of 1997, reported in 2014 (1) MPLJ 680**

**Extracts from the judgment:**

In the instant case, from perusal of Exhibit D-1 filed in Civil Suit No. 643-A/1994 out of which Second Appeal No. 672/1997 arises, it appears that the sale deed dated 21.12.1968 was executed on behalf of the plaintiff who was minor by his mother acting as his guardian.From perusal of Exhibit P-4 filed alongwith

Civil Suit No. 641-A/1994 out of which Second Appeal No. 676/1997 arises, it is evident that the aforesaid document is a Chakbandi Patta wherein the name of grandfather of the plaintiff has been described as owner of the lands bearing khasra numbers 599, 1609 and 1769. The plaintiff's name has been described as minor through his guardian, namely, grandfather, namely, Narayan Singh. It is also not in dispute that the defendants purchased the suit lands during minority of the plaintiff and the sale deeds in question have been executed by the mother of the plaintiff. In the facts of the case, since the defendants had purchased the suit lands from the mother of the plaintiff who derived right, title and interest from the plaintiff therefore, the defendants are bound by the act and representation of the guardian of the plaintiff and they are estopped from contending that the plaintiff has no right, title and interest in respect of the suit lands. In ***Chajja Singh v. Pritam Singh, AIR 1950 Pepsu 59,*** the Full Bench has held that such case may not strictly fall within the scope of section 115 of the Indian Evidence Act, 1872 but neither that section nor the sections that immediately follow it are exhaustive of the rule of estoppel. Principle of estoppels is based on equity and good conscience and the object is to prevent fraud and secure justice between parties by promotion of honesty and good faith and by preventing them from approbating and reprobating at the same time. In view of the aforesaid analysis, the first substantial question of law framed by a Bench of this Court in both the appeals are answered in the affirmative.

It is well settled in law that application for amendment cannot be filed to fill up the lacunae. [see: ***State of U.P. v. Manbbodhan Lal Srivastava, AIR 1957 SC 912]*** In ***South Konkan Distilleries and another v. Prabhakar Gajanan Naik and others, (2008) 14 SCC 632*** it has been held that if the claim n the application for amendment is barred by limitation, such an application has to be rejected. In the instant case, the plaintiff filed the suit seeking the relief of declaration that he is the owner and in possession of the suit lands and sale deeds executed in favour of the defendants is null and void on 8-3-1983. In the written statement which was filed on 04.08.1986, in paragraph 5 the defendants took a specific objection with regard to maintainability of the suit on the ground that relief of possession has not been sought. The trial Court vide judgment and decree dated 12.05.1995 recorded specific finding on issue numbers 6 and 7and held that the plaintiff is not in possession of the suit lands and, therefore, the suit filed by the plaintiff is not maintainable. The aforesaid finding was affirmed in appeal by the lower Appellate Court vide judgment and decree dated 26.04.1997. The second appeal was filed in the year 1997. The application for amendment has been filed on 18.08.2011 i.e. after a period of fourteen years after institution of the second appeal. Thus, the prayer for amendment has been made nearly after a period of twenty-eight years from the date of institution of the suit. The amendment is sought with the view to fill up the lacunae which is impermissible in law. Besides that the relief of possession claimed in the suit is barred by limitation. Therefore, the application filed by the appellant deserves to be rejected.

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***197. FAMILY COURTS ACT, 1986 – Section 7 (1) (g)**
**GUARDIANS AND WARDS , 1890 – Section 25**

**Application under section 25 of Guardians and Wards Act for return of custody, jurisdiction therefor – Only Family Court can exercise jurisdiction to decide such application and in view of power created by Family Courts Act, 1984, District Court has no jurisdiction to entertain such application.**

**Deedar Singh Dhillan and another v. Preetpal Singh Chadda**

**Judgment dated 11.11.2013 passed by the High Court of M.P. in Civil Revision No. 69 of 2013, reported in 2014 (2) MPLJ 194**

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**198. FOREST ACT, 1927 – Sections 52 (4) and 52 (c)**

**Seizure of vehicle in respect of alleged offence under Forest Act and Wild Life (Protection) Act – Initiation of confiscation proceedings, effect on release by Magistrate – Once the Magistrate receives information as to initiation of confiscation proceedings under section 52 (4) of the Act, the Magistrate ceases to have jurisdiction to release the vehicle as per section 52 (c) of the Forest Act.**

**Biresh Kumar Singh v. State of M.P. and others**

**Judgment dated 01.04.2014 passed by the High Court of M.P. in Criminal Revision No. 2571 of 2013, reported in 2014 (3) MPHT 192**

**Extracts from the judgment:**

The facts, in short, giving rise to this revision are that the applicant is a farmer and owner of Tata-407 vehicle bearing No. MP 53-GA-2054. He sent his driver with vehicle to purchase sand for his personal use (for construction of his house). The driver was having all valid documents of vehicle and also having transit pass to transport the sand. Despite that, the prosecution has registered an offence as Forest Offence Case No. 471/20 on 23-6-2013 against the driver for the offence punishable under Sections 27,29,39 and 51 of the Wild Life (Protection) Act alleging that he was unauthorisedly transporting the Sand from the protected area, i.e. Son Ghariya Wild Life Sanctuary, Sidhi. The vehicle was seized by the Police and Officer of Forest Department. Since the applicant was the registered owner of the vehicle, he filed an application under Section 451/457 of the Cr.PC before Chief Judicial Magistrate, Sidhi, which was dismissed with the observation that confiscation proceedings under Section 52 of the Indian Forest Act, 1927 have been initiated by the Competent Authority, therefore, the Court of Chief Judicial Magistrate has no jurisdiction to release the aforesaid vehicle on Superdginama, hence this revision.

It reveals from the impugned order that accused Pinku Kewat has been prosecuted for the offence punishable under Sections 27,29,39,51 of the Wild Life (Protection) Act and under Sections 2, 41,52 of the Indian Forest Act. It further reveals from the impugned order that the Chief Judicial Magistrate, Sidhi

had already received an information under Section 52 (4) of the Indian Forest Act in regard to the fact that the confiscation proceedings have been initiated in connection with seized vehicle. In these circumstances, the legal provision regarding bar of jurisdiction of Courts has to be examined. There is specific bar of jurisdiction of Courts under Section 52-C of the Indian Forest Act, 1927.

The facts of the case of ***Madhukar Rao s/o Malik Rao v. State of M.P. and others, 2000 (1) MPLJ 289*** are totally different than the instant case. In that case, the offences were registered under Wild Life Protection Act. In that case, the main question for consideration was that whether withdrawal of power of interim relief conferred on authorities under the Act (Wild Life Protection Act) can be construed as taking away such power of Magistrate as Criminal Court competent to try the offences and to impose punishment or acquit the accused of the charge. The Full Bench of this Court after consideration of number of authorities held that the property seized under Section 52 of the Forest Act from the alleged offender cannot be the property of the State unless there is trial and finding reached by the Competent Court that the property seized was used for committing the offence. It has been further held that any property including vehicle seized on accusation or suspicion of commission of an offence under the Act can, on relevant grounds and circumstances, be released by the Magistrate pending trial in accordance with Section 50 (4) read with Section 451 of the Cr.P.C. Similar is the situation in the case of ***Smt. Phoolkali Sahu v. State of M.P. and another, M.Cr.C.No. 527/2014, decided on 11-02-2014***.

In the aforesaid cases, the offences were not registered under the Indian Forest Act. But, in the instant case, the property has been seized not only under Wild Life (Protection) Act, but also under Indian Forest Act and there is a specific bar of jurisdiction of the Courts under Section 52-C of the Indian Forest Act as mentioned hereinabove. Since as per impugned order, the information with respect to initiation of proceedings for confiscation was already received by the Chief Judicial Magistrate, Sidhi, therefore, he had no jurisdiction to release the disputed vehicle on Supurdginama to the applicant.

So far as the order passed by this Court on 13-11-2013 in M.Cr.C. No. 11367/2013, ***Yagyaraj Singh v. State of M.P.*** , is concerned , in that case, it was not brought to the notice of this Court that any information has been received by the Chief Judicial Magistrate in regard to initiation of proceedings for confiscation in connection with the disputed property by the Competent Authority. Thus, the aforesaid order has no bearing with the facts of the instant case.

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***199. HINDU MARRIAGE ACT, 1955 – Sections 24 and 26**
**CIVIL PROCEDURE CODE, 1908 – Section 11**

**(i) Subsequent application under section 24 r/w/s 26 of the Hindu Marriage Act – *Res judicata*, applicability of – Where earlier application is not decided finally on merits, principle of *res judicata* is not attracted to subsequent application.**

**(ii) Application for amendment of quantum thereof, determination of – Such application must be decided within the prescribed limit of 60 days from the date of service of notice on the spouse taking into consideration the income of parties – Further held, Court exercises wider discretion in the matter but it cannot be exercised in arbitrary and whimsical manner.**

### Sona v. Subhash

**Judgment dated 07.01.2014 passed by the High Court of M.P. in Writ Petition No. 4463 of 2013, reported in 2014 (2) MPLJ 466**

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**200. INDIAN PENAL CODE, 1860 – Sections 96 to 106, 302 and 304**

**(i) The extent and limitations of the right of private defence is described under sections 96 to 106 IPC – It can only be exercised to defend the illegal act and not to retaliate.**

**(ii) The accused has not stated about right of private defence or that complaints were aggressive in his examination under section 313 Cr.P.C – Held, it was established by prosecution evidence that it was the accused who was the aggressor and he had not acted in private defence so plea of right of private defence is rejected.**

**(iii) Murder and culpable homicide not amounting to murder – There was no motive to cause death of deceased – Intention to cause such bodily injuries which were sufficient in the ordinary course of nature to cause death of deceased was also absent – At the spur of the moment, in heat of exchange of words, accused caused injuries on the body of deceased which caused his death, so ingredients of murder not proved – Conviction altered from section 302 IPC to section 304 IPC.**

### Manjeet Singh v. State of Himachal Pradesh

**Judgment dated 25.04.2014 passed by the Supreme Court in Criminal Appeal No. 1695 of 2005, reported in (2014) 5 SCC 697**

**Extracts from the judgment :**

Under Section 96, IPC, "Nothing is an offence which is done in the exercise of the right of private defence". Right of private defence of the body and of property has been enumerated under Section 97, IPC, subject to the restrictions contained in Section 99, IPC. As per the said section every person has a right to defend:

> ***"Firstly.*** – His own body, and the body of any other person, against any offence affecting the human body;
>
> ***Secondly.*** – The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery,

mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass."

Section 102, IPC, deals with commencement and continuance of the right of private defence of the body as follows :

> "**102. Commencement and continuance of the right of private defence of the body.** – The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues."

The extent and limitations of the right of private defence is prescribed under Sections 96 to 106, IPC. Such a right can be exercised only to defend the unlawful action and not to retaliate.

Satish Kumar (PW 9), an independent witness, who was also staying and sleeping in the hall where the occurrence had taken place, though he was declared hostile, has admitted the correctness of the prosecution story in the following terms:

> "It is correct that when I woke up on hearing the noise, I saw a boy coming in the hall and inquiring about the Manager from the accused Manjeet. It is correct that one of the associates of accused Manjeet, i.e., one driver stated that we are not chowkidar, so you tell the Manager. It is correct that upon this the accused persons started beating that boy and thereafter other associates of that boy also came in the hall of that hotel after about 5-7 minutes."

In answer to court question, PW 9 has stated:

> "The driver who was with accused Manjeet was heavily drunk and was also abusing the other party and Manjeet, the accused tried to prevail upon him and thereafter the said driver attempted to assault those 4-5 persons present in the hall and thereafter free fighting between the parties."

The above statement of Satish Kumar (PW 9) lends support to the prosecution story to show that it was the accused who was the aggressor and that the accused had not acted in private defence.

The question now requires to be determined is as to what is the nature of offence that the accused has committed. The evidence produced against the accused does not show that the accused had any motive to cause death of the deceased or have intended to cause such bodily injuries which were sufficient in the ordinary course of nature to cause the death of the deceased. The evidence on record also does not establish that the injuries caused on the body of the deceased must in all probability cause his death or likely to cause his

death. On the spur of the moment, during the heat of exchange of words the accused caused injuries on the body of the deceased which caused his death. Therefore, the ingredients of the murder as defined in Section 300, IPC, have not been established against the accused. In our opinion, the accused was guilty of culpable homicide not amounting to murder under Section 304, IPC, and considering the fact that the accused had no intention to either cause the death of the deceased or cause such bodily injury as is likely to cause death of the deceased, it would be sufficient to impose on accused a sentence of seven years rigorous imprisonment and to impose on him a fine of Rs.5,000/- and in default of payment of fine, a further imprisonment of six months.

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**201. INDIAN PENAL CODE, 1860 – Sections 148, 149 and 302**
**CRIMINAL PROCEDURE CODE, 1973 – Section 154**

**(i) Common object, how to be gathered? Common object of an unlawful assembly can also be gathered from the nature of the assembly, the weapons used by its members and the behaviour of the assembly at or before the scene of occurrence – It cannot be stated as a general proposition of law that unless an overt act is proven against the person who is alleged to be a member of the unlawful assembly, it cannot be held that he is a member of the assembly – What is really required to be seen is that the member of the unlawful assembly should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141 IPC.**

**(ii) What is the effect of delay in lodging of FIR? Mere delay in lodging FIR cannot be fatal to the prosecution case – When the delay is satisfactorily explained, no adverse inference has to be drawn – Delay in lodging FIR has to be considered in the backdrop of factual score; as to the impact of the crime on the relatives, the shock and panic which would rule supreme at the relevant time, distance of hospital (in injury cases) and police station etc.**

**Om Prakash v. State of Haryana**

**Judgment dated 16.04.2014 passed by the Supreme Court in Criminal Appeal No. 1102 of 2006, reported in (2014) 5 SCC 753**

**Extracts from the judgment :**

In the present case as we find, there is in fact no delay. The learned counsel for the appellants would emphasise on the concept that effort has to be made to lodge the report at the earliest, but the "earliest", according to us, cannot be put in the compartment of absolute precision. Apart from what we have stated, the impact of the crime on the relations who are eyewitnesses, the shock and panic which would rule supreme at the relevant time and other ancillary aspects are also to be kept in mind. That apart, as we notice, the FIR is not the result of

any embellishment which has the roots in any kind of afterthought. Considering the totality of facts and circumstances the submission of the learned counsel for the appellants pertaining to delay in lodging of the FIR being totally unacceptable is hereby rejected.

It is next submitted by the learned counsel for the appellants that the so-called eyewitnesses have not ascribed any specific overt act to each of the accused and there are only spacious allegations that they were armed with lathis and inflicted injuries on the deceased. In essence, the submission is that in the absence of any specific ascription or attribution of any particular role specifically to each of the accused Section 149 IPC would not be attracted. In this regard, we may refer to a passage from ***Baladin v. State of U.P., AIR 1956 SC 181*** wherein a three-Judge Bench had opined thus:

> "..... It is well settled that mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Section 142 of the Penal Code."

The aforesaid enunciation of law considered by a four-Judge Bench in ***Masalti v. State of U.P., AIR 1965 SC 202*** which distinguished the observations made in ***Baladin*** (supra) on the foundation that the said decision should be read in the context of the special facts of the case and may not be treated as laying down an unqualified position of law. The four-Judge Bench, after enunciating the principle, stated as follows:

> "..... It would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly".

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**202. INDIAN PENAL CODE, 1860 – Sections 304-B and 306**
**EVIDENCE ACT, 1872 – Section 106**

**(i) Accused and deceased were husband and wife and living together – Deceased committed suicide by jumping into the river along with her daughter – It was within the special knowledge of the accused that when and why the deceased left the house and how she died, in otherwise than under normal circumstances – If accused does not give any explanation, adverse inference can be drawn against him in the light of section 106 of the Evidence Act.**

**(ii) Where an accused was charged under section 304-B IPC, can court convict him under section 306 IPC? Held, Yes – *Narwinder Singh v. State of Punjab, (2011) 2 SCC 47* relied on.**

## Ramesh Vithal Patil v. State of Karnataka and others

**Judgment dated 31.03.2014 passed by the Supreme Court in Criminal Appeal No. 56 of 2006, reported in (2014) 2 Crimes 227 (SC)**

**Extracts from the judgment :**

It is true that the appellant was not charged under Section 306 of the IPC. The charge was under Section 304-B of the IPC. It was, however, perfectly legal for the High Court to convict him for offence punishable under Section 306 of the IPC. In this connection, we may usefully refer to ***Narwinder Singh v. State of Punjab, (2011) 2 SCC 47***. In that case the accused was charged under Section 304-B of the IPC. The death had occurred within seven years of the marriage. The trial court convicted the accused for an offence punishable under Section 304-B of the IPC.

Upon reconsideration of the entire evidence, The High Court came to the conclusion that the deceased had not committed suicide on account of demand for dowry, but, due to harassment caused by the husband in particular. The High Court acquitted the parents of the accused and converted the conviction of the accused from one under Section 304-B of the IPC of Section 306 of the IPC. This Court dismissed the appeal filed by the accused. It was observed that it is a settled proposition of law that mere omission or defect in framing charge would not disable the court from convicting the accused for the offence which has been found to be proved on the basis of the evidence on record. In such circumstances, the matter would fall within the purview of Sections 221(1) and (2) of the Code of Criminal Procedure, 1973.

The relevant observations of this Court could be quoted:

> "21. The High Court upon meticulous scrutiny of the entire evidence on record rightly concluded that there was no evidence to indicate the commission of offence under Section 304-B IPC. It was also observed that the deceased had committed suicide due to harassment meted out to her by the appellant but there was no evidence on record to suggest that such harassment or cruelty was made in connection to any dowry demands. Thus, cruelty or harassment sans any dowry demands which drives the wife to commit suicide attracts the offence of "abetment of

suicide" under Station 306 IPC and not Section 304-B IPC which defines the offence and punishment for "dowry death".

There is also another angle to this case. The prosecution has succeeded in proving facts from which a reasonable inference can be drawn that the deceased committed suicide by jumping in the river along with her daughter. The deceased was in the custody of the appellant. She left the appellant's house with the small child. Admittedly, neither the appellant nor any member of his family lodged any missing complaint. The appellant straightway went to the house of the deceased to enquire about her. This conduct is strange. When his wife and small child had left the house and were not traceable the appellant was expected to move heaven and earth to trace them.

As to when and why the deceased left the house and how she died in suspicious circumstances was within the special knowledge of the appellant. When the prosecution established facts from which reasonable inference can be drawn that the deceased committed suicide, the appellant should have, by virtue of his special knowledge regarding those facts, offered an explanation which might drive the court to draw a different inference. The burden of proving those facts was on the appellant as per Section 106 of the Evidence Act but the appellant has not discharged the same leading to an adverse inference being drawn against him [See: ***Tulshiram Sahadu Suryawanshi and another v. State of Maharastra, (2012) 10 SCC 373*** and ***Babu alias Balasubramaniam v. State of Tamil Nadu, (2013) 8 SCC 60***].

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***203. INDIAN PENAL CODE, 1860 – Section 306**

**CRIMINAL PROCEDURE CODE, 1973 – Section 399 r/w/s 401**

**Offence of abetment to commit suicide – Framing of charge, requirement of.**

***Stated facts of the case*:**

**Deceased driver committed suicide on demand for the return of money being made by the accused owner of the truck – Before death, quarrel took place between the deceased driver and the accused owner and he threatened the deceased driver regarding account – After completion of evidence, chargesheet under section 306 IPC was filed against the owner of the truck – Trial Court framed charge under section 306 IPC against the accused owner – In revision, it was held there is no sufficient evidence on record to indicate that the accused in any way abetted suicide – Further held, demanding borrowed money back cannot be termed as harassment to the deceased.**

**Radheshyam v. State of M.P.**

**Judgment dated 21.04.2014 passed by the High Court of M.P. in Criminal Revision No. 1465 of 2010, reported in 2014 (3) MPHT 103**

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**204. INDIAN PENAL CODE, 1860 – Section 376 (2)(g)**

**(i) Gang rape – Sentence – Theory of punishment – Punishment should always be proportionate/commensurate to the gravity of the offence.**

**(ii) Proviso to Section 376 I.P.C. – Being an exception clause requires strict interpretation – Religion, race, caste, economic or social status of the accused or victim, long pendency of the criminal trial, offer of the rapist to marry the victim, married and settled status of victim in life, cannot be construed as special and adequate factors for reducing the sentence prescribed by the statute.**

**(iii) Whether a compromise entered into between the parties can be considered as a ground for awarding lesser sentence in a rape case? Held, No – In the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the court to exercise the discretionary power under proviso to section 376 of the IPC.**

**Shimbhu and anr. v. State of Haryana**

**Judgment dated 27.08.2013 passed by the Supreme Court in Criminal Appeal No. 1278 of 2013, reported in AIR 2014 SC 739**

**Extracts from the judgment :**

The law on the issue can be summarized to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute. The power under the proviso should not be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso to Section 376(2) of IPC.

**205. LAND ACQUISITION ACT, 1899 – Sections 18 and 23**

**(i) Inadequacy of compensation, proof of – Burden of proving inadequacies lies with the applicant himself and he has to furnish satisfactory and sufficient basis for determining market value of the acquired land.**

**(ii) Determination of compensation, duty of Court – Court is duty bound to ensure that compensation determined is just and fair, not only to the individual whose land is acquired but also to the public which has to pay for it.**

**(iii) Determination of compensation – Grant of additional statutory benefits, reasons therefor – Reasons for grant of additional statutory benefits are clearly different and has no bearing on determination of market value.**

## Sudarshan Ahuja and others v. State of M.P. and another

**Judgment dated 22.11.2013 passed by the High Court of M.P. in First Appeal No. 98 of 2004, reported in 2014 (1) MPLJ 653 (DB)**

**Extracts from the judgment:**

The burden of proving inadequacy of the amount is to be discharged by the claimant himself and he has to satisfactorily furnish basis for determining market value of acquired land. In the case of ***Special Land Acquisition Officer v. Karigowda and others, (2010) 5 SCC 708,*** at page 723: Hon'ble the Apex Court observed as follows:-

> "It is a settled principle of law that the onus to prove entitlement to receive higher compensation is upon the claimants. In ***Basant Kumar v. Union of India, (1996) 11 SCC 542*** this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimants, which they can discharge while placing and providing on record sale instances and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also copulating the factors regulating the discretion of the Court while awarding the compensation."

Therefore, while deciding on the compensation to be paid for acquisition of the land, the Court is duty bound to ensure that compensation determined is just and fair not only to the individual whose land is acquired but also to the public which has to pay for it.

On perusal of these documents, it is crystal clear that the lands were agricultural lands and they were not vacant lands. In this claimants

were deprived of enjoyment of their lands for the reasons not known to them. Hence, while considering the claim of damages, it should be kept in mind that the reasons for grant of additional statutory benefits are clearly different which has no bearing on determination of market value.

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**206. LAND ACQUISITION ACT – Section 23**

**Assessment of compensation – Determination of market value of acquired land – Factors to be considered – The market value of the land is to be determined taking into consideration the existing use of the land, geographical situation/location of the land along with the advantages/disadvantages i.e. distance from the National or State Highway or a road situated within a developed area etc. – In urban areas, even a small distance makes a considerable difference in the price of land, so above factors are to be kept in mind to assess market value of the land.**

### Bhule Ram v. Union of India and another

**Judgment dated 28.03.2014 passed by the Supreme Court in Civil Appeal No. 6251 of 2010, reported in AIR 2014 SC 1957**

**Extracts from the judgment :**

The market value of the land is to be assessed keeping in mind the limitation prescribed in certain exceptional circumstances under Section 23 of the Act. A guess work, though allowed, is permissible only to a limited extent. The market value of the land is to be determined taking into consideration the existing use of the land, geographical situation/location of the land along with the advantages/disadvantages i.e. distance from the National or State Highway or a road situated within a developed area etc. In urban area even a small distance makes a considerable difference in the price of land. However, the court should not take into consideration the use for which the land is sought to be acquired and its remote potential value in future. In arriving at the market value, it is the duty of the party to lead evidence in support of its case, in absence of which the court is not under a legal obligation to determine the market value merely as per the prayer of the claimant.

There may be a case where a huge tract of land is acquired which runs though continuous, but to the whole revenue estate of a village or to various revenue villages or even in two or more States. Someone's land may be adjacent to the main road, others' land may be far away, there may be persons having land abounding the main road but the frontage may be varied. Therefore, the market value of the land is to be determined taking into consideration the geographical situation and in such cases belting system may be applied. In such a fact-situation every claimant cannot claim the same rate compensation.

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**207. LAND REVENUE CODE, 1959 (M.P.) – Section 164**
**HINDU SUCCESSION ACT, 1956 – Section 22**
**Interest in agricultural land of Bhumiswami, devolution of – Such interest is subject to personal law and Hindu Succession Act is applicable to agricultural lands also.**

## Kamla Bai v. Nathuram Sharma and others

**Judgment dated 14.02.2014 passed by the High Court of M.P. in Writ Petition No. 8114 of 2012, reported in 2014 (2) MPLJ 62**

**Extracts from the judgment:**

Section 22 of the Hindu Succession Act, 1956 has been enacted to keep out stranger coming into heirs of class-I schedule after coming into force of the said Act. A conjoint reading of section 164 of MPLRC and Section 22 of HS Act makes it clear that section 22 needs to be given preference. The effect of amended section 164 was taken into consideration by this Court in ***Chaitram and Ors. v. Mrs. Itwarin,1998 RN 53.*** It was opined that if Phulabai died after this amendment, succession to her interest will be governed by the Hindu Succession Act, but if she died before 08.12.1961, her interest would devolve in accordance with the scheme under unamended section 164 of the Code. Thus, the judgment of ***Chaitram*** (supra) makes the said distinction very clear.

In ***Anant Kibe and Ors. v. Purushottam Rao and others, 1984 (Supp) SCC 175,*** the Apex Court considered the impact of amended section 164 of MPLRC and opined as under :-

> "Section 164 provides that subject to his personal law, the interest of a bhumiswami shall, on his death, pass by inheritance, survivorship or bequest, as the case maybe. On a combined reading of Sections 158 (1) (b) and 164, the legal consequence of succession by the rule of primogeniture which were terms of the grant of inam lands under the Jagir Manual of the Holkar State, stood extinguished."

The Apex Court has drawn the curtains on the issue by holding that as per Section 164, interest of Bhumiswami shall be subject to his personal law.

In ***Dalchand v. Kamlabai & Ors, 1987 MPLJ 636.*** this court opined that it is now well settled that the devolution on the competency or incompetency to dispose of property in any particular mode is governed by the law applicable on the date of devolution or the date of disposition of property.

On the basis of aforesaid analysis, it is clear that amended section 164 will be applicable in the present case. Thus, I am unable to agree with the first contention of learned counsel for the petitioner. The applicability and definitions of MPLRC makes it clear that it is applicable on agricultural land. Apart from this, the judgments of ***Chain Singh v. Ramchandra and ors. 1992 RN 177*** and ***Madan Singh v. Papulal, 2006 RN 207*** are of no assistance to in

view of new Section 164 for the proposition that Section 22 of H.S. Act is not applicable on agricultural land.

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**208. LIMITATION ACT, 1963 – Section 5**

**Sufficient cause – Party should not have acted in a negligent manner or for want of *bona fides* on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has not acted diligently or remained inactive – An application for condonation of delay is to be decided only within the parameters laid down by the Apex court – In case there was no sufficient cause to prevent a litigant to approach the court on time, condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature.**

**Basawaraj & anr. v. The Spl. Land Acquisition Officer**

**Judgment dated 22.08.2013 passed by the Supreme Court in Civil Appeal No. 6974, reported in AIR 2014 SC 746**

**Extracts from the judgment:**

Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercise discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: ***Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors., AIR 1964 SC 1336; Lala Matadin v. A. Narayanan, AIR 1970 SC 1953; Parimal v. Veena alias Bharti, AIR 2011 SC 1150:*** and ***Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629***.

In ***Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993*** this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, difference

exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: ***Madanlal v. Shyamlal, AIR 2002 SC 100*** and ***Ram Nath Sao alias Ram Nath Sahu & ors. v. Gobardhan Sao & ors., AIR 2002 SC 1201***.

The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

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***209. MOTOR VEHICLES ACT, 1988 – Section 166**

**Assessment of compensation in injury cases – Deceased aged 16 years, a student, suffered 70% permanent disability, Tribunal awarded Rs. 6,46,000 as compensation which the High Court enhanced to Rs. 11,76,00,000.**

**Apex Court has taken notional income at Rs. 10,000 p.m., added 50% income for future prospects and after applying multiplier of 18, awarded Rs. 30,93,000 which included Rs. 2,00,000 towards pain and suffering, Rs. 2,00,000 for loss of amenities and attendant, Rs.3,00,000 for loss of enjoyment of life and marriage prospects, Rs. 50,000 for cost of crutches and Rs. 25,000 for cost of litigation.**

**V. Mekala v. M. Malathi and another**
**Judgment dated 25.04.2014 passed by the Supreme Court in Civil Appeal No. 4880 of 2014, reported in 2014 ACJ 1441 (SC)**

**Note:-** Readers are requested to go through the earlier judgment of Hon'ble the Apex Court in the case of ***Master Mallikarjun v. Divisional Manager, the National Insurance Company Ltd. & anr., AIR 2014 SC 736*** which was not referred in this judgment. However, for ready reference, the said judgment is being published in this issue itself as Note No. 213 page No. 291.

**210. MOTOR VEHICLES ACT, 1988 – Section 166**

**Assessment of compensation in death cases – Deceased aged 35 years, was a Sergeant in Air Force – His monthly income was assessed at Rs. 4,030 by the Tribunal – He had five dependents – Tribunal awarded Rs. 2,49,000 and High Court enhanced it to Rs. 1,20,600.**

**Apex Court added 50% income for future prospects after applying multiplier of 16, deducted one-fourth for personal expenses and awarded Rs. 11,20,528 which included Rs. 1,00,000 towards loss of consortium, Rs. 25,000 towards funeral expenses, Rs. 1,00,000 towards loss of love and affection etc.**

## Anjani Singh and others v. Salauddin and others

**Judgment dated 25.04.2014 passed by the Supreme Court in Civil Appeal No. 4647 of 2009, reported in 2014 ACJ 1565 (SC)**

**Extracts from the judgment :**

In the decision reported in ***Reshma Kumari v. Madan Mohan, 2013 ACJ 1253 (SC)***, the points answered read as under:

(i) In the applications for compensation made under section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in column (4) of the Table prepared in ***Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298 (SC),*** read with para 21 of that judgment.

(ii) In cases where the age of the deceased is up to 15 years, irrespective of section 166 or section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in column (6) of the Table in ***Sarla Verma*** (supra) should be followed.

(iii) As a result of the above, while considering the claim applications made under section 166 in death cases where age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule to the 1988 Act.

(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 9 of ***Sarla Verma*** (supra) for determination of compensation in cases of death.

(v) While making addition to income for future prospects, the Tribunals shall follow para 11 of the judgment in ***Sarla Verma*** (supra).

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 14 and 15 of the judgment in ***Sarla Verma*** (supra) subject to the observations made by us in para 38 above.

(vii) The above propositions ***mutatis mutandis*** shall apply to all the pending matters where above aspects are under consideration."

In view of the above decision of the larger Bench of this court, the appellants were held entitled to future prospects of income considered at the time of determination of compensation both by the Tribunal and the High Court. The monthly salary of the deceased was taken as Rs. 4,030/- by the Tribunal. The High Court, in view of the answer to the points raised by this court and keeping in view the age of the deceased which was 35 years, has taken 50 per cent of the monthly salary to arrive at the multiplicand. Therefore, towards future prospects at the rate of 50 per cent with monthly income of Rs. 4,030/- it would come to Rs. 2,015/-, making the total monthly income to Rs. 6,045/-. Out of Rs. 6,045/-, one-fourth, i.e., Rs. 1,511/- shall be deducted towards personal expenses of the deceased, as per the decision of this court in ***Sarla Verma*** (Supra) as the deceased has five dependants, thus the resultant figure would be Rs. 4,534/- per month which after multiplying by 12 would come to Rs. 54,408/- as annual income. The multiplier would be 16 as per the above case which would come to Rs. 8,70,528/- under the head of loss of dependency. We further award for funeral expenses, a sum of Rs. 25,000/-, for loss of love and affection of the children and the parent, a sum of Rs. 1,00,000/- and further, a sum of Rs. 1,00,000/- for loss of consortium by the widow of the deceased, as per the legal principle laid down by this court in the three-Judge Bench decision in ***Rajesh v. Rajbir Singh, 2013 ACJ 1403 (SC)***. We also award a sum of Rs. 25,000/- towards the cost of litigation as per the principle laid down by this court in ***Balram Prasad v. Kunal Saha, (2014) 1 SCC 384***. Therefore, the amount would come toRs. 11,20,528/-.

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**211. MOTOR VEHICLES ACT, 1988 – Section 166**

**Assessment of compensation in death cases – Whether deductions under heads of GPF, house rent, group insurance etc. are permissible for calculating income of the deceased? Held, No – Only deduction towards income tax/surcharge should be considered to calculate the net income of the deceased – Voluntary contributions made by the deceased which are in the nature of savings, cannot be deducted from the salary of the deceased to calculate his net salary.**

**Manasvi Jain v. Delhi Transport Corporation and others**

**Judgment dated 23.04.2014 passed by the Supreme Court in Civil Appeal No. 7642 of 2009, reported in 2014 ACJ 1416 (SC) (3 Judge-Bench)**

**Extracts from the judgment :**

This court in ***Shyamwati Sharma v. Karam Singh, 2010 ACJ 1968 (SC),*** while considering the issues of deduction of taxes, contributions, etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans, etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased".

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**212. MOTOR VEHICLES ACT, 1988 – Section 166**

**Assessment of compensation in injury cases – Claimant aged 24 years, working on the post of Quality Engineer in a private limited company, earning Rs. 17,200/- p.m., suffered 60% permanent disability – Claims Tribunal awarded compensation of Rs. 30,60,160 but the High Court reduced it to Rs. 6,32,000/- – Apex Court not only upheld the award of the Claims Tribunal but also enhanced the compensation to Rs. 33,10,160/.**

**Dinesh Singh v. Bajaj Allianz General Insurance Co. Ltd.**

**Judgment dated 23.04.2014 passed by the Supreme Court in Civil Appeal No. 8215 of 2009, reported in 2014 ACJ 1412 SC (3 Judge Bench)**

**Extracts from the judgment :**

We hold that appellant is entitled to compensation of Rs. 33,10,160/- as under:

| | | |
|---|---|---|
| (1) | Pain and agony | Rs. 1,20,000 |
| (2) | Medical expenditure, including conveyance, attendant fee, etc. (during the period of treatment) | Rs. 3,10,000 |
| (3) | Loss of income during hospitalisation/treatment | Rs. 3,08,160 |
| (4) | Loss of future income | Rs.15,72,000 |
| (5) | Loss of happiness and loss of amenities | Rs. 3,50,000 |
| (6) | Loss of marriage prospects | Rs. 1,00,000 |
| (7) | Future medical expenses | Rs. 5,50,000 |
| | **Total** | **Rs.33,10,160** |

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**213. MOTOR VEHICLES ACT, 1988 – Section 168**

**Assessment of compensation in cases of children suffering from disability on account of motor vehicle accidenta – Appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be – (1) If the disability is upto 10%, Rs. 1 lakh, (2) if the disability is above 10% and upto 30% to the whole body, Rs. 3 lakh, (3) If the disability is upto 60%, Rs. 4 lakh, (4) if the disability is upto 90%, Rs. 5 lakh, and (6) Above 90% it should be Rs. 6 lakh, unless there are exceptional circumstances to take a different yardstick.**

**Master Mallikarjun v. Divisional Manager, the National Insurance Company Limited & Anr.**

**Judgment dated 26.08.2013 passed by the Supreme Court in Civil Appeal No. 7139 of 2013, reported in AIR 2014 SC 736**

**Extracts from the judgment :**

Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up to 30% to the whole body, Rs. 3 lakhs; upto 60%, Rs.4 lakhs; up to 90%, Rs. 5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows:

| HEAD | COMPENSATION AMOUNT |
|---|---|
| Pain and suffering already under gone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability. | Rs. 3,00,000/- |
| Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization. | Rs. 25,000/- |
| Medical and incidental expenses during the period of hospitalization for 58 days. | Rs. 25,000/- |
| Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment. | Rs. 25,000/- |
| **TOTAL** | **3,75,000/-** |

The impugned judgment of the High Court in M.F.A. No. 1146 of 2018 is accordingly modified. The claimant will be entitled to a total compensation of Rs. 3,75,000/- along with interest @ 6% per annum from the date of the petition. First respondent–Insurance Company is directed to deposit the enhanced compensation with interest as above within two months from today. On such deposit, it will be open to the appellant to approach the Tribunal for appropriate orders on withdrawal. The appeal is allowed as above.

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**214. MOHAMMEDEN LAW:**

**Whether Muslim girl who has attained the age of 15 years can marry? Held, Yes – Such marriage would be a valid marriage and she has a right to reside with her husband.**

**Rashid Khan v. State of M.P. and others**

**Judgment dated 13.02.2014 passed by the High Court of M.P. in Writ Petition No. 4768 of 2013, reported in 2014 (2) MPLJ 56**

**Extracts from the judgment:**

Brief facts necessary for adjudication of this matter are as under:-

(i) Petitioner and Gulafsa (corpus) solemnized marriage in accordance with Muslim customs on 2-3-2013 at the office of Sharivah Kaza Khanugaon Bhopal (M.P.) Nikahnama' is filed as Annexure P/1. The corpus executed an affidavit on 2-4-2013 at Bhopal admitting the factum of marriage with petitioner. This Affidavit is filed as Annexure P/2.

(ii) the stand of the petitioner is that he and corpus are major and therefore, they were entitled to decide to decide as to with whom they would marry. In support of contention regarding age, the voter ID and voter list are filed. 'Aadhar' registration slip is also relied upon for this purpose.

(iii) It is submitted that the mother of the corpus, respondent No. 4, lodged FIRs against the petitioner and forcibly and illegally took away the corpus from the petitioner's custody. Petitioner was enlarged on bail and then filed this petition.

It is contended that as per the provisions of Mulsim Law marriage is in accordance with law and respondent No. 4 is keeping the corpus without her will, which amounts to wrongful detention of corpus.

Per contra, Respondent No.4 submitted that the date of birth of corpus is 15th July, 1997. Thus, she is about 16 years and 1 and ½ months old. Mark sheet Annexure R/1 for this purpose is relied upon. However, factum of marriage is not denied. It is contended that marriage was solemnized illegally without

permission of respondent No. 4. It is contended that since corpus is minor, the marriage without the consent of respondent No. 4 is impermissible.

This Court on various occasions asked the corpus as to with whom she wants to reside. On every occasion, including on the last date of hearing on 10-2-2014, she in no uncertain terms stated that she on her own volition got married and wants to reside with the husband.

The Marriage in the present case is solemnized under the customs of Mahomedan Law. In, ***Munshi v. Mt. Alam Bibi, AIR 1932 Lahore 280*** the Division Bench of the High Court opined that under Mahomedan Law even a girl under fifteen is competent to enter into a marriage contract if she has attained puberty. In ***Mt. Gulam Sakina v. Falak Sher Allah Bakhs, AIR 1950 Lahore 45*** it was opined that "Puberty" under Muhammadan law is presumed, in the absence of evidence, on completion of the age of 15 years. It would, therefore, necessarily follow that the minor should exercise the option after the age of 15 years unless there is evidence to the contrary that puberty has been attained earlier and the burden of proving this shall lie upon the person so pleading. Anything done by the minor during the minority would not destroy the right which can accrue only after puberty.

The Division Bench of Patna High Court in case of ***Md. Irdis v. State of Bihar and others,*** reported in ***1980 Cri. L.J. 764*** opined that it has to be held that under Mahomedan Law a girl, who has reached the age of puberty, i.e., in normal course at the age of 15 years, can marry without the consent of her guardian. This Court in ***Noor Mohammad v. Mohammad Jiauddin and others, 1991 MPLJ 50*** opined that marriage solemnized under Mahomedan Law is purely a civil contract. The essentials of a valid Muslim marriage are offer and acceptance at the same sitting, by the parties to the marriage of the proposal, in the presence and hearing of two male or one male and two female witnesses.

The Delhi High Court in ***W.P. (CRL) 446/2012, Cri M.A. 3701/2012, Mrs. Tahra Begum v. State of Delhi and others*** posed with a situation where the mother of the corpus was seeking the writ of habeas corpus for getting custody from the husband of the corpus. In the said case, the corpus was a minor (age 15 years). She married with one Mehtab. Question was whether the mother can seek custody because corpus was minor/below 18 years of age. After considering various judgments, including the judgment of Patna High Court in case of ***Md. Irdis*** (supra), Delhi High Court opined that Muslim girl, who has attained puberty, i.e. 15 years can marry and such marriage would not be a void marriage. However, it was held that she has no option of treating the marriage as voidable at the time of her attaining the age of majority, i.e. 18 years. It was held as under:-

> "the girl in this case, Shumaila, clearly expressed her choice of residing with her husband, this Court is of opinion that she ought to be allowed to exercise her option. This Court has today recorded her statement in that regard. We direct

the presence of Mehtab, Shumaila and either of her in-laws once in six months, in order to ascertain her well being, till she attains the age of majority before the Child Welfare Committee. The Committee shall take necessary steps including obtaining the necessary undertaking from Mehtab in that regard subject to completion of these steps, (which shall be within a week) Shumaila shall be allowed to live with Mehtab, in the matrimonial home."

Different authors have taken the same view regarding age of marriage of Muslim girl which have been taken in the aforesaid judgments. This view is taken in "Principles of Mohammedan Law" by Mulla, "Mohammedan Law" by Aqil Ahmad and "Mohammedan Law" by B.R. Verma.

In the present case, admittedly the corpus has married after attaining the age of 15 years. Thus, her marriage cannot be said to be a void marriage. She on more than one occasion has expressed her wish to reside with her husband Rashid Khan. In this view of the matter, she has a right to reside with her husband. In view of option exercised by her to live with her husband, I deem it proper to direct the respondent No. 4 to permit the corpus to go and live with her husband. However, in the facts and circumstances of this case, I deem it proper for the welfare of the corpus to give similar directions which were given by the Delhi High Court in the above case.

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**215. MUNICIPALITIES ACT, 1961 (M.P.) – Sections 187 and 319**
**SPECIFIC RELIEF ACT, 1963 – Section 38**
**Whether section 319 (3) of the M.P. Municipalities Act, 1961 is applicable only to the suits of perpetual injunction? Held, Yes – If the suit is filed for declaration of title and permanent injunction, notice under section 319 (1) of the 1961 Act is necessary.**

**Nagar Palika Parishad, Mihona and another v. Ramnath and another**
**Judgment dated 09.04.2014 passed by the Supreme Court in Civil Appeal No. 4454 of 2014, reported in (2014) 6 SCC 394**

**Extracts from the judgment :**

Section 319 of the 1961 Act bars suits in absence of notice and reads as follows:

> ***"319. Bar of suit in absence of notice.*** – (1) No suit shall be instituted against any council or any councilor, officer or servant thereof or any person acting under the direction of any such council, councilor, officer or servant for anything done or purporting to be done under this Act, until the

expiration of two months next after a notice, in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of a council delivered or left at its office, and, in the case of any such member, officer, servant or person as aforesaid, delivered to him or left at his office or usual place of abode; and the plaint shall contain a statement that such notice has been delivered or left.

(2) Every such suit shall be dismissed unless it is instituted within eight months from the date of the accrual of the alleged cause of action.

(3) Nothing in this section shall be deemed to apply to any suit instituted under Section 54 of the Specific Relief Act, 1877 (1 of 1877)."

Respondent 1–plaintiff filed the suit for declaration of title and permanent injunction. In view of bar of suit for declaration of title in absence of notice under Section 319, the suit was not maintainable. The courts below wrongly held that the suit was for perpetual injunction though Respondent 1–plaintiff filed the suit for declaration of title and for permanent injunction.

Respondent 1–plaintiff cannot derive advantage of sub-section (3) of Section 319 which stipulates non-application of Section 319 when the suit was instituted under Section 54 of the Specific Relief Act, 1877 (old provision) equivalent to Section 38 of the Specific Relief Act, 1963 and reads as follows:

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

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

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

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

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

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

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

The benefit aforesaid cannot be derived by Respondent 1–plaintiff as the suit was filed for declaration of title coupled with permanent injunction. Respondent 1 having claimed title, the suit cannot be termed to be suit for perpetual injunction alone.

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**216. NEGLIGENCE :**

**(i) Plaintiff was admitted as an in–door patient in the hospital – He fell out of the window of hospital room – Trial Court came to the conclusion that the principle of *res ipsa loquitur* is attracted by the evidence on record – It was for the defendant to prove the absence of any negligence and due care and attention on his part – He did not prove it – Finding of trial Court upheld by Hon'ble Apex Court.**

**(ii) The classic form of the maxim *res ipsa loquitur* from *Scoot v. London and St. Katherine Docks, (1865) 3 H & C 596*:**

**"..... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care".**

**Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital Trust and others**

**Judgment dated 22.04.2014 passed by the Supreme Court in Civil Appeal No. 4010 of 2010, reported in AIR 2014 SC 2061**

**Extracts from the judgment :**

We have considered the case of the respective parties and the evidence adduced in support thereof; the judgment under appeal as well as the view taken by the learned Trial Judge besides the arguments and contentions advanced before us. The learned courts have applied the principle of ***res ipsa loquitur*** to the present case to cast the burden of proving that there was no negligence on the defendant. Thereafter, the learned Trial Judge as well as the Division Bench of the High Court has held the defendant liable for negligence and failure to take due care of the plaintiff who was an in-door patient in the hospital. The aforesaid conclusions reached is on an elaborate

the evidence and materials on record and after a detailed discussion of the stand of the rival parties. On a consideration of the facts of the present case we do not find any error in the application of the principle of ***res ipsa loquitur*** to the present case. Insofar as the findings of negligence and absence of due care of the defendant is concerned, we are of the view that such findings being concurrent findings of fact the same ought not to be reopened by us in the appeal filed by the defendant-hospital under Article 136 of the Constitution. Any such exercise would be wholly inappropriate to the extraordinary and highly discretionary jurisdiction vested in this Court by the Constitution. Even otherwise, we do not find anything inherently improbable or outrageously illogical in the conclusions reached by the learned Trial Judge as affirmed in appeal. The appeals filed by the defendant-hospital are, therefore, dismissed.

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**217. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138**

**(i) Power to levy fine under Negotiable Instruments Act – Circumscribed to twice the cheque amount – Even in a case where the Court may be taking a lenient view in favour of the accused by not sending him to prison, it cannot impose a fine more than twice the cheque amount.**

**(ii) Process to award compensation in a conviction under section 138 of N.I. Act – The power to award compensation is not available under section 138 of the Negotiable Instruments Act – It is only when the Court has determined the amount of fine, the question of paying compensation out of the same would arise – It comprises two stages – First, when the Court determines the amount of fine and levies the same subject to the outer limits and the second stage comprises invocation of the power to award compensation out of the amount so levied.**

**(iii) Purpose of punishment – Unlike other crimes, punishment in section 138 of N.I. Act cases is meant more to ensure payment of money rather than to seek retribution.**

**Somnath Sarkar v. Utpal Basu Mallick & anr.**

**Judgment dated 07.10.2013 passed by the Supreme Court in Criminal Appeal No. 1651 of 2013, reported in AIR 2014 SC 771**

**Extracts from the judgment:**

This Court has held that unlike other crimes, punishment in section 138 cases is meant more to ensure payment of money rather than to seek retribution. The Court said: (***Damodar S. Prabhu v. Syed Babalal H., AIR 2010 SC 1907***)

> "17..... Unlike that for others forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means

> to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque."

Coming then to the question whether the additional amount which the High Court has directed the appellant to pay could be levied in lieu of the sentence of imprisonment, we must keep two significant aspects in view. First and foremost is the fact that the power to levy fine is circumscribed under the statute to twice the cheque amount. Even in a case where the Court may be taking a lenient view in favour of the accused by not sending him to prison, it cannot impose a fine more than twice the cheque amount. That statutory limit is inviolable and must be respected. The High Court has in the case at hand, obviously overlooked the statutory limitation on its power to levy a fine. It appears to have proceeded on the basis as though payment of compensation under Section 357 of Cr.PC is different from the power to levy fine under Section 138, which assumption is not correct.

The second aspect relates precisely to the need for appreciating that the power to award compensation is not available under Section 138 of Negotiable Instruments Act. It is only when the Court has determined the amount of fine that the question of paying compensation out of the same would arise. This implies that the process comprises two stages. First, when the Court determines the amount of fine and levies the same subject to the outer limit, if any, as is the position in the instant case. The second stage comprises invocation of the power to award compensation out of the amount so levied. The High Court does not appear to have followed that process. It has taken payment of Rs. 80,000/- as compensation to be distinct from the amount of fine it is imposing equivalent to the cheque amount of Rs. 69,500/- . That was not the correct way of looking at the matter. Logically, the High Court should have determined the fine amount to be paid by the appellant, which in no case could go beyond twice the cheque amount, and directed payment of compensation to the complainant out of the same. Viewed thus, the direction of the High Court that the appellant shall pay a further sum of Rs. 69,500/- does not appear to be legally sustainable as rightly observed by my erudite Brother Vikarmajit Sen J. I, therefore, entirely agree with my Brother's view that payment of a further sum of Rs. 20,000/- towards fine, making a total fine of Rs.1,00,000/- (Rupees one lac) out of which Rs. 80,000/- has already been paid as compensation to the complainant, should suffice. The amount of Rs. 20,000/- (Rupees twenty thousand) now directed to be paid shall not go to the complainant who is, in our view, suitably compensated by the amount already received by him. In the event of failure to pay the additional

amount of Rs. 20,000/- the appellant shall undergo imprisonment for a period of six months. With these words, I concur with the order proposed by Brother Vikramajit Sen J.

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***218. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 143 and 145(2)**

**For speedy and expeditious disposal of cheque dishonour cases, the following directions are issued by Hon'ble the Apex Court:**

**(i) The Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the NI Act is presented, shall scrutinise the complaint and, if the complaint is accompanied by the affidavit, and affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.**

**(ii) The MM/JM should adopt a pragmatic and realistic approach while issuing summons – Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant – The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused – For notice of appearance, a short date be fixed – If the summons is received back unserved, immediate follow-up action be taken.**

**(iii) The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.**

**(iv) The court should direct the accused to furnish a bail bond on his appearance for ensuring his appearance during trial and ask him to take notice under Section 251 Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) of the NI Act for recalling a witness for cross-examination.**

**(v) The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case – The court has option of accepting affidavits of the witnesses instead of examining them in the court – The witnesses to the complainant and the accused must be available for cross-examination as and when there is direction to this effect by the court.**

**Indian Bank Association and others v. Union of India and others**

**Judgment dated 21.04.2014 passed by the Supreme Court in W.P. (C) No. 18 of 2013, reported in (2014) 5 SCC 590**

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**219. PREVENTION OF CORRUPTION ACT, 1988 – Section 2 (c)**

**Scope of the definition of the expression 'public servant' under section 2 (c) of the Prevention of Corruption Act, 1988 – It is wider than the definition of the expression under Section 21 of the Indian Penal Code, 1860 – A position-holder may not come within the definition of public servant as defined under Section 21 of I.P.C. but that does not mean that they cannot be brought into the category of public servant by any other enactment – Sub-section (viii) of section 2 (c) of the present Act makes any person, who holds an office by virtue of which he is authorized or required to perform any public duty, to be a public servant – The Municipal Councillor or members of the Board does not come within the definition of public servant as defined under section 21 of the Indian Penal Code, but in view of the legal fiction created by Section 87 of the Rajasthan Municipalities Act, they come within its definition.**

## Manish Trivedi v. State of Rajasthan

**Judgment dated 29.10.2013 passed by the Supreme Court in Criminal Appeal No. 1881 of 2013, reported in AIR 2014 SC 648**

**Extracts from the judgment:**

We proceed to consider whether or not the appellant, a Councillor and the member of the Board, is a public servant under Section 2 (c) of the Prevention of Corruption Act, 1988. Section 2(c) of this Act reads as follows:

> *"2 Definitions.*- In this Act, unless the context otherwise requires,-
>
> (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) "public servant" means, –
>
> (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
>
> (ii) any person in the service or pay of a local authority;
>
> (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
>
> (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade, or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding conducting examinations

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

*Explanation 1.* – Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

> *Explanation 2.* – Wherever the words "public servant" occur, they shall be understood of every persons who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

The present Act envisages widening of the scope of the definition of the expression 'public servant'. It was brought in force to purify public administration. The legislature has used a comprehensive definition of 'public servant' to achieve the purpose of punishing and curbing corruption among public servants. Hence, it would be inappropriate to limit the contents of the definition clause by a construction which would be against the spirit of the statute. Bearing in mind this principle, when we consider the case of the appellant, we have no doubt that he is a public servant within the meaning of Section 2(c) of the Act. Sub-section (viii) of Section 2(c) of the present Act makes any person, who holds an office by virtue of which he is authorized or required to perform any public duty, to be a public servant. The word 'office' is of indefinite connotation and, in the present context, it would mean a position or place to which certain duties are attached and has an existence which is independent of the persons who fill it. Councillors and members of the Board are positions which exist under the Rajasthan Municipalities Act. It is independent of the person who fills it. They perform various duties which are in the field of public duty. From the conspectus of what we have observed above, it is evident that appellant is a public servant within Section 2(c)(viii) of the Prevention of Corruption Act, 1988.

Now we revert to the authorities relied on by the learned senior counsel for the appellant ***R.S. Nayak v. A.R. Antulay, AIR 1984 SC 684, Ramesh Balkrishna Kulkarni v. State of Maharashtra, AIR 1985 SC*** 1655 and ***State of T.N. v. T. Thulasingam, AIR 1995 SC 1314***. In all these decisions, this Court was considering the scope of Section 21 of the Indian Penal Code which defines 'public servant'. It was necessary to do so as Section 2 of the Prevention of Corruption Act, 1947 defined 'public servant' to mean as defined under Section 21 of the Indian Penal Code. A member of the Board, or for that matter, a Councillor per se, may not come within the definition of the public servant as defined under Section 21 of the Indian Penal Code but this does not mean that they cannot be brought in the category of public servant by any other enactment. In the present case, the Municipal Councillor or members of the Board does not come within the definition of public servant as defined under Section 21 of the Indian Penal Code, but in view of the legal fiction created by Section 87 of the Rajasthan Municipalities Act, they come within its definition.

It is an admitted position that in none of the aforesaid judgments relied on by the appellant, this Court had considered any provision similar to Section 87 of the Rajasthan Municipalities Act and, therefore, those judgments cannot be read to mean that a Municipal Councillor in no circumstance can be deemed to be a public servant. The learned senior counsel for appellant points that

provisions *pari materia* to that of Section 87 of the Rajasthan Municipalities Act did exist in the respective enactments under consideration in these cases and, therefore, it has to be assumed that this Court, while holding that Municipal Councillors are not public servants, must have taken note of the similar provision. However, in fairness to him, he concedes that such a provision, in fact, has not been considered in these judgments. We are of the opinion that for ascertaining the binding nature of a judgment, what needs to be seen is the ratio. The ratio of those cases is that Municipal Councillors are not public servants under Section 21 of the Indian Penal Code. But Section 87 of the Rajasthan Municipalities Act, as discussed above, make Councillor and member of Board a public servant within the meaning of Section 21 of the Indian Penal Code. Hence, all the judgments of this Court referred to above are clearly distinguishable.

Not only this, in the case in hand, we are concerned with the meaning of the expression 'public servant' as defined under Section 2 (c) of the Prevention of Corruption Act, 1988 and, hence, decisions rendered by this Court while interpreting Section 21 of the Indian Penal Code, which in substance and content are substantially different than Section 2(c) aforesaid, shall have no bearing at all for decision in the present case. As regards the decision of the learned single Judge of the Rajasthan High Court in the case of ***Smt. Sumitra Kanthiya v. State of Rajasthan, 2009 (1) Cri LR (Raj) 222,*** it has also not considered Section 87 of the Rajasthan Municipalities Act. In fact, to come to the conclusion that the Municipal Councillor would not come within the definition of public servant, it has mainly placed reliance on a judgment of this Court in the case of ***Ramesh Balkrishan Kulkarni v. State of Maharashtra, AIR 1985 SC 1655.*** We have considered this judgment in little detail in the preceding paragraphs of the judgments and found the same to be distinguishable as the said decision did not consider the statutory provision in the present format. Further, the aforesaid case does not lay down an absolute proposition of law that Municipal Councillor in no circumstances can be treated as a public servant. The learned Judge has also not at all adverted to Section 87 of the Rajasthan Municipalities Act as also Section 2(c) of the Prevention of Corruption Act, 1988 and, hence, the judgment rendered by the Rajasthan High Court in ***Sumitra Kanthiya*** (supra) does not lay correctly and is, therefore, overruled.

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**220. PREVENTION OF CORRUPTION ACT, 1988 – Sections 3 and 4**
**CRIMINAL PROCEDURE CODE, 1973 – Section 220**
**Jurisdiction of a special Judge appointed under Section 3 (1) of the P.C. Act, 1988:**

**(i) Trial of any case under P.C. Act against a public servant or a non-public servant is a sine qua non for exercising powers under sub-section (3) of Section 4 of the P.C. Act.**

**(ii) An accused person, either a public servant or non-public servant, who has been charged for an offence under section 3 (1) of the P.C. Act, could also be charged for an offence under I.P.C, in the event of which, the Special Judge has got the jurisdiction to try such offences against the public servant as well as against a non-public servant.**

**(iii) Even if a non-public servant, though charged only of offences under Section 420 and Section 120B read with Section 420 IPC, he could also be tried by the Special Judge with the aid of sub-section (3) of Section 4 of the P.C. Act.**

**(iv) Where no charge has been framed against the public servant, while he was alive, under Section 3(1) nor any charge was framed against a private person for any offence under Section 3(1) of the P.C. Act. The Special Judge, therefore, had no occasion to "try any case" under Section 3(1) of the P.C. Act, either against a public servant or a private person, so as to try any offence other than an offence specified in Section 3, meaning thereby, non-P.C. offences against private person, like the appellant.**

**(v) Special Judge exercising powers under the P.C. Act is not expected to try non- P. C. offences totally unconnected with any P.C. offences under Section 3 (1) of the P.C. Act**

**(vi) Once the power has been exercised by the Special Judge under sub-section (3) of Section 4 of the P.C. Act to proceed against non-P.C. offence along with P.C. offences, the mere fact that the sole public servant dies after the exercise of powers under sub-section (3) of Section 4, will not divest the jurisdiction of the Special Judge or vitiate the proceedings pending before him.**

### State through CBI, New Delhi v. Jitender Kumar Singh

**Judgment dated 05.02.2014 passed by the Supreme Court in Criminal Appeal No. 943 of 2008, reported in AIR 2014 SC 1169**

**Extracts from the judgment:**

A special Judge appointed under Section 3 (1) of P.C. Act has got jurisdiction to proceed exclusively against a public servant and exclusively against a non-public servant as well, depending upon the nature of the offence referred to in Chapter III of the PC Act. Junction of a public servant is not a must for the Special Judge to proceed against a non-public servant for any offence alleged to have been committed by him under Chapter III of the PC Act. As already indicated, an offence under Section 8 or Section 9 can be committed by non-public servant and he can be proceeded against under the PC Act without joinder of any public servant. For example:

– Section 7 of the Act uses the words “Whoever, being or expecting to be a public servant.....”

– Sections 10 and 11 of the Act use the words “Whoever, being a public servant.....”

– Section 13 uses the words “A public servant is said to commit.....”

Thus, offences under Sections 7, 10, 11 and 13 of the PC Act can be committed by a public servant though an offence under Section 7 can be committed also by a “person expected to be a public servant”. On the other hand:

– Section 8 uses the words “whoever....” simpliciter, without using any other qualifying words.

– Likewise, Sections 9 and 12 also sue the words “whoever....” simpliciter.

Thus, an offence under Sections 8, 9 or 12 can be committed by any person, who need not necessarily be a public servant. Such an offence can, therefore, be committed by a public servant or by a private person or by a combination of the two. It is thus clear that an offence under the PC Act can be committed by either a public servant or a private person or a combination of both and in view of the mandate of Section 4(1) of the PC Act, read with Section 3(1) thereof, such offences can be tried only by a Special Judge. For example:

– A private person offering a bribe to a public servant commits an offence under Section 12 of Act. This offence can be tried only by the Special Judge, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused in that case.

– A private person can be the only accused person in an offence under Section 8 or Section 9 of the said Act. And it is not necessary that a public servant should also be specifically named as an accused in the same case. Notwithstanding the fact that a private person is the only accused in an offence under Section 8 or Section 9, it can be tried only by a Special Judge.

Thus, the scheme of the PC Act makes it quite clear that even a private person who is involved in an offence mentioned in Section 3 (1) of the PC Act, is required to be tried only by a Special Judge, and by no other Court. Moreover, it is not necessary that in every offence under the PC Act, a public servant must necessarily be an accused. In other words, the existence of a public servant for facing the trial before the Special Court is not a must and even in his absence, private persons can be tried for PC as well as non-PC offences, depending upon the facts of the case.

We, therefore, make it clear that it is not the law that only along with the junction of a public servant in array of parties; the Special Judge can proceed against private persons who have committed offences punishable under the PC Act.

Section 3(1) (a) and (b), it may be noted, deal with only the offences punishable under the PC Act and not any offence punishable under IPC or any other law and Section 4(1) of the PC Act makes it more explicit.

Section 4(1) of the PC Act has used a non-abstante clause. It says, "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by special Judges only". Consequently, the offences referred to in Section 3(1) cannot be tried by the ordinary criminal court, since jurisdiction has been specifically conferred on a special Judge appointed under Section 3 (1) of the PC Act. Sub-section (2) of Section 4 also makes it clear, which says that every offence specified in sub-section (1) of Section 3 shall be tried by the Special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government. A conjoint reading of Section 3(1) along with Section 4(1) and (2) would make it amply clear that only the Special Judge has got the jurisdiction to try the offences specified in sub-section (1) of Section 3 committed by a public servant or a non-public servant, alone or jointly.

Reference may also be made to the judgments of this Court in ***Sanichar Sahni v. State of Bihar, AIR 2010 SC 3786*** and ***Mohd. Arif v. State (NCT of Delhi), 2011 AIR SCW 5851***

In other words, an accused person, either a public servant or non-public servant, who has been charged for an offence under Section 3(1) of the PC Act, could also be charged for an offence under IPC, in the event of which, the Special Judge has got the jurisdiction to try such offences against the public servant as well as against a non-public servant. The legal position is also settled by the Judgment of this Court in ***Vivek Gupta v. CBI and another, (2003) 8 SCC 628,*** wherein this Court held that a public servant who is charged of an offence under the provisions of the PC Act may also be charged by the Special Judge at the same trial of any offence under IPC if the same is committed in a manner contemplated under Section 220 of the Code. This Court also held, even if a non-public servant, though charged only of offences under Section 420 and Section 120B read with Section 420, IPC, he could also be tried by the Special Judge with the aid of sub-section (3) of Section 4 of the PC Act. We fully endorse that view.

We are, however, in Criminal Appeal No. 161 of 2011, concerned with a situation where no charge has been framed against the public servant, while he was alive, under Section 3(1) nor any charge was framed against a private person for any offence under Section 3(1) of the PC Act. The Special Judge, therefore, had no occasion to "try any case" under Section 3(1) of the PC Act,

either against a public servant or a private person, so as to try any offence other than an offence specified in Section 3, meaning thereby, non-PC offences against private person, like the appellant.

The special Judge appointed under Section 3(1) could exercise the powers under sub-section (3) to Section 4 to try non-PC offence. Therefore, trying a case by a special Judge under Section 3(1) is a sine qua non for exercising jurisdiction by the Special Judge for trying any offence, other than an offence specified in Section 3. "Trying any case" under Section 3(1) is, therefore, a jurisdictional fact for the Special Judge to exercise powers to try any offence other than an offence specified in Section 3.

Exclusion of the jurisdictional of ordinary Criminal Court, so far as offences under the PC Act are concerned, has been explicitly expressed under Section 4(1) of the PC Act, which does not find a place in respect of non-PC offences in sub-section (3) of Section 4 of the PC Act. Further, it is not obligatory on the part of a Special Judge to try non-PC offences. The expression "may also try" gives an element of discretion on the part of the Special Judge which will depend upon the facts of each case and the inter-relation between PC offences and non-PC offences.

A Special Judge exercising powers under the PC Act is not expected to try non-PC offences totally unconnected with any PC offences under Section 3(1) of the PC Act and in the event of a Special Judge not trying any offence under Section 3(1) of the PC Act, the question of the Special Judge trying non-PC offences does not arise. As already indicated, trying of a PC offence is a jurisdictional fact to exercise the powers under sub-section (3) of Section 4. Jurisdiction of the Special Judge, as such, has not been divested, but the exercise of jurisdiction, depends upon the jurisdictional fact of trying a PC offence. We are, therefore, concerned with the exercise of jurisdiction and not the existence of jurisdiction of the Special Judge.

We may now examine whether, in both these appeals, the above test has been satisfied. First, we may deal with Criminal Appeal No. 943 of 2008. CBI, in this appeal, as already indicated, submitted the charge-sheet on 1.11.2001 for the offences against A-1, who is a public servant, as well as against non-public servants. Learned Special judge had, on 25.3.2003, framed the charges against the accused persons under Section 120B read with Sections 467, 471 and 420, IPC and also under Sections 13(1)(d) and 13(2) of the PC Act, and substantive offences under Sections 420, 467 and 471, IPC and also substantive offences under Sections 13(1) (d) and 13(2) of the PC Act against the public servants. Therefore, charges have been framed against the public servants as well as non-public servants after hearing the prosecution and defence counsel, by the special Judge on 25.3.2003 in respect of PC offences as well as non-PC offences. As already indicated, under sub-section (3) of trying any case,

a Special Judge may also try any offence other than the offence specified in Section 3 and be charged in the same trial. The special Judge, in the instant case, has framed charges against the public servant as well as against the non-public servant for offences punishable under Section 3(1) of PC Act as well as for the offences punishable under Section 120 B read with Sections 467, 471 and 420, IPC and, therefore, the existence of jurisdictional fact that is "trying a case" under the PC Act has been satisfied.

The Special Judge after framing the charge for PC and non-PC offences posted the case for examination of prosecution witnesses, thereafter the sole public servant died on 2.6.2003. Before that, the Special Judge, in the instant case, has also exercised his powers under sub-section (3) of Section 4 of the PC Act and hence cannot be divested with the jurisdiction to proceed against the non-public servant, even if the sole public servant dies after framing of the charges. On death, the charge against the public servant alone abates and since the special Judge has already exercised his jurisdiction under sub-section (3) of Section 4 of the PC Act, that jurisdiction cannot be divested due to the death of the sole public servant.

We can visualize a situation where a public servant dies at the fag end of the trial, by that time, several witnesses might have been examined and to hold that the entire trial would be vitiated due to death of a sole public servant would defeat the entire object and purpose of the PC Act, which is enacted for effective combating of corruption and to expedite cases related to corruption and bribery. The purpose of the PC Act is to make anti-corruption laws more effective in order to expedite the proceedings, provisions for day-to-day trial of cases, transparency with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been provided under the PC Act. Consequently, once the power has been exercised by the Special Judge under sub-section (3) of Section 4 of the PC Act to proceed against non-PC offence along with PC offences, the mere fact that the sole public servant dies after the exercise of powers under sub-section (3) of Section 4, will not divest the jurisdiction of the Special Judge or vitiate the proceedings pending before him.

We may now examine Criminal Appeal No. 161 of 2011, where the FIR was registered on 2.7.1996 and the charge-sheet was filed before the Special Judge on 14.9.2001 for the offences under Sections 120B, 420, IPC read with Sections 13(2) and 13(1) of the PC Act. Accused 9 and 10 died even before the charge-sheet was sent to the Special Judge. The charge against the sole public servant under the PC Act could also not be framed since he died on 18.2.2005. The Special Judge also could not frame any charge against non-public servants. As already indicated, under sub-section (3) of Section 4, the special Judge could try non-PC offences only when "trying any case" relating to PC offences. In the instant case, no PC offence has been committed by any of the non-public servants so as to fall under Section 3(1) of the PC Act. Consequently, there was

occasion for the Special Judge to try any case relating to offences under the PC Act against the Appellant. The trying of any case under the PC Act against a public servant or a non-public servant, as already indicated, is a ***sine qua*** non for exercising powers under sub-section (3) of Section 4 of PC Act. In the instant case, since no PC offence has been committed by any of the non-public servants and no charges have been framed against the public servant, while he was alive, the Special Judge had no occasion to try any case against any of them under the PC Act, since no charge has been framed prior to the death of the public servant. The jurisdictional fact, as already discussed above, does not exist so far as this appeal is concerned, so as to exercise jurisdiction by the Special Judge to deal with non-PC offences.

Consequently, we find no error in the view taken by the Special Judge, CBI, Greater Mumbai in forwarding the case papers of Special Case No. 88 of 2001 in the Court of Chief Metropolitan Magistrate for trying the case in accordance with law. Consequently, the order passed by the High Court is set aside. The competent Court to which the Special Case No. 88 of 2001 is forwarded, is directed to dispose of the same within a period of six months. Criminal Appeal No. 161 of 2011 is allowed accordingly.

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**221. PREVENTION OF CORRUPTION ACT, 1988 – Section 19**
**CRIMINAL PROCEDURE CODE, 1973 – Section 465**

**(i) Whether sanction order passed mechanically can be held before taking evidence? Held, No – Appropriate stage for reaching the said conclusion would be only after evidence had been led on that point.**

**(ii) Even if sanction is granted by an incompetent authority, there should be a finding of failure of justice by the court before interdicting the criminal proceeding.**

**State of Bihar and others v. Rajmangal Ram**
**Judgment dated 31.03.2014 passed by the Supreme Court in Criminal Appeal No. 708 of 2014, reported in 2014 (2) Crimes 293 (SC)**

**Extracts from the judgment :**

In the instant cases the High Court had interdicted the criminal proceedings on the ground that the Law Department was not the competent authority to accord sanction for the prosecution of the respondents. Even assuming that the Law department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High Court.

The High Court in both the cases had also come to the conclusion that the sanction orders in question were passed mechanically and consideration

of the relevant facts and records. This was treated as an additional ground for interference with the criminal proceedings registered against the respondents. Having perused the relevant part of the orders under challenge we do not think that the High Court was justified in coming to the said findings at the stage when the same were recorded. A more appropriate stage for reaching the said conclusion would have been only after evidence in the cases had been led on the issue in question.

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**222. SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Sections 13(4), 17 and 34**

**CIVIL PROCEDURE CODE, 1908 – Section 9 and Order 7 Rule 11(a) & (d)**

**Taking possession of secured assets – Suit for permanent injunction by tenant restraining secured creditor from dispossessing him – Barred in view of section 34 of the Act – Remedy is to file appeal under section 17 of the Act.**

## Bhaiyalal Tiwari v. Central Bank of India & others

**Judgment dated 12.11.2013 passed by the High Court of M.P. (Gwalior Bench) in Second Appeal No. 141 of 2012, reported in AIR 2014 MP 57**

**Extracts from the judgment:**

The controversy involved in this appeal centres around the provisions contained in the SARFAESI Act. The mortgaged document executed by defendant No.3 in favour of defendant No.1 Bank in respect of suit property, nowhere mentioned that the appellant was tenant in the suit premises. Admittedly the possession of the suit property has been taken in presence of defendant No.3 after preparation of Panchnama dated 17.3.2010 under Section 13 (4) of the Act and lock was put on it. Thereafter, auction notice was published in Hindi Newspaper “Dainik Bhaskar” and auction was conducted. No objection was raised as against the said auction, it is followed by issuance of sale certificate on 30.7.2010. The appellant claims to be a tenant of defendant No.3 on the basis of oral tenancy. There is no clinching evidence to establish the right of appellant as tenant in the suit premises. These findings are recorded by both the Courts below. There is specific bar under Section 34 of the Act.

In view of the aforesaid there is no infirmity in the order passed by the trial Court while dismissing the suit under Order 7, Rule 11 (d) as order of the first appellate Court justifying the dismissal of the suit under Order 7, Rule 11 (a) of CPC. In the opinion of this Court, both the provisions are attracted as not only suit is barred under Section 34 of the Act 2002 but also the appellant could not establish himself to be a tenant in the suit premises.

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***223. SERVICE LAW:**

**Termination on the ground of accusation of an offence, legality of – Allottee employee of a fair price shop charged under section 3/7 of the Essential Commodities Act, 1955 – After completion of trial, he was acquitted from the aforesaid charge – After leaving fair price shop, he got appointed as a daily wager – Later on he was regularized on the post of Pump Operator – At that time, he was required to furnish an attestation form for the purpose of police verification in which he left blank the relevant column of criminal record and did not mention as to the facts of his acquittal – In verification report, police authorities mentioned that he was charged for such offences – Departmental authorities terminated the services of the employee treating that he concealed material confirmation in his attestation form deliberately – Held, offence under section 3/7 of the Essential Commodities Act, 1955 does not fall within the category of those offences mentioned where moral turpitude is involved – Prosecution was not for the offence under IPC – Further held, if the information is not given believing that because the same has resulted in acquittal, it cannot be said that such a serious and deliberate misconduct is committed on account of which his services can be terminated – Setting aside the order of termination, he was ordered to be reinstated in service.**

**Baldeo Singh v. State of M.P. and others**

**Judgment dated 04.09.2013 passed by the High Court of M.P. in Writ Petition No. 15511 of 2003, reported in 2014 (2) MPLJ 177**

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**224. SPECIFIC RELIEF ACT, 1963 – Section 28**

**(i) Decree for specific performance of contract – A suit for specific performance does not come to an end on passing of a decree and the Court which passed the decree retains control over the decree even after the decree has been passed and the decree is sometimes described as preliminary decree – Contract between the parties is not extinguished by the passing of a decree for specific performance and that the contract subsists notwithstanding the passing of the decree – The decree for specific performance is a decree in favour of both the plaintiff and the defendant in the suit – Hence, the decree can be executed either by the plaintiff or the defendant.**

**(ii) Decree of specific performance of contract – Both parties were equally at fault – Purchaser/plaintiff/decree-holder seeking execution of decree only $6^{1/2}$ years after its passing and this efflux of time assumes importance and seriousness in the background of the escalation of price in real estate and obligation of vendor to pay unearned increase thereby growing four times the balance sale consideration – Said unconscionable liability arose only on account of delay in execution – Purchaser also delaying payment of balance consideration on ground that vendors have not fulfilled their obligation – Neither party approached Court for appropriate directions to come out of the situation – Both parties were therefore at fault – Court to balance equities, directed purchaser to pay land value at increased rates and also to pay unearned increase – In case purchaser fails to pay, vendor directed to compensate purchaser by paying the increased land value.**

## Rajender Kumar v. Kuldeep Singh and others

**Judgment dated 07.02.2014 passed by the Supreme Court in Civil Appeal No. 1873 of 2014, reported in AIR 2014 SC 1155**

**Extracts from the judgment:**

We shall deal with the issue regarding the approach of the High Court in dealing with the application for rescission. Apparently, the purchaser-Kuldeep Singh was also no quite serious in pursuing the cause. Though the decree is dated 30.04.1984, the execution petition was filed only after six and a half years, on 07.11.1990. No doubt, it was within the time prescribed by the law of limitation. But the efflux of time assumes importance and seriousness in the background of the escalation of price in real estate.

It is very strange that no serious steps have been taken by the executing court for almost a decade. While so, only on 24.04.1999, respondents 3 to 7 and 13 filed Application – IA No. 4274 of 1999 in the suit for rescinding the agreement for sale. The main ground taken in the Application for rescission of the agreement was that the plaintiff/purchaser failed to deposit the balance consideration of Rs. 12,60,000/- It was also contended that between the date of decree in 1984 and the date of filing the Application for rescission, even the notified rates in land value shot up from Rs. 2,000/- per square yard to Rs.13,860/- per square meter and the unearned increase would be around Rs.50,00,000/- and, thus, it would be highly unjust, unconscionable and inequitable to compel the vendors to make the payment of the unearned increase. It was also averred that the vendors were prepared to pay a reasonable compensation to the purchaser. The purchaser-Kuldeep Singh response to the Application or rescission, stated that the court had not fixed any time for

deposit of the balance amount, the balance amount was payable only on the execution and registration of the conveyance deed. He also contended that execution was possible only on permission from the L&DO on payment of unearned increase by the vendors and for which the vendors are at fault in not having taken any serious steps in completing their obligations under the decree; and that the purchaser had always been ready and willing to perform his part of the agreement.

Having regard to the facts and circumstances which we have discussed above, we are afraid the High Court has not made an attempt to balance equity. As in the case of decree for specific performance where equity weighs with the court so is the situation in considering an application under Section 28 of the Specific Relief Act, 1963 for rescinding the contract. Under Section 28 of the Specific Relief Act, 1963, a vendor is free to apply to the Court which made decree to have the contract rescinded in case the purchaser has not paid the purchase money or other sum which the Court has ordered him to pay within the period allowed by the decree or such other period as the court may allow. On such an application, the Court may, by order, rescind the contract "as the justice of the case, may require". It is now settled law that a suit for specific performance does not come to an end on passing of a decree and the Court which passed the decree retains control over the decree even after the decree has been passed and the decree is sometimes described as the preliminary decree.

In ***Hungerford Investment Trust Limited (In Voluntary Liquidation) v. Haridas Mundhra and others, AIR 1972 SC 1826,*** it has been held that

> "It is settled by a long course of decisions of the Indian High Courts that the Court which passes a decree for specific performance retains control over the decree even after the decree has been passed. In ***Mahommadalli Sahib v. Abdul Khadir Saheb (1930) MLJ Vol. 59, p. 351*** it was held that the Court which passes a decree for specific performance has the power to extend the time fixed in the decree for the reason that Court retains control over the decree, that the contract between the parties is not extinguished by the passing of a decree for specific performance and that the contract subsists notwithstanding the passing of the decree...."

The discretionary power vested in court by Section 28 of the Specific Relief Act, 1963 is intended to apply in such circumstances:

> "The effect of this provision is to empower the court which passed the decree for specific performance to rescind the contract and set aside the decree which it has passed earlier if the successful plaintiff failed to comply with the terms of

> the decree by making payment of the purchase money or other sums which the court ordered him to pay. ....." [***Pollock & Mulla, The Indian Contract and Specific Relief Acts, 14th Edition Page 2064***]

The decree for specific performance is a decree in favour of both the plaintiff and the defendant in the suit, as held by this Court in ***Hungerford Investment Trust Limited case*** (supra). Hence, the decree can be executed either by the plaintiff or the defendant.

In the facts and circumstances of the case, it is very difficult to balance the equity and balance the rights of both the parties in the background of their conduct. No doubt there was no time fixed in the agreement for payment of the purchase money. That was also contingent on a series of obligations to be performed by the vendor and the duty of the purchaser to pay the purchase money was only thereafter. But if we closely analyze the pleadings and submission, we can see that the purchaser had made an attempt, though belatedly, for getting the obligations performed at his expense.

Analyzing the conduct of the vendors-defendants also, one can see that they are equally at fault. In the contract, no time was fixed for payment and, therefore, the purchaser was obliged to pay the purchase money within a reasonable time. Owing to the laches or lapses on the part of the parties in case there is any insurmountable difficulty, hardship or, on account of subsequent development, any inequitable situation had arisen, either party was free to approach the court for appropriate direction. Though the suit was decreed in the year 1984 and execution petition filed in 1990, the application for rescission was filed only in the year 1999.

In ***Nirmala Anand v. Advent Corporation (P) Ltd. and others, AIR 2002 SC 3396,*** it has been held by this Court:

> "It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others

to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

In the above case, this Court balanced the equity by directing payment of Rs. 6,25,000/- in place of Rs. 25,000/-

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**225. STAMP ACT, 1899 – Sections 33 and 35**

**It is not obligatory but discretionary for a criminal court to impound an instrument not sufficiently stamped.**

**Ramesh Giri v. Dheeraj Gobhuj**

**Order dated 23.04.2014 passed by the High Court in Misc. Criminal Case. No. 639 of 2013, reported in 2014 (3) MPHT 394**

**Extracts from the order:**

On considering Annexure P-4, I find that it is a receipt dated 25-03-2011 on white paper signed by accused Ramesh Giri. Whereas Counsel for the petitioner has vehemently urged the fact that it is a bond. Considering the receipt, which is on a blank piece of paper handwritten and indicates as per language used; that the accused had availed of Rs. 5,00,000/- from the respondent/complainant and it is a receipt. Whereas Counsel for the petitioner urged that as per provisions of Negotiable Instruments Act, it is a bond, which is not properly stamped in accordance with the provisions of Stamp Act. And hence Counsel for the petitioner submitted that the objection was properly raised at the initial stage itself by the applicant, but the same had been wrongly dismissed by the Courts below. On considering to Section 33(2) (a) of the Stamp Act, I find that the proviso (2) (a) reads as under:-

"(2) (a). Nothing herein contained shall deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898."

And hence, the Trial Court had rightly relied on the proviso to discard the objection raised by the accused petitioner. Besides I also find that the proceedings under Section 138 of the Act are summary in nature and in this regard also the Revisional Court as well as the Trial Court had properly held that the document (Annexure P-4) does not require impounding and has been produced as a receipt by the complainant. In these circumstances, I find that the proceedings under Section 138 of the Act are criminal in nature although the offence may be in the nature of civil wrong. The Apex Court was in the case of ***Kaushalya Devi Massand v. Roopkishore, (2011) 4 SCC 593*** in fact, considering the case whether a jail sentence awarded to the accused appellant was really necessary to meet the ends of justice; since the appellant was a lady and only fine has been imposed. I find that the submissions as put forth by the Counsel for the petitioner are off at a tangent. There is no doubt that the proceeding for offence under Section 138 of the Act are criminal in nature and provisions of Stamp Act would not be attracted especially under Section 35 of the Stamp Act. So also, the proviso under Section 33 (2) (a) of the Stamp Act itself gives wide discretion to the Judicial Magistrate to examine or impound an instrument filed before him. And in the present case, the learned Judge of the Lower Court has already accepted the receipt as evidence. In this light also, I find that the petition is without merit and it is, therefore, dismissed as such.

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**226. WAQF ACT, 1995 – Sections 6 and 7**

**CIVIL PROCEDURE CODE, 1908 – Section 9**

**Whether determination of dispute for eviction against the tenant from waqf property is covered u/s 6 and 7 of Waqf Act? Held No – Such type of eviction suit is exclusively triable by the civil court – *AIR 2010 SC 2897* relied on.**

## Faseela M. v. Munnerul Islam Madrasa Committee and another

**Judgment dated 31.03.2014 passed by the Supreme Court in Civil Appeal No. 4250 of 2014, reported in AIR 2014 SC 2064**

**Extracts from the judgment :**

The matter before us is wholly and squarely covered by ***Ramesh Gobindram (Dead) through L.Rs.v. Sugra Humayun Mirza Wakf, AIR 2010 SC 2897***. The suit for eviction against the tenant relating to a waqf property is exclusively triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Wakf Act.

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NOTE : (*) Asterisk denotes short notes

# PART - III
## CIRCULARS/NOTIFICATIONS

### NOTIFICATION OF STATE GOVERNMENT REGARDING AMENDMENT IN RULE 18SSS5 OF THE MADHYA PRADESH MOTOR VEHICLES RULES, 1994

**Notification No. F-22-41-2011-VIII dated the 31st August, 2013.–** In exercise of the powers conferred by Section 111 read with Section 212 of the **Motor Vehicles Act, 1988 (No. 59 of 1988),** the State Government, hereby, makes the **following amendment in the Madhya Pradesh Motor Vehicles Rules, 1994** the same having been previously published in the Madhya Pradesh Gazetted (Extraordinary), dated 9th July, 2013 as required by sub-section (1) of Section 212 of the said Act, namely :-

### AMENDMENT

In the said rules, in the rule 185, for sub-rule (3), the following sub-rules shall be substituted, namely :-

"(3) The provisions of sub-rule (1) and (2) shall not apply to the driver of a fire brigade vehicle while proceeding to extinguish fire or the driver of an ambulance while carrying seriously ill patient.

(4) No driver or a motor vehicle shall use a siren/hooter. The Provisions of this sub-rule shall not apply to the following, namely :-

(a) security vehicle engaged in escorting of Governor, Chief Minister, Chief Justice of High Court or Speaker of the State Legislative Assembly;

(b) a vehicle of the Army/Police/Executive Magistrate, when engaged in maintaining law and order situation in their jurisdiction;

(c) a fire-brigade vehicle while proceeding to extinguish fire; and

(d) an ambulance while carrying a seriously ill patient;"

**Note:** Prior to amendment, Rule 185 of the Madhya Pradesh Motor Vehicles Rules, 1994 was as under:

**185. Prohibition or restriction on the use of Audible Signals.–** (1) No driver of a motor vehicle shall sound the horn or other device for giving audible warning with which the motor vehicle is equipped or shall cause or allow any

person to do so continuously or to an extent beyond what is necessary to ensure safety.

(2) The District Magistrate may, by notification published in one or more regional news papers circulating in the area, and by the erection in suitable place of mandatory traffic sign, M-18 as set forth in the Schedule to the Act, prohibits, the use by driver of a Motor vehicle of any horn, gong or other device for giving audible warning in any area within the district and during such hours as may be specified in the notification:

Provided that when the District Magistrate Prohibits the use of any horn, gong or other device for giving audible warning during certain specified hours he shall cause a suitable notice in Hindi and English to be affixed below the traffic sign setting forth hours within which such use is so prohibited.

(3) The provisions of sub-rules (1) and (2) shall not apply to the driver of a fire brigade while proceeding to extinguish fire or the driver of an ambulance while carrying a serious patient or the driver of a vehicle in which the Chief Justice of India or of any State or the Judge of Supreme Court or the Judge of any High Court is travelling.)

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***Character is like a tree and reputation is like a shadow.***
***The shadow is what we think of it; the tree is the real thing.***

**– Abraham Lincoln**

# PART - IV

## IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

## CONSUMER PROTECTION (PROCEDURE FOR REGULATION OF ALLOWING APPEARANCE OF AGENTS OR REPRESENTATIVES OR NON-ADVOCATES OR VOLUNTARY ORGANISATIONS BEFORE THE CONSUMER FORUM) REGULATIONS, 2014

***National Consumer Disputes Redressal Commission Notification No. G. S. R. 89(E) dated the 13th February, 2014. Published in Gazette of India (Extraordinary) part II Section 3(i) dated 17-2-2014 Pages 8-13***

In exercise of the powers conferred by Section 30A of the **Consumer Protection Act, 1986 (68 of 1986),** the National Consumer Disputes Redressal Commission with the previous approval of the Central Government, hereby makes the following regulations, namely:-

### CHAPTER

**1. Short title and commencement.–** (1) These regulations may be called the 'Consumer Protection (Procedure for regulation of allowing appearance of Agents or representatives or Non-Advocates or Voluntary Organisations before the Consumer Forum) Regulations, 2014'.

(2) They shall come into force on the date of their publication in the Official Gazette.

**2. Definitions.**– In these regulations unless the context otherwise requires,–

(a) "Act" means the Consumer Protection Act, 1986 (68 of 1986);

(b) "Consumer Forum" means a District Forum, a State Consumer Disputes Redressal Commission or the National Consumer Disputes Redressal Commission;

(c "Registrar" means the head of the ministerial establishment of the Consumer Forum and exercising such powers and functions as are conferred upon him by the President of the Consumer Forum;

(d) "Agent" means a person accredited as such under these regulations and duly authorized by a party to present any complaint, appeal, revision or to file written version or to file any written submissions and address or plead, as the case may be, for and on behalf of such a party before the Consumer Forum;

(e) "representative" means any person who is accredited as such under these regulations and who represents a group of complainants or a group of opposite parties in any complaint, appeal or revision before the Consumer Forum and is duly authorised by that group to appear

and act on behalf of the group for filing of the complaint, appeal or revision petition or the written version or any written submissions or like pleadings, as the case may be, for and on behalf of such a group of the complainants or the opposite parties;

(f) "non-advocate" means a person who is not registered as an advocate under the Advocates Act, 1961 and has been duly accredited to appear before the Consumer Forum in order to practice as representative, having been granted such licence or accreditation by the competent authority to appear as "non-advocate" before the Consumer Forum on regular basis in a particular category of the cases as may be specified under the procedure of accreditation.

(g) "social organisation" means a voluntary consumer organisation duly recognized by the Consumer Forum and is duly registered as a Charitable Society under any State's law dealing with the registration of Charitable Institutions.

(h) words and expressions used in these regulations and not defined herein but defined either in the Act or in the rules shall have the same meaning assigned to them either in the Act or rules, as the case may be.

**3. Appearance by agent, non-advocate, representative or social organisations.–** (1) A party may authorise as Agent or non-advocate or representative or social organisations to represent him before the Consumer Forum in an individual complaint case/appeal or revision, subject to production of duly authenticated authorisation made by the party in favour of such Agent or non-advocate or representative or social organisation, subject to the conditions that he,–

(a) is appearing on an individual case basis;

(b) has a pre-exsiting relationship with the complainant (such as: a relative, neighbour, business associate or personal friend);

(c) is not receiving any form of, direct or indirect, remuneration for appearing before the Consumer Forum and files a written declaration to that effect:

(d) demonstrates to the presiding officer of the Consumer Forum that he is competent to represent the party.

(2) Every Agent or non-advocate or representative or social organisation shall adhere to the Code of Conduct specified in schedule-I to these Regulations.

**4.** The Consumer Forum may within its discretion disallow Agent or non-advocate or representative or social organisation to appear before it in any case, for reasons to be recorded in writing, on account of breach of the terms of the undertaking or misconduct or failure in providing proper assistance to the Consumer Forum.

**5. Claim for fees.–** (a) Any Agent or non-advocate or representative or social organization who seek to receive fee from the concerned party to whom he represents before the Consumer Forum shall file a written request in this behalf before the Forum.

(b) The President shall decide the amount of fee, if any, an Agent or non-advocate or representative may be allowed to charge or receive from a party engaged him.

(c) While evaluating such a request for fee, the presiding officer may consider the following factors, namely :-

(i) the extent and type of services the Agent or non-advocate or representative or social organization had performed;

(ii) the complexity of the case;

(iii) the level of skill and competence required by such Agent or non-advocate or representative in giving the services;

(iv) the amount of time the Agent or non-advocate or representative spent on the case; and

(v) the ability of the party to pay the fee;

(d) If a party is seeking monetary damages, its Agent or non-advocate or representative shall not seek fee of more than twenty percent of the damages awarded.

## CHAPTER II

**6. Accreditation of Agent or non-advocate or representative.–** (1) Any person who is not registered as an Advocate under the Advocates Act, 1961 (25 of 1961) and is not debarred from practicing by way of penalty, may apply for accreditation as an Agent or non-advocate or representative to practice as an Agent or non-advocate or representative before the Consumer Forum.

(2) Any application by an Agent or non-advocate or representative shall be presented to the President of the concerned Consumer Forum before which the appearance is sought on regular basis to practice as an Agent or non-advocate or representative in Form “A” of Schedule-II.

(3) Any Agent or non-advocate or representative seeking accreditation shall specify in the application in which case or classes of cases or group of cases the accreditation is sought along with due credentials to be furnished in order to demonstrate due expertise or adequate knowledge in the particular type of cases or the matters involving the relevant issues in which such Agent or non-advocate or representative is well versed or expertise or may apply for accreditation in general as such for all kinds of consumer cases.

(4) An application seeking accreditation shall be submitted only between 1st July to 31st August of the relevant year, duly completed in all respects and

accompanied by a demand draft of hundred rupees drawn in the name of Registrar of the Consumer Forum.

(5) The Registrar shall carryout the scrutiny of such applications and short list eligible applicants in accordance with the guidelines issued by the President under practice directions issued under regulation 24 of the Consumer Protection Regulation, 2005.

(6) The Registrar of the Consumer Forum concerned shall after scrutinising the applications and short listing the eligible applicants, along with a list, forward the applications to the Committee referred to in sub-regulation (8) on or before 1st January of the relevant year.

***Explanation.–*** The expression 'relevant year' for the purpose of the accreditation procedure shall mean the year commencing from 1st April of the calendar year which will end on 31st March of the next calendar year.

(7) The accreditation process shall be conducted by a Committee duly constituted by the National Consumer Protection Council for such accreditation of Agent or non-advocate or representative to appear before the National Consumer Disputes Redressal Commission and by the State Consumer Protection Council if the accreditation is sought for appearance before the Consumer Forum in the State. A duly constituted Committee of the said Council may hold written test to ascertain knowledge of applicant/Agent or non-advocate or representative who seeks such accreditation, in order to ascertain his ability to make legal presentations, submissions and arguments.

(8) The National Consumer Protection Council in case of accreditation sought by such applicants to appear before the National Consumer Disputes Redressal Commission and the State Protection Council in case of accreditation sought by such applicants to appear before the Consumer Forum in that State shall constitute an 'Accreditation Committee' which shall consist of the President of the Consumer Forum or his nominee as a member and an expert member besides the President of the Consumer Protection Council or his nominee. The President of the Consumer Protection Council may also appoint any other member as may be deemed proper but not more than two at a time. The Consumer Council may however appoint different expert members for such purpose, depending upon nature of the purpose/subject in which the accreditation is being sought for.

(9) The Consumer Protection Council may with the help of Center for Consumer Studies or the Public Service Commission hold written test preferably in the first or second week of March of each calendar year.

(10) The written test shall carry 100 marks and those who will secure more than 45% of the total marks will be eligible to appear for oral interview to be conducted by the Accreditation Committee.

(11) The Accreditation Committee may call the eligible candidates to appear for an oral interview which shall be conducted within two weeks after results

of the written test are declared and shall carry 50 marks and may prepare a select list of Agent or non-advocate or representative for the purpose of granting accreditation in case the aggregate marks secured by such Agent or non-advocate or representative is over and above 60% of the total marks of written test and the oral interviews.

(12) The Consumer Protection Council may call for information from the Police Department concerned about criminal antecedents of the Agent or a non-advocate or representative who has sought accreditation and, if such antecedents are found to be satisfactory then the President of the Consumer Forum after satisfying himself about the eligibility report and recommendation of the duly constituted Selection Committee, may issue letter of accreditation in favour of such applicant to authorise him to plead and act as an Agent or non-advocate or representative on regular basis:

Provided that the President may within his discretion, grant accreditation to an Agent or non-advocate or representative to appear only in a particular type of case. For example, an accreditation may be granted only to appear in medical negligence cases, or only in insurance cases or only in cases involving financial transactions, as per the expertise or field of knowledge of such Agent or non-advocate for representative.

**7.** The syllabus for written test may be drawn by the Consumer Protection Council and may consist of the following subjects:

(a) The writing and communication skill;

(b) Knowledge of the particular provisions in the relevant laws or subjects in which the accreditation is sought as well as knowledge of the Consumer Protection Act and the rules or regulations made thereunder:

**Illustrations**

(i) For accreditation to appear in medical negligence cases, the knowledge of surgery procedures, precautions to be taken for proper diagnosis, precautions needed for prescribing of medicines, pre-operative care and post-operative care that is needed, and like aspects.

(ii) For accreditation to appear in insurance cases, the Insurance Act and rules or regulations, non-standard settlement procedure and like subjects.

(iii) For accreditation to appear in construction cases and contracts of developers, contracts and consumers, the provision of the Contract Act, the architectural specifications and like subjects.

(iv) For accreditation to appear in cases of deficiency like in automobile engines or other items of engineering or electronic goods, the technical knowledge of mechanical engineering.

**Note :** These are illustrations which are not exhaustive and test paper may be set up in respect of specialized subjects through reliable Government Agency or Department, to the extent of such specific subject or field of knowledge.

(c) The basic knowledge of the provisions of the Evidence Act;

(d) The knowledge of basic principles of interpretation of statutes; and

(e) Basic principles of pleadings and important provisions of Code of Civil Procedure, 1908 (5 of 1908) relating to the pleadings, bringing of legal representatives on record, attachment before judgment, temporary injunction and appointment of Court Commissioner.

## CHPATER III

### Parties to be bound by the Act of Agent or non-advocate or representative or social organisation

**8.** (1) Any party appearing through an Agent or non-advocate or representative or social organisation, shall be bound by the acts or omissions of such Agent or non-advocate or representative or social organisation :

Provided, that such an Agent or non-advocate or representative or social organisation shall not be permitted to withdraw any complaint or claim or any part thereof on behalf of the party without producing written consent from the party allowing him for withdrawal of the complaint or claim or part thereof.

(2) A party shall not be bound by an act of any Agent or non-advocate or representative or social organisation where it is shown to the satisfaction of the Consumer Forum that the Agent or non-advocate or representative or social organisation committed any act of fraud which adversely affected interest of the party concerned.

## CHAPTER IV

### Disciplinary powers of the President of the Consumer Forum

**9.** (1) The President of the Consumer Forum shall ensure the strict adherence to the Code of Conduct laid down in Schedule-I by the agent, non-advocate, representatives or social organisations appearing before it.

(2) The President of the Consumer Forum shall have the power to summarily suspend any Agent or non-advocate or representative or social organization to appear before the consumer Forum for any duration upto a period of six months.

(3) During the pendency of any enquiry, the President of the Consumer Forum may cause suspension of an accreditation granted to an Agent or non-advocate or representative, as the case may be, if he is satisfied that there is a prima facie proof of his mis-conduct.

***Explanation.–*** For the purpose of this sub-regulation, the word 'mis-conduct' shall have the same meaning assigned to it in Section 35 of the Advocates Act, 1961.

(4) The President of the Consumer Forum may either on his own motion or reference made by a member of the Forum or on application made to him by any aggrieved party, direct preliminary enquiry to be made against an Agent or non-advocate or representative or social organization for alleged mis-conduct, by a Member of the Commission or the Registrar or his nominee, as he may direct.

(5) The President of the Consumer Forum, after giving the concerned Agent or non-advocate or representative or social organisation an opportunity of being heard, may make any of the following orders, namely :-

(i) pass an order to debar such Agent or non-advocate or representative or social organization from appearing before any Consumer Forum for such period or permanently, as it may deem fit;

(ii) remove the name of Agent or non-advocate or representative or social organization from the roll of Agent or non-advocate or representative or social organisation;

(iii) to censure or reprimand the Agent or non-advocate or representative or social organisation;

(iv) impose a monetary fine not exceeding five thousand rupees on Agent or non-advocate or representative or social organization, which may be recovered in the manner provided under Section 25 or Section 27 of the Consumer Protection Act.

(6) Where an Agent or non-advocate or representative or social organisation is debarred from appearing before the Consumer Forum or his name is removed from the roll of the Agent or non-advocate or representative or social organisation of the District Consumer Forum, such Agent or non-advocate or representative or social organisation may prefer an appeal to the President of the State Commission.

(7) Where an Agent or non-advocate or representative is debarred from appearing before the State Commission or his name is removed from the role of Agent or non-advocate or representative or the State Commission, such Agent or non-advocate or representative or social organisation may prefer an appeal to the President of the National Consumer Disputes Redressal Commission.

(8) The disciplinary proceedings before the Consumer Forum shall be of Summary nature and shall be concluded within a period of six months from the date of the receipt of the complaint or the date of suo moto initiation thereof, as the case may be.

(9) In case of any difficulty arising in the implementation of these regulations, the matter may be referred for the decision of the President of the National Consumer Disputes Redressal Commission and the decision of the President shall be final.

## SCHEDULE-II

**[See Regulation 6(2)]**

## FORM "A"

(Application for accreditation by Agent or non-advocate or representative)

1. Name in Full (in Capital letters)

   .....

   Surname Middle Name First Name

2. Date of birth (in Christian era) : .....

3. Father's name :
   .....

4. Postal Address :
   .....

   .....
   ..

5. Educational Qualifications:

   Qualifications/Experience (in chronological order):

| Name of University/ Equivalent Institution | Degree | Year of Passing | Division % age of marks obtained | Academic Distinction | Subject/ Specialization |
|---|---|---|---|---|---|

(Attested copy of the relevant certificate to be attached)

6. Experience with specific reference to eligibility conditions in the particular category of cases in which accreditation as an Agent or non-advocate or representative is being sought.

7. Whether you are presently in employment? If yes, details of the employment in chronological order, as follows :

| Name and address of the employer | Designation whether regular/ deputation/ad hoc | Scale of pay | Period of Service From.....To..... | Nature of work/ experience |
|---|---|---|---|---|

8. Whether involved in any criminal case or convicted by any Criminal Court in the past? If yes give the details.

9. Contact No. (Off.) : .....
(Res). : .....
(Mob.) : .....
(E-mail) : .....
(Fax No.) : .....

10. Address for communication : .....
.....
..

**DECLARATION**

I certify that the foregoing information is correct and complete to the best of my knowledge and belief and nothing has been concealed or distorted. If at any time, I am found to have concealed or distorted any material information, any appointment shall be liable to be summarily terminated without notice.

Date : .....  (Signature of the candidate & Address)

Place : .....

## SCHEDULE-I

**[See Regulation 3(2) and 9 (1)]**

## CODE OF CONDUCT

(i) An Agent or non-advocate or representative shall not indulge in doubtism.

(ii) An Agent or non-advocate or representative shall appeal before the Consumer Forum in moderate dress and shall make submissions in such a manner so as to maintain proper decorum of the Commission.

(iii) An agent or non-advocate or representative shall not charge any excessive fee from the party.

(iv) An Agent or non-advocate or representative shall not directly accept any amount for and on behalf of the party from the opponent without due written authority made by the party on behalf of such Agent or non-advocate or representative appearing.

(v) An Agent or non-advocate or representative shall not make any attempt to fabricate any document or make any false statement of fact on behalf of the concerned party.

(vi) An Agent or non-advocate or representative shall not act contrary to the interest of the party to whom he represents.

(vii) Separate register of accreditation for Agents, non-advocates and representatives shall be maintained by the Consumer Forum.

***Climbing to the top demands strength, whether it is to the top of Mount Everest or to the top of your career.***

**– A.P.J. Abdul Kalam**