JOTI JOURNAL

(BI-MONTHLY)

JUNE 2018

MADHYA PRADESH STATE JUDICIAL ACADEMY
HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

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Corrigendum:

In December 2017 issue of JOTI Journal, an article on ***'Cruelty as defined under Section 498-A IPC – Concept and dimensions'*** has been published at page no. 198. At page no. 208 case law of ***Appasaheb & anr. v. State of Maharashtra, AIR 2007 SC 763*** has been quoted as an instance of act/omission not amount to cruelty but that case law has to be read in accordance with ***Bachni Devi v. State of Haryana, (2011) 4 SCC 427*** and ***Rajinder Singh v. State of Punjab, 2015 (2) Crimes 90,*** wherein it has been held that law laid down in ***Appasaheb*** (supra) is not a correct law.

FROM EDITOR'S DESK

Sanjeev Kalgaonkar
Director Incharge

Respected Judges

Honour killing is the stigma in modern society. By adding the word 'honour' to killing, we are glorifying or justifying the gruesome murder as the outcome of perpetrator's so called false 'honourable' motives. The use of word 'honour' is itself objectionable to be associated with any kind of crime.

Former U.N. Secretary-General Kofi Annan has preferred to call such crimes as "shame killings". Mostly, such kind of killings or murders are committed against a woman for actual or perceived immoral behavior whereby she has breached 'honour code' of a family or community. These honour codes are invariably the product of deep rooted patriarchal, social and cultural prejudices wherein the perpetrator takes glory in eliminating the person who has brought dishonor upon the family, clan or community. The sense of false pride sometimes gets social recognition. It is indeed a stigma on any society.

Any kind of violence in the name of false pride or honour of family or community violates the right to live, right to move freely, right to equality and equal protection of law and right to security. Stricter laws need to be made, penalizing the joint liability of both the persons giving the orders viz. Khap Panchayats, Nyay Panchayats and the executors. Pro-active laws can be only deterrent to such dishonourable practice in the name of religion or culture.

Till date, we do not have any codified law on honour rather shame killing. The Law Commission in its 242nd Report has said Penal Laws lack direct application to illegal acts of such caste assemblies and Khap Panchayats and has proposed a draft bill to effectively set against honour killings.

The Prevention of Crimes in the Name of Honour and Tradition Bill, 2010 could be converted into law. Now, the Central Government is considering another Bill – The Prohibition of Interference with Freedom of Matrimonial Alliance Bill, which is yet to be tabled in the Parliament.

We are publishing the Directives issued by the Supreme Court to meet challenges of agonising effect of honour crimes.

This issue comprises of latest judgments on various nuances of law enunciated by the Supreme Court and the High Courts. Let us have a glimpse of the latest trend of law laid down in various judgments.

In case of ***Sundaram Finance Ltd.,*** the Apex Court laid down that Arbitral Award is to be executed in accordance with the provisions of Civil Procedure Code by the Court where such decree can be executed.

The High Court of Madhya Pradesh in case of ***Jagdish,*** held that Civil Court can restore suit using inherent powers wherein the plaint was rejected for non-payment of deficit court fees.

Explaining the mandate of Order 2 Rule 2 CPC, in case of ***Sucha Singh Lodhi,*** the Apex Court clarified that the cause of action for the suit of permanent injunction and specific performance of contract are independent and cannot include each other. Therefore, withdrawal of earlier suit for permanent injunction does not bar subsequent suit for specific performance of contract based on same agreement for sale.

In case of ***Mangilal,*** the High Court of Madhya Pradesh laid down that any person may be impleaded as an accused on instance of an accused already before the Court u/s 319 of Cr.P.C.

In case of ***Pradeep,*** the High Court of Madhya Pradesh held that every medical insanity is not legal insanity so as to give the benefit of Section 84 of IPC. Mere absence of motive to commit offence cannot be a ground to prove insanity.

In case of ***Kamal Kant Jain,*** the Apex Court held that liquidation of damages in agreement is, in itself, no bar to specific performance. It was further held that mere omission of statement in agreement that in the event of breach, specific performance of contract can be sought, does not bar the relief of specific performance of such contract.

The Academy in the months of April and May conducted Advance Course for District Judges (Entry Level) promoted in the year 2018, First Refresher Course for Civil Judges Class II of 2016 Batch, Induction Course programme for the newly appointed Civil Judges of 2018 Batch, Induction Course on Juvenile Justice (Care & Protection of Children) Act, 2015 for the newly appointed Principal Magistrates of the Juvenile Justice Boards and Refresher Course for the already working Principal Magistrates of Juvenile Justice Boards.

In addition to the above, the Academy conducted Regional Workshops on – Family Laws for Principal and Additional Principal Judges of Family Courts and Judges dealing with Matrimonial cases at Chhindwara and Motor Accident Claim Cases at Ujjain. Specialised Educational Programme at Forensic Science Laboratory, Sagar was also organized for the Judges of HJS cadre.

The Academy, in order to develop a reserve pool of faculties for MPSJA and to groom them as Trainers, conducted a week long Workshop on – Training for Trainers for selected Judges of District Judiciary. RCVP Narohna Academy of Administration, Madhya Pradesh guided the Academy with modalities and also provided faculties and training material support.

The Academy conducted two Sensitization Programmes on – Juvenile Justice (Care & Protection of Children) Act, 2015 for other stakeholders working under the Juvenile Justice System i.e. D.S.Ps. posted as Special Juvenile Police Unit and Members of Juvenile Justice Boards.

I sincerely hope that the content of this issue will enlighten and guide the readers in discharge of their duties. Your valuable contributions and response are always welcome.

Keep blessing our pursuit for judicial excellence.

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MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGH COURT OF M.P., JABALPUR

Advance/Orientation Course for the District Judges
(Entry Level) (Third Batch)
(02.04.2018 to 13.04.2018)

First Refresher Course for Civil Judges Class - II from 2016 Batch
(16.04.2018 to 20.04.2018)

HON'BLE SHRI JUSTICE ANURAG SHRIVASTAVA
DEMITS OFFICE

Hon'ble Shri Justice Anurag Kumar Shrivastava demitted office on His Lordship's attaining superannuation.

Hon'ble Shri Justice Anurag Kumar Shrivastava was born on April 11, 1956 at Rajnandgaon, Chhattisgarh. After obtaining degrees of B.Sc. (Maths) in 1975 from Govt. Digvijay Mahavidhyalaya, Rajnandgaon and LL.B. from Vidhi Mahavidyalaya, Rajnandgaon in the year 1979, enrolled as an Advocate in the State Bar Council of M.P. in the year 1980 and started practicing in District Rajnandgaon under the able guidance of Senior Lawyer Shri K.C. Jain. Joined M.P. State Judicial Services as Civil Judge Class II on 27th April, 1983 at District Court Durg. Promoted to Higher Judicial Services in June, 1996. Granted Super Time Scale on 02.01.2012.

Worked in different capacities at Mahasamund, Gariyaband, Mungeli, Korba (Tahsils of Raipur and Bilaspur districts), Maihar, Mandla, Jabalpur, Rewa, Sakti, Chhatarpur. Held the post of Member Secretary, State Legal Services Authority (M.P.), Jabalpur from April 2012 to March 2014 and organized Lok Adalats and Mega Lok Adalats under the direction of Executive Chairman, SLSA in which a large number of cases were decided amicably. Was appointed as Member of Monitoring Committee by Hon'ble Supreme Court for providing drinking water to the residents of 21 localities situated around the Union Carbide Plant of Bhopal and with the help of Municipal Corporation, Bhopal prepared the Action Plan, identified the families entitled to get tap water connections and provided potable water connections to more than 11,000 families and submitted the progress report to Hon'ble Supreme Court from time to time. Served twice as District & Sessions Judge, Balaghat from June 2010 to March 2012 and again from April 2014 till elevation.

Took oath as Additional Judge, High Court of Madhya Pradesh on 07.04.2016 and as Permanent Judge on 17.03.2017.

We on behalf of JOTI Journal, wish His Lordship a healthy, happy and prosperous life.

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PART – I

DEALING WITH NO INSTRUCTIONS AND ENSURING EXPEDITIOUS HEARING IN CIVIL CASES

– By **Yashpal Singh**
OSD, MPSJA

> *"Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. ……. Therefore, whoever has a role to play in the justice dispensation system cannot be allowed to remotely conceive of a casual approach."*
>
> **Dipak Misra, J.** (as His Lordship then was)
> in ***Noor Mohammed v. Jethanand, (2013) 3 SCC 202***

INTRODUCTION

It is a primary duty of every litigant, whether plaintiff or defendant, to appear personally or through a recognized agent or a counsel duly instructed by him on every date fixed for hearing of the case to which he is a party. Fairplay on part of every stake holder, be it the litigants, or their counsels or witnesses is also a ***sine quo non*** of a fair trial. Fairplay includes promptness and excludes dilatory tactics. However, litigation in India is more or less governed by the instructions of counsels to the litigants. A litigant may instruct his counsel to appear, act and apply on his behalf before the court. But, this right is always subject to a rider that the counsel must be duly instructed. Whenever a party engages a counsel to represent him at trial, he acquires certain rights along with certain obligations.

In ***Lt. Col. S.J. Chaudhary v. State (Delhi Administration), AIR 1984 SC 618*** a three-Judge Bench of the Supreme Court, while dealing with the role of an advocate in trial, has observed as follows: -

> *"We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his Advocate is finding it difficult to attend the court from day-to-day. It is the duty of every Advocate, who accepts the brief in a criminal case to attend the trial from day-to-day. We cannot over-stress the duty of the Advocate to attend to the trial from day-to-day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend."*

Although this observation relates to criminal trial, but it applies to civil cases as well.

The High Court of Madhya Pradesh in ***Benibai v. Smt. Champaba, AIR 1996 MP 177,*** has also observed that -

"The confidence reposed by parties in the counsel is most important. A person who is not present in Court presupposes that because of engagement of a counsel his interest would be properly looked after. It is the duty of a counsel to inform him before he proceeds to plead no instructions. ... A Judge ordinarily should not permit a lawyer to plead no instructions unless the lawyer satisfies the judicial conscience of the Court that for the compelling reasons he was posed to plead no instructions."

It often happens in courts that after taking several adjournments, counsel for a party appears on an adjourned date of hearing and pleads NO INSTRUCTIONS from his client. The party too remains absent on such dates. Sometimes, such a situation may arise due to unforeseen events. However, quite often it is used as a strategy to protract the trial.

A question arises before the courts in such cases as to whether court should proceed under Order IX or Order XVII of CPC, i.e., to proceed ***ex parte*** in case of defendant or proceed to decide or dismiss the suit in case of plaintiff, or to adjourn the case to a future date.

EFFECT OF NO INSTRUCTIONS

There is no provision in CPC or Civil Court Rules which provides for the effect of no instructions or which lays down the procedure to deal with a situation when a counsel pleads no instructions. But precedents on the point provide guidance regarding law and procedure.

A five Judges Bench of the High Court of Madhya Pradesh in ***Rama Rao v. Shantibai, AIR 1977 MP 222*** considered the effect of pleading no instructions by the counsel. Their Lordships observed that:

"As a result of these conclusions, our answers together with the questions referred to us, are stated as under:-

Questions	Answers
(1) If, when a suit is called on for hearing, a party's counsel appears and seeks adjournment but when adjournment is refused he retires saying that he has no instructions whether this will amount to "appearance" of the party whom the counsel represents ? (a) If the counsel had sought adjournment because he was instructed by his client to ask for an adjournment only, and not to proceed with the trial if adjournment be refused?	It will be no appearance of the party and R.2 of O.17 C.P.C. alone would be attracted. However, in such a case the defaulting party must show 'sufficient cause' for non-appearance as well as for not fully instructing the counsel.

(b)	If the counsel feels a necessity to seek adjournment so that he may prepare himself and, on his own, seeks adjournment ?	It will be no appearance of the party and R. 2 of O. 17 C.P.C. alone would be attracted.
(2)	If, when a case is called on for hearing, the counsel appears (without making any request for adjournment) merely to inform the Court that he has no instructions and, therefore, would not appear, will it still amount to appearance of a counsel for the purposes of O.9, R. 8, or O. 17, R. 2 C.P.C. ?	It will be no appearance of the party and R. 2 of O, 17 C. P.C. alone would be attracted.

However, before proceeding under Order XVII, Rule 2 of the CPC on non appearance of a party, Court is required to consider the pre-condition of notice to the defaulting party. The Supreme Court in case of ***Malkiat Singh and another v. Joginder Singh, (1998) 2 SCC 206,*** while dealing with a case in which the counsel for the party pleaded no instructions, has observed as under :

> *"There is no denying the fact that the appellants had engaged a counsel to defend them in the civil suit. The counsel for the appellant pleaded "no instructions" but the Court did not issue any notice to the appellants, who were admittedly not present on the date when their counsel reported no instructions in the court. It is nobody's case that the counsel informed them after he had reported no instructions to the Court. In this factual situation, the trial Court, which admittedly had not issued any notice to the appellants after their counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when the counsel reported no instructions. The appellants cannot in facts and circumstances of the case, be said to be at fault and they should not suffer."*

The same question arose before the High Court of Madhya Pradesh in ***Bherulal v. Resham Bai, 2003 (I) MPWN 137,*** wherein, it was observed that –

> *"Even otherwise, when I read the impugned order, it is in conformity with the requirement of Order 9 Rule 13 ibid., it is held, and in my opinion, rightly, that when lawyer reported no instructions and none appeared for defendant (lady), she ought to have been noticed. Indeed, this is the view of Supreme Court in one recent case where Their Lordships had observed that notice to party should have been sent before he was proceeded ex party."*

Similarly, in the case of ***Pankaj Agrawal & Ors. v. Shakuntala Devi & Ors., 2006 (III) MPJR 72,*** a suit was dismissed in absence of plaintiff when his counsel pleaded no instructions without informing the plaintiff. The High Court of Madhya Pradesh held that it is sufficient cause for restoration of the suit under Order 9 Rule 9 CPC.

Hence, it can be concluded from above pronouncements that whenever no instructions is pleaded by a counsel, a notice should be issued to the party concerned, who are not present on the date of hearing.

HOW TO CONTROL THIS TENDENCY – COURT'S PERSPECTIVE

Appearance of parties before court is regulated by Order III, Rule 1 of the CPC. It provides that -

> ***"1. Appearances, etc., may be in person, by recognized agent or by pleader :-***
>
> *Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:*
>
> *Provided that any such appearance shall, if the Court so directs, be made by the party in person." (emphasis given)*

A bare perusal of this rule suggests that as a general rule, a party to a suit is expected to be present in person to prosecute his/her suit. However, the suit may be prosecuted on his/her behalf by his recognized agent or pleader if duly instructed to do so. They may appear, file applications and act on behalf of their client.

However, proviso appended to Rule 1 empowers the Court to order personal appearance of a party in exceptional circumstances, where Court is of the opinion that personal appearance of a party is necessary for proper conduction and progress of the suit. Virtually, this proviso is codification of Court's inherent power to order personal appearance of a party before it.

The Supreme Court has also recognized this power of Court in the case of ***Jagraj Singh v. Birpal Kaur, (2007) 2 SCC 564.*** Their Lordships observed that-

> *"Apart from the matters under the Act i.e. Hindu Marriage Act, 1955, even in civil matters also, a Court of law may order either the plaintiff or the defendant to remain personally present in Court. For instance, Rule 1 of Order III of the Code Of Civil Procedure, 1908 ('Code' for short) states that a party may appear in Court either in person or by his recognized agent or by a pleader on his behalf. The proviso to the said rule, however, declares that any such appearance shall, if the Court so directs, be made by the party in person. ..... It is thus clear that in appropriate cases, a Civil Court may direct a party to the suit plaintiff or defendant, to appear in person."*

The consequences of not obeying an order passed under Order III, Rule 1 of the CPC have been provided under Order IX, Rule 12 thereof. It provides that-

> ***"12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person :-***

> *Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively who do not appear."*

A bare perusal of this provision suggests that a party who fails to appear personally when directed to do so will have to suffer the consequences as if he or she has failed to appear on the first date of hearing. This provision is penal in nature. The Supreme Court in the case of ***Jagraj Singh (supra)*** has also dealt with the effect of this provision in following words -

> *"Likewise, Rule 12 of Order IX provides that where a plaintiff or defendant, who was ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the said Order applicable to plaintiffs and defendants respectively who fail to appear."*

Therefore, if court is observing or suspecting dilatory tactics on the part of plaintiff or defendant, it may, by a specific order direct such party to appear in person on the next day fixed for hearing of the suit in accordance with Order III, Rule 1 CPC. On the date of hearing, if the party remains absent and counsel pleads no instruction, then Court may proceed under Order IX, Rule 12. If the plaintiff or his pleader, both are absent and no evidence or part of his evidence is on record, court may proceed to dismiss the suit under Order IX, Rule 8. If all or substantive part of evidence of the plaintiff is on record, court may, instead of dismissing the whole suit, close plaintiff's evidence or his right to cross examine defendant's witnesses and proceed with the case in accordance with Explanation appended to Order XVII, Rule 2 CPC. Similarly, in case of default of defendant, court may proceed to hear the suit ***ex parte***.

However, the court is expected to observe some precautions while ordering personal appearance by parties.

1. **To be used sparingly**

   Since, the non-appearance of a party on being ordered to appear personally has a grave consequence, such an order should be made sparingly in exceptional cases to ensure the expeditious trial of civil cases.

2. **Taking signature of parties/pleaders on order sheet**

   According to Rule 322 of the Madhya Pradesh Civil Court Rules, 1961, orders fixing dates or adjourned dates for hearing, or directing anything to be done by the parties or their pleaders, should be signed then and there by the parties or their pleaders. Therefore, whenever Court directs personal appearance of the parties, it should take the signature of the parties or their pleaders on the order sheet immediately. Otherwise no notice of such direction may be claimed.

3. Disclosure of consequences

The primary duty of a civil Court is to impart justice and not to punish the parties for their misdeeds. Therefore, whenever Court directs a party to appear personally, it should also disclose the consequences of non appearance.

4. Notice to the party or counsel

It may happen that the party is not present on the day on which adjournment has been granted by the Court on his request and Court propose to order his personal appearance on next date of hearing, then Court should also send a separate notice to his counsel to be served upon him. Attention is invited to the provisions of Order III, Rule 5 of the CPC which provides that-

> ***"5. Service of Process on pleader.-***
> *Any process served on a pleader who has been appointed to act for any party or left at the office or ordinary residence of such pleader, and* ***whether the same is for the personal appearance of the party or not,*** *shall be presumed to be duly communicated and made known to the party whom the pleader represents and, unless the Court otherwise directs shall be as effectual for all purposes as if the same had been given to or served on the party in person."*

5. Strict adherence to the law of adjournments

Whenever Court orders personal attendance of a party and such party does not appear in person on the fixed date, Court should not show any leniency towards such party and should proceed under Order IX or Order XVII CPC, as the case may be; unless the default is proved to be due to the reasons beyond the control of such party.

6. Payment of costs

Whenever a party is noticed by the Court due to his default in instructing his counsel, proper and realistic costs must also be imposed on him to meet the expenses of such notice and to compensate the delay caused by his default.

CONCLUSION

1. Whenever a counsel pleads "no instructions" without informing the party, Court should instead of proceeding under Order IX or Order XVII of the CPC, issue notice upon such party.
2. Whenever Court suspects that an adjournment may be sought on the ground of "No Instructions" or there are chances of protracting trial of a suit, it may order the personal appearance of such party by exercising powers conferred by the Proviso appended to Order III Rule 1 of the CPC.

3. Whenever personal appearance by a party is ordered, he should also be informed that in case of default, Court may proceed under Order IX Rule 12 of the CPC.
4. While ordering personal appearance, Court may serve a notice on the counsel of the party to bring the same in the notice of his client.
5. Reader should also be directed to take signature of the parties/their counsel on the order sheet in accordance with Rule 322 of MP Civil Court Rules, 1961 and place the same for perusal of the Presiding Officer.
6. If a party remains absent on such adjourned date of hearing, then Court is free to proceed under Order IX Rule 12 of the CPC even though the counsel has no instructions.
7. Whenever notice is issued to a party by Court for not instructing his counsel, appropriate costs should be imposed upon his appearance for compensating the expenses of notice and delay.

उपसंहार

1. किसी मामले में अधिवक्ता द्वारा पक्षकार की जानकारी के बिना यदि ''कोई अनुदेश न होना'' प्रकट किया जाता है तो न्यायालय को ऐसे पक्षकार के विरूद्ध आदेश 9 अथवा आदेश 17 सि.प्र.सं. में कार्यवाही करने के स्थान पर सूचना पत्र प्रेषित करना चाहिए।
2. यदि न्यायालय को समाधान है कि कोई अनुदेश न होने के आधार पर स्थगन लेने का प्रयास किया जाएगा अथवा प्रकरण के विचारण को अनावश्यक विलंबित करने का प्रयास किए जाने की संभावना है, तो न्यायालय पूर्ववत तिथि पर ही सि.प्र.सं. के आदेश 3 नियम 1 के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये आगामी नियत तिथि पर पक्षकार की वैयक्तिक उपस्थिति का आदेश दे सकता है।
3. जब भी वैयक्तिक उपस्थिति का आदेश दिया जाये, पक्षकार को यह सूचना भी दी जानी चाहिए कि यदि वह इस आदेश का पालन करने में व्यतिक्रम करता है तो उसके विरूद्ध सि.प्र.सं. के आदेश 9 नियम 12 के अनुसार कार्यवाही की जायेगी।
4. ऐसा आदेश करने पर न्यायालय पक्षकार के विद्वान अभिभाषक को सूचित कर सकता है कि वे पक्षकार को उपरोक्त आदेश से तत्काल अवगत करायें।
5. साथ ही प्रस्तुतकार को आदेश देना चाहिए कि आदेश पत्रिका पर पक्षकारों के अधिवक्ता के हस्ताक्षर म.प्र. सिविल न्यायालय नियम, 1961 के नियम 322 के अनुसार आवश्यक रूप से प्राप्त कर नस्ती अवलोकन हेतु पीठासीन अधिकारी के समक्ष प्रस्तुत करें।
6. यदि ऐसी स्थगित सुनवाई तिथि पर भी पक्षकार उपस्थित नहीं होता है तो अधिवक्ता को कोई अनुदेश न होने के बावजूद न्यायालय सि.प्र.सं. के आदेश 9 नियम 12 के प्रावधानानुसार कार्यवाही करने के लिए स्वतंत्र होगा।
7. यदि पक्षकार द्वारा अपने अधिवक्ता को उचित अनुदेश न दिए जाने के कारण न्यायालय द्वारा उसे सूचना पत्र जारी किया जाता है तो उसकी उपस्थिति पर न्यायालय को सूचना पत्र के व्यय एवं कारित विलंब की प्रतिपूर्ति हेतु उचित परिव्यय भी अधिरोपित करना चाहिए।

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IMPLEADMENT OF THIRD PARTIES *VIS-A-VIS* DOCTRINE OF *DOMINUS LITIS*

– By **Swati Bajaj**
OSD (Training & Research)
MPSJA

INTRODUCTION

Parties to the suit are one of the essential components of a suit. The provisions which deals with joinder of parties during pendency of the suit in CPC are:

1. Order 1 Rule 1 deals with joinder of plaintiffs.
2. Order 1 Rule 3 deals with joinder of defendants.
3. Order 1 Rule 10(1) deals with addition of plaintiff.
4. Order 1 Rule 10(2) deals with addition of plaintiff or defendant.
5. Order 22 Rule 10 deals with impleadment of a party who got interest or on whom interest has been devolved during pendency of the suit.

Though plaintiff is the master of his own suit, but again a question will arise, who may be joined as plaintiff and defendant. Where an act is done by two or more persons or where it adversely affects two or more persons, a question of joinder of plaintiff or joinder of defendant would arise. The provisions of Order 1, Rules 1 and 3 of the Code make it permissible to join more than one plaintiff and defendants in a suit. According to Rule 1 & 3 of Order 1, plaintiffs or defendants can be joined in a suit, where right to relief arises out of same act or transaction and if separate suit were brought common question of law or fact would arise.

Rule 1 and Rule 3 of Order 1 of the Code reads as:

All persons may be joined in one suit as plaintiffs or defendants where–

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise.

Apart this, question of joinder of parties includes joinder of causes of action. In ***IshwarBhai v. Harihar, (1999) 3 SCC 457,*** the Supreme Court had an occasion to deal with both the provisions, viz. Order 1, Rule 3 and Order 2 Rule 3. Considering the ambit and scope of the former provision in juxtaposition of the latter, the Court stated:

> "These two provisions, namely, Order1 Rule 3 and Order 2 Rule 3, if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The

simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined."

MEANING OF *DOMINUS LITIS*:

According to **BLACK'S LAW DICTIONARY** meaning of ***Dominus Litis*** is **"Master of a suit;** i.e.,the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate."

Rule 1 and 3 of Order 1 of the Code deals with conditions under which plaintiff and defendant can be joined. Now, whether a third party can be impleaded in the suit against the wishes of the plaintiff, particularly when he is the master of the suit?

The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of Civil Procedure Code, which provides for impleadment of proper or necessary parties. ***(Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd., AIR 2010 SC 3109)***

It means that concept of doctrine of *Dominus Litis* is not an absolute one. It is the discretion of the Court to direct impleadment of party whose presence is found necessary and proper for effective and proper adjudication of the dispute, if the Court deems it necessary for effectual adjudication even against the wishes of the plaintiff.

Rule 10(2) of Order 1 CPC postulates that "*the Court may, at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

So by virtue of Order I Rule 10 C.P.C., the Court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the Court must be satisfied that the presence of the party to be added, would be necessary in order to enable the Court effectually and completely to adjudicate upon and to settle all questions involved in the suit.

OBJECT:

The object of the Rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and

to avoid multiplicity of proceedings. ***(Anil Kumar Singh v. Shivnath Mishra alias Gadasa Guru, (1995) 3 SCC 147).*** Further, to save honest and *bonafide* claimants from being non-suited on technical pleas. ***(Amit Kumar Shaw v. Farida Khatoon, AIR 2005 SC 2209).***

AMBIT AND SCOPE:

Rule 10 of Order 1 does not give absolute right to non-party to be impleaded as a party but it is discretion of the Court to add parties at any stage of a proceeding. The discretion can be exercised by the Court either *suo motu* or upon application of parties which may be filed by plaintiff or defendant or a person who is not a party to the suit. But the discretion of the Court should not be arbitrary because Court has jurisdiction to implead only necessary or proper party in order to adjudicate the questions involved in the suit effectually and completely. (***Mumbai International Airport Pvt. Ltd. (supra)*** and ***Ramesh Hiranand Kundanmal v. Municipal Corporation, Greater Bombay, 1992(2) SCC 524***).

Thus, while exercising the judicial discretion the Court has to consider two categories of parties:-

1. Who ought to have been joined *i.e.* necessary party; and
2. Whose presence before the court may be necessary *i.e.* proper party.

WHO MAY APPLY:

An application under Order 1 Rule 10 (2) may be presented by following persons:

1. Plaintiff
2. Defendant
3. Third Party

Where an application is presented by plaintiff, the problem does not arise because plaintiff being the master of the suit has the right to choose the person against whom he wishes to litigate. If defendant or third party proposes an application under the said provision then the Court needs to consider whether the proposed party is necessary party or proper party and also conditions which are necessary to join defendant as mentioned in Rule 3 of Order 1.

Further, if the Court comes to the conclusion that the proposed party is necessary party to the suit but impleadment of such necessary party will embarrass or delay the trial or change the nature of a suit then the Court may order to separate the trial by invoking Rule 2 and Rule 3A of Order 1 of the Code.

Rule 2 of Order 1 postulates that *"where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient."*

Similarly, Rule 3A of Order 1 postulates that *"where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice."*

'NECESSARY PARTY' AND 'PROPER PARTY' – BROAD PRINCIPLES FOR DETERMINATION:

The question whether a party is a necessary party or a proper party frequently arises before the Court. Unless a necessary party is not impleaded, the suit may be liable to be dismissed, but that is not so when a proper party is not impleaded. So, it is necessary to understand the concept of necessary and proper party.

Two tests for determining the question whether a particular party is a necessary party to a proceeding are:

(i) *There must be a right to some relief against such party in respect of the matter involved in the proceeding in question; and*

(ii) *It should not be possible to pass an effective decree in absence of such a party.* ***(Benares Bank Ltd. v. Bhagwandas, AIR 1947 All 18 (Full Bench))***

In ***Deputy Commissioner Hardoi v. Rama Krishna Narain, AIR 1953 SC 521,*** the Supreme Court has approved the above tests describing them as "true tests."

Thus, it can be said that:

A **"necessary party"** is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not impleaded, the suit itself is liable to be dismissed.

A **"proper party"** is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate the matter, in favour of or against whom the decree is to be made.

NECESSARY PARTY *VIS-A-VIS* NECESSARY WITNESS:

As discussed above, Rule 10 (2) of Order I CPC grants jurisdiction only to implead necessary or proper party. But, sometimes it may happen that a party who may be a necessary witness for the adjudication of the case proposes itself to be a necessary party. So, while deciding the application it is the duty of the court to differentiate between necessary party and a necessary witness. This concept has been elaborately described and discussed in the case of ***Ramesh Hiranand Kundanmal (supra).***

Facts of the case:

One **'A'**, licensor of disputed property gave his property on license to **'B'**. **'B'** (licensee) made unauthorized construction violating Municipal Law. One **'C'** (Municipal Corporation) issued notice to **'B'** for unauthorized construction. **'B'** filed civil suit for permanent injunction against **'C'**. **'A'** (licensor) filed an

application for being impleaded as defendant on ground that he has material to show that structure is unauthorized and hence a necessary party.

The question before the Supreme Court was, whether **'A'** is necessary party in suit filed by **'B'** against **'C'**. The Supreme Court held that **'A'** is neither necessary nor proper party to the proceeding. The person to be joined must be one whose presence is necessary as a party. ***The test is not whether his presence is necessary for the correct solution of the dispute before the Court but whether the order would affect him or his interest would be prejudiced.*** In the instant case, the question for consideration was whether the structure made by **'B'** was contrary to the Municipal Law and not whether such construction was contrary to the agreement between **'B'** and **'A'**. The Court further also held ***"the mere fact that a fresh litigation can be avoided is no ground to invoke the power under the rule in such cases."***

Relevant extract of the judgment:

> *The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest of the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e. he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action.*

Hence, if the Court finds that the third party is only a necessary witness *i.e.* he has interest to get the correct solution in the suit, the Court shall not implead such party.

BROAD PRINCIPLES LAID DOWN BY THE SUPREME COURT:

The Supreme Court has laid down the broad principles which governs consideration of an application for impleadment of parties. In ***Razia Begum v. Sahebzadi Anwar Begum & others, AIR 1958 SC 886, Mumbai International Airport***

Private Limited (supra) and VidhurImpex and Traders Pvt. Ltd v. Tosh Apartments Pvt. Ltd and others, (2012) 8 SCC 384, following general principles were laid down:

(1) *That the question of addition of parties under R.10 of O.1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the Court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in S. 115 of the Code;* **(*Razia Begum* (supra))**

(2) *The discretion to either allow or reject the application of the person claiming to be the proper party depends upon the facts and circumstances of the case and no person has a right to insist that he should be impleaded as a party merely because he is a proper party.* ***(Mumbai International Airport Private Limited*** (supra)**)**

(3) *The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the Court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The Court can strike out any party who is improperly joined. The Court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the Court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the Court will of course act according to reason and fair play and not according to whims and caprice.* ***(Mumbai International Airport Private Limited (supra))***

(4) *If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the Court may implead him having regard to the provisions of Rules 9 and 10(2) of Order 1. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.* ***(Mumbai International Airport Private Limited*** (supra)***)***

(5) *If a person makes an application for being impleaded contending that he is a necessary party, and if the Court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the Court may proceed to dismiss the suit by holding that the applicant was a necessary party and*

in his absence the plaintiff was not entitled to any relief in the suit. ***(Mumbai International Airport Private Limited*** (supra)***)***

(6) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides etc., the Court will normally implead him, if he is found to be a proper party. On the other hand, if a non- party makes an application seeking impleadment as a proper party and Court finds him to be a proper party, the Court may direct his addition as a defendant; but if the Court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the Court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. ***(Mumbai International Airport Private Limited*** (supra)***)***

(7) A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court. ***(VidhurImpex and Traders Pvt. Ltd*** (supra)***)***

(8) A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made. ***(VidhurImpex and Traders Pvt. Ltd*** (supra)***)***

(9) If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff. ***(VidhurImpex and Traders Pvt. Ltd*** (supra)***)***

THIRD PARTY, WHETHER A NECESSARY PARTY IN DECLARATORY SUIT?

A question which arises before the trial Court is that in declaratory suit, whether a third party can be impleaded as necessary party?

The question of impleadment of a party is to be decided on the basis of Order 1 Rule 10 (2) CPC which provides that only necessary or proper party can be added. One has to keep in mind while deciding an application that the object of Order 1 Rule 10 CPC is not to change the scope or character of the suit by addition of new parties and to enable third party to litigate their own independent claims. Plaintiff being *dominus litis* cannot be forced to add a third person which will change the nature of suit on the ground that impleadment of third person would avoid multiplicity of suits. Further, the third person should also have direct or legal interest in the subject-matter of the litigation which should be different from commercial interest. A person is said to have legal interest in suit if the judgment will affect him legally *i.e.* by curtailing his legal

rights. (***Baijnath v. State of M.P. & others, 1972 JLJ 126, Razia Begum*** (supra), ***Ramesh Hiranand Kundanmal*** (supra))

Relevant extract of *Baijnath* (supra):

The question was again considered in ***Amon v. Rapheol Tuck & Sons Ltd., (1956) 1 All ER 273,*** where Devlin J., on a review of authorities including the one quoted above, said:

> *"The person to be joined must be someone whose presence is necessary as a party. What makes a person a necessary party? It is not, of course, merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately. That would mean that on the construction of a cause in a common form contract many parties would claim to be heard, and, if there were power to admit any, there is no principle of discretion by which some would be admitted and others refused. The Court might often think it convenient or desirable that some of such persons should be heard so that the Court could be sure that it had found the complete answer, but no one would suggest that it is necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.*
>
> *On the wider construction of the rule, I do not understand where the line is to be drawn between a commercial interest in the question involved in the case and a legal one. It is conceded that the line must be drawn somewhere. It is not enough that the intervener should be commercially or indirectly interested in the answer to the question; he must be directly or legally interested in the answer. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights."*

There is no strait jacket formula, when third party can be impleaded because it depends upon facts and circumstances of each case. For example, it is settled principle of law that in suit regarding eviction and recovery of rent, the question of title can not be decided. But where the third person claiming to be the real owner of the suit premises questions the genuineness of the suit and the stand of the plaintiff, in such situation he may be impleaded to avoid complication between the parties. ***(Vishnu Swaroop Joshi v. Janki Prasad Kurele, 2013 SCC OnLine MP 3659)***

In ***Razia Begum*** (supra), the facts of the case was that one **'A'** filed a suit for declaration that she was legally wedded wife of **'B'**. One **'C'** claimed to be another married wife of **'B'** and sought to be added as defendant in the suit. The Hon'ble Apex Court held that in a suit for declaration of status, the judgment is not only binding upon the parties to the proceedings but also persons claiming through them respectively. In a suit relating to property a person who has direct interest alone has to be added as a party, said rule has to be relaxed in a suit for declaration as regards to status or legal character. In such suits a person may be necessary party who has an interest or bind by the result of action or the question settled there in.

Principles laid down by the Supreme Court in *Razia Begum (supra):*

(1) Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy;

(2) The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Ss.42 and 43 of the Specific Relief Act;

(3) In cases covered by those statutory provisions, the Court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the Court has reasons to insist upon a clear proof apart from the admission;

(4) The result of a declaratory decree on the question of status, such as in controversy in the instant case, affects not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of 'present interest', as evolved by case law relating to disputes about property does not apply with full force.

(5) The rule laid down in S. 43 of the Specific Relief Act, is not exactly a rule of res judicata. It is narrower in one sense and wider in another.

THIRD PARTY, WHETHER A NECESSARY PARTY IN A SUIT FOR SPECIFIC PERFORMANCE?

In a suit for specific performance of contract for sale of a property instituted by a purchaser against the vendor, ***whether a stranger or a third party to the contract, claiming to have an independent title and possession over the contracted property, is entitled to be added as a party/defendant in the said suit ?*** To answer this question, firstly it is necessary to understand who are the necessary parties in suit for specific performance of a contract.

According to Section 19 of Specific Relief Act, 1963, specific performance of a contract may be enforced against:

1. Party to the contract;
2. Any person claiming under him by a title arising subsequently to the contract, except *bonafide* purchaser;
3. Person who have a claim to the property even prior to the contract, when such title is liable to be displaced by contracting parties.

In suit for specific performance for contract, (i) Parties to the contract or if they are dead their legal representative; (ii) Subsequent purchaser who had purchased the disputed property from the vendor are necessary parties. Further, the question that is to be decided in a suit for specific performance of the contract for sale is enforceability of the contract entered into between the parties to the contract. Hence, generally, the stranger to the contract, making an independent and adverse to the title of vendor is neither necessary nor proper party, and therefore, not entitled to join as defendant in the suit for specific performance of contract for sale. ***(Kasturi v. Iyyamperumal and others, AIR 2005 SC 2813***

But if the third party can show a fair semblance of title or interest, he can certainly file an application for impleadment. ***(Sumtibai v. Paras Finance Co. Mankanwar, AIR 2007 SC 3166*** while considering ***Kasturi*** (supra)***)***

To understand the ratio laid down in ***Sumtibai*** case (supra), it is necessary to know the facts of the case. In this case, an agreement was executed between **'A'** and **'B'** for the sale of property. **'A'** filed a suit for specific performance of agreement against **'B'** for disputed property. The disputed property was owned by **'B'** and his son's **'C'** and **'D'** on strength of sale deed. **'B'** died during the pendency of the trial. **'B'**'s sons **'C'** and **'D'** were not impleaded as necessary party but in the capacity of B's L.R.. Applications filed by **'C'** and **'D'** under Order I Rule 10 were rejected by the trial court. The argument put forth by **'A'**'s advocate was that due to the ratio laid by the Supreme Court in ***Kasturi's*** case (supra) that third party to the agreement to sale cannot be impleaded as party to the suit. In this context it was held by Supreme Court that since **'B'**'s sons were also co-owner with **'B'** on strength of sale deed and has semblance with the property and are hence, necessary party in the suit and gave them opportunity to file additional defence.

Doctrine of *Lis pendens* and impleadment of parties:

It is well settled that the doctrine of *lis pendens* is based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but also on those who derive their title ***pendente lite***. The doctrine does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation. The principles of *lis pendens* was discussed by the Privy Council in the case of ***Gouri Dutt Maharaj v. Sukur Mohammed & Ors., 1948 AIR (PC) 147,*** observed as under :

> *"The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The applicability of the section cannot depend on*

matters of proof or the strength or weakness of the case on one side or the other in bona fide proceedings. To apply any such test is to misconceive the object of the enactment and in the view of the Board, the learned Subordinate Judge was in error in this respect in laying stress, as he did, on the fact that the agreement of 8.6.1932, had not been registered."

The transferee *pendente lite* can be discussed from two point of view:

1. *Transferee who has derived title/ interest in the disputed property from the defendant/ vendor particularly in suit for specific performance of agreement.*
2. *Transferee who has derived title/interest in the subject matter from the defendant during the pendency of the suit.*

With respect to Point no. 1, in ***Vidur Impex and Traders Pvt. Ltd.*** (supra)**,** the question for consideration before the Apex Court was ***whether the subsequent purchaser who has purchased the suit property in violation of order of injunction and having sufficient notice and knowledge of the prior agreement is necessary party for passing an effective decree in the suit?***

Facts of the case in narrow compass was that, one **'A'** executed agreement to sell of disputed property in favour of **'B'**. **'B'** filed suit for specific performance against **'A'** in which Court granted interim injunction restraining **'A'** from parting with possession or creating third party rights in respect of the disputed property. During pendency of suit, **'A'** clandestinely entering into agreement to sell the property with **'C'** and executed sale deed in favour of **'C'**. Now, whether **'C'** is necessary party for the adjudication of the suit ?

Answering the question in negative, the Court observed that **'C'** is total stranger to agreement between **'A'** and **'B'**. The agreements for sale and the sale deeds executed by **'A'** in favour of **'C'** did not have the legal sanctity. Hence, neither his presence is at all necessary for adjudication nor he is entitled to be impleaded as party.

Relevant extract of the judgment:

In the present case, the agreements for sale and the sale deeds were executed by respondent No. 2 in favour of the appellants in a clandestine manner and in violation of the injunction granted by the High Court. Therefore, it cannot be said that any valid title or interest has been acquired by the appellants in the suit property and the ratio of the judgment in ***Surjit Singh v. Harbans Singh*** *(supra) would squarely apply to the appellants case because they are claiming right on the basis of transactions made in defiance of the restraint order passed by the High Court. The suppression of material facts by Bhagwati Developers and the appellants from the Calcutta High Court, which was persuaded to pass orders in their favour, takes the appellants out of the*

category of bona fide purchaser. Therefore, their presence is neither required to decide the controversy involved in the suit filed by respondent No. 1 nor required to pass an effective decree.

Again, similar question arose before the Supreme Court while delivering judgment in ***Thomson Press (India) Ltd v. Nanak Builders & Investors Pvt. Ltd, (2013) 5 SCC 397.*** The question, that falls for consideration for the Supreme Court was, ***whether the purchaser who is the transferee pendente lite having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as necessary party under Order I Rule 10?*** The Supreme Court while referring to ***Vidur Impex*** (supra)***, Kasturi*** (supra)***, Lala Durga Prasad v. Lala Deep Chand, 1954 SCR 360*** and many more of its earlier case laws held that a contract for specific performance may be enforced against the parties to the contract and the persons mentioned in the section 19 of Specific Relief Act. It is settled principle of law that transfer made in favour of the subsequent purchaser is subject to the rider provided under Section 52 of the Transfer of Property Act and the restrain order passed by the Court. But for the effective passing of decree in the suit of specific performance of contract as per the proposition laid down by the Supreme Court in ***Lala Durga Prasad*** (supra) subsequent purchaser was allowed to be added as defendant.

From the above discussion, it can said that transferee ***pendente lite*** who has derived interest (bonafide) in the disputed property through vendor must be impleaded as a necessary party in the suit of specific performance for the effective passing of decree as per the ratio laid down by the Supreme Court in ***Lala Durga Prasad*** (supra) case but if the transfer has been intentionally made by the vendor in violation of restraint order passed by the Court and the subsequent purchaser having knowledge about the same in such situation such subsequent purchaser (transferee) shall not be impleaded in the suit.

With respect to point no. 2, in ***Amit Kumar Shaw v. Farida Khatoon, AIR 2005 SC 2209,*** while discussing transferee *pendente lite*, the Supreme Court held that it is not the absolute right of the *lis pendent* transferee to be impleaded as a party in suit but it is only discretion of the Court. However, Court further added that such transferee can be added as proper party if he has acquired substantial interest in subject matter. Further, if the transferee has acquired entire interest from the defendant, then in such a situation, since defendant has no vested interest in property, he may not defend the suit properly. He may also collide with the plaintiff. It also held that though the plaintiff is under no obligation to make a *lis pendens* transferee a party in a suit but Court may implead such party under Order 22 Rule 10 of the Code to enable him to protect his interest.

Specific instances and general principles laid down by the Supreme Court for impleading parties in suit for specific performance of contract:

(1) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished

from a commercial interest, in the subject-matter of the litigation; ***(Razia Begum*** (supra)***)***

(2) *If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.* ***(Mumbai International Airport Pvt. Ltd.*** (supra)***)***

(3) *If 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co- owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the Court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the Court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the Court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.* ***(Mumbai International Airport Pvt. Ltd.*** (supra)***)***

(4) *In a Suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files Application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.* ***(Vidhur Impex and Traders Pvt. Ltd.*** (supra)***)***

(5) *However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.* ***(Vidhur Impex and Traders Pvt. Ltd.*** (supra)***)***

(6) *In suit for specific of a contract, a third person, who contends that the suit property is joint property and also that he is co-owner of that property is neither a necessary party nor proper party. If third person (co-owner) is added in such suit, nature of suit will change from suit for specific performance of contract to that of a suit for title.* ***(Panee Khushali and anr. v. Jeewanlal Mathoo Khatik and anr., AIR 1976 MP 148)***

APPLICABILITY OF ORDER 1 RULE 10 CPC IN DIFFERENT CASES:-

1. Partition Suit:

Whether all co-sharers are necessary parties in suit for partition?

In ***Kanakarathanammal v. V.S. Loganatha Mudaliar, AIR 1965 SC 271 the question for determination before Hon'ble Supreme Court was whether in a suit for partition, all the co-sharers or co-heirs are necessary parties or not?*** In paragraph 9 of the judgment, the question has been dealt by the Supreme Court, as under:-

"On the other hand, if Section 10 (2) (d) applies to the property, the appellant will not be exclusively entitled to the property and her brothers would be necessary parties to the suit. In that case, the plea of non-joinder would succeed and the appellant's suit would be dismissed on that ground".

Thus, all persons who are entitled to a share in the property by inheritance must be made parties in the suit for partition.

2. Whether Workers of a company are necessary parties to the winding up proceedings?

This question came for consideration before the Supreme Court in ***National Textiles Workers' Union etc v. P.R. Ramakrishnan and others, 1983 (1) SCR 922,*** in which the Court held that the workers of a company are entitled for hearing in a proceeding of winding up petition to oppose or support the same, in such cases as the larger interest of public is involved. However, same rule is not applicable to the civil litigation.

Relevant extract of the judgment:

The workers are entitled to appear at the hearing of the winding up petition whether to support or to oppose it so long as no winding order is made by the Court. The workers have a locus to appear and be heard in the winding up petition both before the winding up petition is admitted and an order for advertisement is made as also after the admission and advertisement of the winding up petition until an order is made for winding up the company.

Similarly, where a company is ordered to be wound up and a liquidator is appointed, in a suit for possession against the company, the liquidator is a

necessary party. ***(See-Vishnu Mahadeo v. Rajen Textile Mills (P) Ltd, (1975) 2 SCC 144)***

3. **Whether Judicial Officers are necessary parties to proceedings which they disposed off?**

The Apex Court in the case of ***Savitri Devi v. District Judge, Ghorakhpur and others, AIR 1999 SC 976,*** held that Judicial Officer who have disposed off the matter in a civil proceeding are not necessary parties since said proceedings may cause unnecessary disturbance to the functions of Judicial Officers.

4. **Representative Suits:**

In ***Diwakar Srivastava and others v. State of Madhya Pradesh and others, AIR 1984 SC 468,*** the Supreme Court held that under Order I Rule 8 CPC, any person who got interest in the subject matter of the suit can be impleaded to suit filed under representative capacity.

5. **Execution Proceedings:**

Whether Order I Rule 10 CPC is applicable to execution proceedings?

In ***State Bank of Patiala v. M/s Alpna Industries, 1992 (1) LJR 159 (H.P.),*** the High Court of Himachal Pradesh while referring ***Mir Sardar Ali Khan and Others v. Special Deputy Collector Land Acquisition (Industries) Hyderabad and Others, AIR 1973 A.P. 298*** and ***Ramader Appalla Narsinga Rao v. Chunduru Sarada, AIR 1976 A.P. 226,*** held that the said Rule is not applicable to execution proceedings.

Relevant extract of the judgment *State Bank of Patiala* (supra):

> *Order 1 Rule 10 of the Civil Procedure Code, is applicable only during the proceedings in a suit. Such powers under Order 1 Rule 10 sub-rule (2) can only be exercised when the proceedings are alive and still pending. Thus, once the adjudication itself of all the disputes in the case is over, this provision cannot be made use of by any party.*

The rights of third parties in execution proceedings can be safeguarded under Rule 98 or Rule 101 of Order XXI or Sec. 47 of C.P.C.

6. **Land Acquisition proceedings:**

In ***U.P Awas Evam Vikas Parishad v. Gyan Devi (dead) by L.Rs., (1995) 2 SCC 326,*** the question raised before the Supreme Court was whether a body for which land was acquired by the Government under the Land Acquisition Act could be said to be a 'necessary' or 'proper party'. The majority (4:1) held that though the acquiring body may not be held to be a 'necessary party', it must be held to be a 'proper party' and, hence, should be impleaded as a party in the proceedings.

7. Eviction suit:

In eviction suit, whether sub-tenant is a necessary or proper party?

In ***Importers and Manufactures Ltd., Messrs. v. Pheroze Framroze Taraporewala, 1953 AIR SC 73,*** it has been held that in a suit for possession by the landlord against his tenant, a sub-tenant is merely a proper party.

In eviction suit, whether a co-owner is necessary party?

In an eviction suit, landlord and tenant are the only necessary parties. The only question required to be proved in such cases is existence of relationship between landlord and tenant. The question of title or extent of shares of co-owners in suit premises neither be decided nor can it be made subject matter of determination in such cases. Hence, co-owner is neither a necessary nor a proper party in eviction suit. ***(Kanaklata Das and others v. Naba Kumar Das and others, (2018) 2 SCC 352)***

8. Public Trusts Act:

Whether impleading the Registrar Public Trust under Order 1 Rule 10 (2) in lieu of mandatory compliance under section 8 (2) of Public Trusts Act is permissible?

In the name of mandatory notice to the State Government under Section 8 (2) of the Act, Registrar, Public Trust cannot be impleaded as a party under Order 1 Rule 10 CPC. ***(Trimurti Charitable Public Trust & Anr. v. Munikumar Rajdan & ors., ILR (2016) MP 3307)***

9. Indian Trusts Act:

Whether beneficiary of the Trust is necessary party in suit filed for specific performance relating to trust property against Trustee?

In a suit for specific performance against trustees, a beneficiary of trust has a right to be impleaded as a party. He is a proper party and cannot be treated as stranger. ***(Baluram v. P. Chellathangam, AIR 2015 SC 1264)***

10. Whether appreciation of evidence is required while deciding an application under Order 1 Rule 10 CPC?

At the stage of deciding application for impleadment of a person, Court is only required to see whether the presence of such person before Court may be necessary in order to enable it to effectually and completely adjudicate upon and settle all questions involved in the suit, appreciation of evidence is not required. ***(Ashok Choudhary v. Gwalior Dairy Ltd. and another, 2018 (2) MPLJ 301)***

WHEN COURT CAN REJECT APPLICATION UNDER RULE 10 OF ORDER I:

Introducing a new cause of action:

A court will not permit addition of a party where it would result in introducing a new cause of action with which the plaintiff has nothing to do. Thus, where **'A'** purchased goods by sample from **'B'**, sued for damages alleging that the goods

sold were not according to sample, **'B'** cannot apply for impleadment of **'C'** as party on the ground that **'B'** purchased goods from **'C'** by sample and the question raised in the suit was same as between **'B'** and **'C'. 'A'** has nothing to do with **'C'** and addition of 'C' would introduce a new cause of action.

Altering the nature of suit:

The Court will not allow leave to add a party which would alter the nature of character of the suit. In ***M/s Jayashree Chemicals Ltd v. K. Venkatarathnam and others, AIR 1975 Ori. 86,*** it was held that in a suit filed for eviction, impleading third party who has been claiming title over the suit property, it would amount to conversion of suit from eviction to declaration of title. Hence, not permissible.

In ***Kasturi v. Iyyamperumal and others, AIR 2005 SC 2813*** (it is held that during pendency of suit for specific performance of contract for sale, a third party who claims independent title and possession over contracted property cannot be impleaded. Such application would enlarge the scope of the suit for specific performance of suit for title and possession.)

REJECTION OF PLAINT VIS-A-VIS NON-JOINDER OF NECESSARY PARTY:

Another situation regarding necessary party which arises before the trial court is that whether a plaint can be rejected under Order 7 Rule 11 due to mis-joinder or non-joinder of parties? In this respect, the Supreme Court in ***Prem Lala Nahata v. Chandi Prasad Sikaria, AIR 2007 SC 1247,*** has held that the suit which is bad for mis-joinder of parties is a suit barred by a law and is not liable to be dismissed under Order 7, Rule 11, Civil Procedure Code. In the aforesaid order the Supreme Court has held as under:

> *Thus, when one considers Order 7, Rule 11 of the Code with particular reference to Clause (d), it is difficult to say that a suit which is bad for mis- joinder of parties or mis-joinder of causes of action, is a suit barred by any law. A procedural objection to the impleading of parties or to the joinder of causes of action of or the frame of the suit could be successfully urged only as a procedural objection which may enable the Court either to permit the continuance of the suit as it is or to direct the plaintiff or plaintiffs to elect to proceed with a part of the suit or even to try the causes of action joined in the suit as separate suits.*

In *M/s Reva Associates v. Sarjubai, 2016 (4) MPLJ 282 (M.P.),* it was held that suit cannot be dismissed on ground of non-joinder of necessary parties. Parties can be joined later also but if parties are not joined later, then only suit can be dismissed.

ORDER 22 RULE 4 VIS-A-VIS ORDER 1 RULE 10 CPC:

One more question arises before trial courts while dealing with an application under Order 1 Rule 10 CPC is that whether the court has power to implead legal representatives of deceased person on record under Order 1

Rule 10 CPC, where an application for bringing legal representative of deceased person on record under Order 22 Rule 4 CPC is dismissed on ground of limitation or any other reasons?

The scope of Order 22 Rule 4, Civil Procedure Code on the one hand, and that of Order 1 Rule 10 Civil Procedure Code on the other, are quite different. In the case of the former, the heirs enter into the shoes of the deceased with all rights and liabilities and are precluded from presenting a case inconsistent with the one set up by the deceased. On the other hand, Order 1, Rule 10, Civil Procedure Code is available to a party in a situation where the party or parties are trying to enter appearance for the first time and entirely on their own, and is free to take any stand he wishes. The provisions of Order 22, Civil Procedure Code apply in a situation caused by the death of a party already on record and is bound by the laws of limitation, whereas in the case of the latter, the applicant may not be bound by any such restriction. Further, law is well settled that applicability of general provisions are excluded in situations where specific provisions are in force. ***(Ramashray Mahto and ors. v. Amiri Mahto and anr., 2005 AIHC 4362 (Patna High Court))***

In ***Minati Dutta & others v. Sushil Choudhary, AIR 2006 Patna 62,*** the Patna High Court has held that where an application for bringing legal representative on record has not been filed under Order 22 Rule 4 and more over where no application has been filed to set aside abatement. The parties cannot be permitted to file an application under Order 1 Rule 10 for impleading the legal representative on record. Same view has been taken by the Odisha High Court in ***Kanhu Gauda v. D. Kodandi Dora and others, 1985 (2) Ori. LR 385*** and Full bench of Allahabad High Court in ***Smt. Mahendras Kaur v. Hafiz Khalil and others, 1983 (9) ALR 689.***

In ***Bhagwan Swaroop v. Mool Chand, AIR 1983 SC 355,*** the Supreme Court considered the scope of Order I, Rule 10 and Order XXII, Rule 4 of the Code of Civil Procedure. In this particular case the heirs of the deceased Respondent No. I who had not been impleaded within time by the Appellant of the appeal before the Supreme Court, had applied under Order I, Rule 10 for being brought on the record. The Apex Court held that as the Appellant had not moved the High Court within time by filing an application under Order XXII, Rule 4, the limitation for taking action under the said provision having since expired, the consequence could not be circumvented by resort to the provision of Order I, Rule 10. In this case Supreme Court gave two judgments. Hon'ble Justice D.A. Desai observed that:

> *"There is some force in the contention that when a specific provision is made as provided in Order XXII, Rule 4, resort to the general provision like Order I, Rule 10 may not be appropriate."*

As the heirs and legal representatives of the deceased Respondent No. 1 had themselves applied for being brought on record, the Supreme Court held

that, on the basis of facts of the case, that they could be brought on record in place of the deceased.

Hon'ble Justice A.N. Sen approved the view of the High Court with regard to non-maintainability of the application under Order I, Rule 10 Code of Civil Procedure by observing that:

> *"The application made by the heirs of deceased for substitution under Order 1, Rule 10 Code of Civil Procedure is indeed misconceived and has been rightly held to be so by the High Court."*

Both the Hon'ble Judges were of the same opinion that the application under Order I, Rule 10(2) was not maintainable. They took note of the fact that the application was moved by the heirs for being impleaded as party.

In ***BanwariLal (D) v. Balbir Singh, AIR 2015 SC 3573,*** it was held again by the Supreme Court that Order 22 stipulates the manner in which the legal representatives of plaintiffs or defendants ought to be brought on record. The prescribed procedure cannot be circumvented by filing application under order 1, Rule 10 CPC read with Section 151 CPC.

Now another question which comes in the mind is whether the heirs of a deceased could be brought on record by a Court in exercise of its inherent power? The question was considered by the Supreme Court in ***Rameshwar Prasad v. Shambehar, AIR 1963 SC 1901.*** The Supreme Court held:

> *"When the legal representatives of the deceased Appellant and the surviving Appellants were negligent in not taking steps for substitution, the Court is not to exercise its discretion in favour of such a party. The discretionary power cannot be exercised to nullify the effect of the abatement of the appeal so far as Kedar Nath is concerned...."*

Order I, Rule 10(2) of the Code of Civil Procedure is also discretionary and preserves the power of the Court to add a person as a party in cases where interest of justice may require it to do so. If such a power is permitted to be exercised to substitute the heirs of the deceased Defendant, that will necessarily result in nullifying the consequence of abatement in which the heirs were not brought on record and no explanation had been offered for not doing so. This can be done only in accordance with the provision prescribed in Order XXII, Rules 4 and 9 of the Code of Civil Procedure and Section 5 of the Limitation Act.

SUIT BY OR AGAINST DEAD PERSON:

According to one view, a suit by or against a dead man is a nullity and the plaint cannot be amended by bringing his legal representatives on record. The reason being that such suit is stillborn suit and its institution is *non-est*. It, therefore, cannot be revived by substituting legal representatives of the original plaintiff or defendant who was dead on the date of institution of such suit.

The other view, however, is that such suit is not *void ab initio* and it can be continued by bringing on record legal representatives of the plaintiff or the defendant as the case may be and by allowing amendment of plaint if the mistake is bona fide. The rule contemplates a suit by or against a wrong person irrespective or whether he is alive or dead.

The Supreme Court, in ***Karupaswamy v. Ramamurthy (1993) 4 SCC 41,*** has held that "a suit filed against the sole defendant who was dead at the time of institution thereof is not *void ab initio* and can be continued against the legal representatives of the deceased defendant if they have been brought on record subsequently in accordance with law. Hence, if a suit is filed against a dead person by the plaintiff without knowledge of such death but as soon as he comes to know about the death of the defendant and takes prompt action to bring legal representatives of the deceased defendant on record, he cannot be deprived of his rights. The proviso to Section 21(1) of the Limitation act, 1963 enables the court to permit correction of error which might have been committed by the plaintiff in good faith by impleading the right defendant in the place of the deceased defendant. On such impleadment of the defendant the suit shall be deemed to have been instituted on the date on which the plaint was originally presented. The Court's satisfaction breathes life in the suit".

One more situation that arises before the court is that where the defendant dies prior to the filing of the suit but plaintiff has filed an application under Order 22 Rule 4 to bring the LR of deceased on record. But twist in the case arises where the court dismisses the application on ground of not maintainability and now plaintiff files subsequent application under Order 1 Rule 10 to implead the same.

In such a situation, whether the subsequent application filed under Order 1 Rule 10 is barred due to principles of res judicata? In ***Pankajbhai Rameshbhai Zalavadia v. Jethabhai Kalabhai Zalavadiya (Deceased), 2017(9) SCC 700,*** the Supreme Court after referring ***Karuppaswamy and Ors. (supra)*** answered it negatively and held that principle of res judicata is not applicable as the former application was not decided on merits. Hence, subsequent application under Order 1 Rule 10 is maintainable.

ORDER 1 RULE 10 VIZ-A-VIZ ORDER 22 RULE 10 CPC:

The provisions of Order 22, Rule 10 are different from the provisions of Order 1, Rule 10. Whereas Order 1 Rule 10 is general in its application, Order 22, Rule 10 is a special or particular provision. Order 22 Rule 10 applies where during the pendency of the suit the interest has been assigned to a third party. Under Order 1 Rule 10, on the other hand, a person is vitally interested in the litigation and in the final outcome of the proceedings. The parameters for impleadment under Order 1, Rule 10 and under Order 22, Rule 10 are totally different with each other. Person can seek impleadment on account of devolution of right and interest by invoking provision of Order 22, Rule 10 of the Code.

NOTICE OF ADDITION:

There are two different views regarding issuing of notice to the new party before impleading him. One view is that on basis of principle of natural justice an opportunity of being heard is to be given to the new party before impleading him. But another view is that since it is the court which decides whether the new party is necessary or proper party, issuance of notice before impleading him is not necessary and the court may issue the notice after impleading him. Further, another reason for not issuing notice before impleading proposed party is that it also causes delay in the trial of the case.

Rule 10 of Order 1 CPC does not specifically talk about issuing notice to the proposed party before impleading him in the suit. However, the format of notice has been provided in ***Appendix – B*** at ***Form No. - 5*** but that format of notice specifically deals with notice for adding a party as co-plaintiff. Further Rule 3 of Order 48 CPC says that **"Use of forms in appendices –** *The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned."*

Further in ***Bhimavarapu Venkateswara Reddi v. Vanga Rami Reddi, 1971 (2) APLJ 55,*** the Andhra Pradesh High Court held as under:

> *On a perusal of the records, I find that the proposed party defendant V. Nagi Reddy is not made a party to this application in the lower Court nor is he a party in this revision petition. Under Order 1, Rule 10. the Court has suomotu power to add a party to the suit if it thinks it necessary to do so for effective adjudication of the rights of the parties, but that can be done only after issuing notice to the proposed party or parties to the suit. I am unable to agree with Mr. Suryanarayana that notice could be issued after the Court comes to the conclusion that the proposed party is a necessary party and where the Court either suomotu or on the application filed by any of the parties to the suit, considers the proposed party to be a necessary or proper party, notice should go to the party to show cause why he should not be made a party to the suit and after hearing his representation the Court may finally decide that question. But in his absence if a decision is taken and notice is issued subsequently to such proposed party such notice would be nugatory. The proposed party, in all fairness must be given a reasonable opportunity to make his representation and show cause, if he so desires, to the Court that he is neither a necessary nor proper party to the suit and he need not be made a party. Such a construction in my judgment would be in accord with the principles of natural justice. In this view this application is liable to be rejected and I think it unnecessary for me to go into the question whether the promisee under the original promissory note, who endorsed in favour of the plaintiff, was or was not a necessary or proper party to the suit in which the promissory (defendant) contends that the original promissory note itself was nominally executed and without consideration.*

Similarly in ***Shaukat Ali v. Bhag Chand (Rajasthan), 2016 (2) RLW 1037,*** the Rajasthan High Court held that:

> *It is true that before a new party is impleaded under provisions of Order 1, Rule 10 CPC, notice must be issued to the proposed party and it is not appropriate or correct procedure that notice be issued after the Court comes to the conclusion that the proposed party is a necessary party. However, even if a party is impleaded without issuing any notice to it as a proposed party, an opportunity to file application under 1, Rule 10(2) CPC is always available to such party to plead that it in fact is not a necessary party to the suit and the trial court after hearing the parties can take a view different from the view taken by it at the time of passing the order impleading the said party.*

So, on the basis of ratio laid down in the aforementioned cases, in my humble opinion, a notice should be issued to the proposed party before impleading him on the principle of natural justice although it is the court who will decide whether the proposed party is necessary or proper party. But if party is impleaded without issuing notice then such proposed party has an opportunity to file an application under Order I Rule 10 to plead that he is not a necessary party.

CONSEQUENCES OF ADDITION OF PARTIES:

Order 1 Rule 10(5) of C.P.C. deals with the consequences of addition of parties with regard to limitation. Limitation commences to the added defendants on the date of service of summons.

Section 21 of Limitation Act provides that wherever on institution of a suit a new plaintiff or defendant is substituted or added, the suit shall, as regard him, be deemed to have been instituted when he is so made a party. However, if court is satisfied that omission to include a new plaintiff or defendant was due to mistake made in good faith, it may direct that the suit as regards to such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

There is a clear distinction between the original parties to the suit and parties who are added subsequently. So far as the parties original to the suit are concerned, the date of institution of the suit should be treated as the date of actual institution of the suit, and so far as the parties subsequently added are concerned, the date of institution of the suit should be reckoned as the date on which the order of impleadment is passed by the Court. The order of the Court allowing a party to the suit to bring some third party would come into effect not actually from the date of order of impleadment but from the date of service of summons. ***(Ganapathi (Padala) Suryakumari v. Dr. Erra Ramadevi, AIR 2007 AP 118).*** The crucial expression in Order 1, Rule 10 is 'only on the service of the summons' if any defendant is impleaded subsequently proceedings as against him shall be deemed to have begun only from the date of service of summons subject to provisions of Section 21 of Limitation Act. ***(Seenivasan v. Peter Jebaraj and anr., AIR 2008 SC 2052)***

If plaintiff files an application for impleading a person as defendant on the ground that he is necessary party, if claim is barred by limitation Court may refuse to add such party and even suit may dismiss for non -joinder of necessary party.

CONCLUSION

Thus, the law regarding impleadment of parties may be summarised as under:

1. A plaintiff is a *dominus litis* and has a right to choose against whom he wants to fight and from whom he wants to seek relief but it is subject to Order 1 Rule 10(2).
2. It is a judicial discretion of the court to implead proposed party depending upon facts and circumstances of the case. A non-party cannot claim as a matter of right to be impleaded in the suit.
3. Order 1 Rule 10 (2) CPC grants jurisdiction to the court to implead only necessary or proper party.
4. A necessary party is the person who ought to be joined as party to the Suit and in whose absence an effective decree cannot be passed by the Court.
5. A person cannot be impleaded as a necessary party merely bacause he has relevant evidence to give on the question involved in the suit. Such person is only a necessary witness but not a necessary party.
6. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not necessarily be a person in favour of or against whom a decree may be passed.
7. In a suit for specific performance of a contract for sale, the parties to the contract or if they are dead, their legal representatives and person who has purchased the disputed property from the vendor are the necessary parties.
8. In a suit for specific performance of contract, third person who claims a title adverse to the defendant/vendor is not a necessary party but if the third person shows a fair semblance of title or interest, he can be impleaded in the suit.
9. A transferee *pendente-lite* who has acquired title/interest in the disputed property through defendant/vendor may be impleaded in the suit to enable him to protect his interest.
10. A transferee *pendent-lite* (bonafide purchaser) who has acquired title in the disputed property through defendant/vendor specifically in a suit for specific performance of agreement to sale is a necessary party for the effective passing of decree but if such transfer is made by the vendor malafide, in violation of the restraint order passed by the court, such transferee shall not be impleaded.
11. In declaratory suit, a third party cannot be impleaded as necessary party unless he has legal interest in the subject matter in the suit. A person is legally interested in a suit where the result of the suit curtails his legal rights.

12. If the plaintiff opposes to join a necessary party, then in such cases, the proposed party need not worry because in absence of necessary party, the plaintiff would not be entitled to get any relief and the suit will be dismissed.
13. The Court shall not permit addition of parties, where it changes the nature of suit, introduces new cause of action or results in triangular fights.
14. During the pendency of the suit, the LR of plaintiff or defendant cannot proceed under Order 1 Rule 10 to get themselves added on record as necessary party. The application needs to be filed and decided in context of Order 22 Rule 3 & 4 of the Code.
15. Before a new party is impleaded, a notice must be issued to the proposed party.
16. Where a defendant is added, the proceedings against him shall be deemed to have commenced from the date of service of summons upon him.
17. If plaintiff files an application for impleading a person as necessary party but claim against such person is barred by limitation, Court may refuse to implead such person.

उपसंहार

1. वादी वाद का स्वामी है इसलिये उसे यह चुनाव करने का अधिकार है कि वह किसके विरूद्ध वाद प्रस्तुत करना चाहता है तथा वह किससे अनुतोष प्राप्त करना चाहता है, परन्तु यह नियम आदेश 1 नियम 10 (2) सि.प्र.सं. के प्रावधान के अधीन है।
2. प्रत्येक मामले के तथ्य एवं परिस्थितियों पर निर्भर करते हुए किसी प्रस्तावित पक्षकार को जोडा जाना न्यायालय का न्यायिक विवेकाधिकार है। कोई अन्य व्यक्ति (जो पक्षकार नहीं है) वाद में पक्षकार बनाये जाने के लिये अपने अधिकार का दावा नहीं कर सकता है।
3. आदेश 1 नियम 10 (2) सि.प्र.सं. न्यायालय को आवश्यक तथा उचित पक्षकार को ही जोड़े जाने की अधिकारिता प्रदान करता है।
4. एक आवश्यक पक्षकार वह व्यक्ति है जिसे वाद के पक्षकार के रूप में जोडा जाना अत्यावश्यक है तथा जिसकी अनुपस्थिति में कोई प्रभावशील आज्ञप्ति पारित नहीं की जा सकती है।
5. किसी व्यक्ति को इस कारण आवश्यक पक्षकार नहीं बनाया जा सकता है कि उसके पास वाद में अंतर्वलित प्रश्न के संबंध में देने हेतु सुसंगत साक्ष्य है। उक्त पक्षकार मात्र आवश्यक साक्षी है न कि आवश्यक पक्षकार।
6. उचित पक्षकार वह व्यक्ति है जिसकी उपस्थित सभी विषयों एवं विवादों पर न्यायालय को पूर्णरूपेण, प्रभावी तथा उचित न्यायनिर्णय हेतु सहयोग प्रदान करेगा, यद्यपि वह आवश्यक रूप से वह व्यक्ति न होगा, जिसके पक्ष में या जिसके विरूद्ध आज्ञप्ति आज्ञप्ति पारित की जा सकती है।
7. विक्रय की संविदा के विनिर्दिष्ट अनुपालन हेतु वाद में संविदा के पक्षकार अथवा उनकी मृत्यु पर उनके विधिक प्रतिनिधि तथा वह व्यक्ति जिसने विक्रेता से विवादग्रस्त संपत्ति क्रय की है, वाद में आवश्यक पक्षकार है।

8. संविदा के विनिर्दिष्ट अनुपालन हेतु वाद में, अन्य व्यक्ति जो प्रतिवादी/विक्रेता के प्रतिकूल स्वत्व का दावा करता है, आवश्यक पक्षकार नहीं है किन्तु यदि अन्य व्यक्ति विवादग्रस्त सम्पत्ति में उसके स्वत्व को अथवा हित को स्पष्टतः दर्शित करता है, तो वह वाद में पक्षकार बनाया जा सकता हैं।
9. किसी लंबित वाद का अंतरिती जिसने प्रतिवादी/विक्रेता के माध्यम से वादग्रस्त सम्पत्ति में स्वत्व/अर्जित कर लिया है, तो वह वाद में उसके हित की रक्षा हेतु पक्षकार के रूप में जोडा जा सकता है।
10. किसी लंबित वाद का अंतरिती (सद्भावी क्रेता) जिसने विशेषतया विक्रय के करार के विनिर्दिष्ट अनुपालन के वाद में प्रतिवादी/विक्रेता से वादग्रस्त संपत्ति में स्वत्व अर्जित कर लिया है, प्रभावी आज्ञप्ति पारित करने के लिए आवश्यक पक्षकार है, परन्तु यदि ऐसा अंतरण विक्रेता द्वारा न्यायालय के प्रतिषेध आदेश के उल्लंघन में विद्वेषपूर्ण तरीके से किया गया है, तो ऐसा अंतरिती पक्षकार नहीं बनाया जा सकता है।
11. घोषणात्मक वाद में कोई अन्य व्यक्ति तब तक आवश्यक पक्षकार के रूप में नहीं जोड़ा जा सकता है, जब तक कि वाद की विषयवस्तु में उसका कोई विधिक हित न हो। दावे में कोई व्यक्ति तब विधितः हितबद्ध होता है जब दावे का परिणाम उसके विधिक अधिकार को प्रभावित करता है।
12. यदि वादी आवश्यक पक्षकार को जोड़े जाने का विरोध करता है, तो ऐसी स्थिति में प्रस्तावित पक्षकार को चिंतित होने की आवश्यकता नहीं है क्योंकि आवश्यक पक्षकार की अनुपस्थिति में वादी किसी अनुतोष का हकदार नहीं होगा और ऐसा वाद खारिज होगा।
13. न्यायालय वहाँ पक्षकरों को जोड़े जाने की अनुमति नहीं देगा जहाँ इससे वाद की प्रकृति में परिवर्तन होता है, किसी नये वाद कारण का जन्म होता है अथवा जहाँ इससे त्रिपक्षीय विवाद पैदा होता है।
14. वाद लंबन के दौरान वादी अथवा प्रतिवादी के विधिक प्रतिनिधि आदेश 1 नियम 10 सि.प्र.सं. के अंतर्गत स्वयं को अभिलेख में आवश्यक पक्षकार के रूप में जोड़ने के लिए कार्यवाही नहीं कर सकते हैं परन्तु आवेदन को आदेश 22 नियम 3 तथा 4 के संदर्भ में संस्थित किया जाना तथा विनिश्चित किया जाना आवश्यक होता है।
15. प्रस्तावित पक्षकार को नये पक्षकार के रूप में जोड़ने से पहले उसे सूचना दिया जाना आवश्यक है।
16. जहाँ किसी प्रतिवादी को जोड़ा जाता है, तो उसके विरूद्ध कार्यवाहियों का प्रारंभ उस पर समन तामीली दिनांक से माना जायेगा।
17. यदि वादी किसी व्यक्ति को आवश्यक पक्षकार के रूप में जोड़े जाने हेतु आवेदन करता है, परन्तु ऐसे व्यक्ति के विरूद्ध वांछित अनुतोष अवधि बाह्य है, तो न्यायालय ऐसे व्यक्ति को जोड़ने से इंकार कर सकता है।

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PART – II

NOTES ON IMPORTANT JUDGMENTS

***101. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 32, 36 and 42**

Execution of arbitral award – Award to be enforced in accordance with the provisions of CPC – Award can be executed by the Court where such decree can be executed – Transfer of award from the Court having jurisdiction over arbitral proceedings not required.

माध्यस्थम् एवं सुलह अधिनियम, **1996 -** धाराएं **32, 36** एवं **42**

माध्यस्थम् पंचाट का निष्पादन - पंचाट सिविल प्रक्रिया संहिता के प्रावधानों के अनुसार निष्पादित किया जाना चाहिए - पंचाट उस न्यायालय द्वारा निष्पादित कराया जा सकता है जहाँ ऐसी आज्ञप्ति निष्पादित कराई जा सकती है - माध्यस्थम् कार्यवाहियों के संबंध में क्षेत्राधिकार रखने वाले न्यायालय से पंचाट का अंतरण आवश्यक नहीं है।

Sundaram Finance Limited v. Abdul Sawad and anr.

Judgment dated 15.02.2018 passed by the Supreme Court in Civil Appeal No. 1650 of 2018, reported in AIR 2018 SC 965

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***102. ARMS ACT, 1959 – Sections 3 and 25 (1-B)**

Conscious possession – Mere custody of fire arms or ammunition without knowledge of possession, whether constitutes an offence under Section 25 (1-B) of the Arms Act ? Held, No – Conscious possession i.e. possession with requisite mental element is necessary to constitute an offence under Section 25 (1-B) of the Arms Act.

आयुध अधिनियम, **1959 -** धाराएं **3** एवं **25 (1-**ख)

सचेतन/अभिज्ञ आधिपत्य - क्या आधिपत्य के ज्ञानाभाव में आग्नेयशास्त्र या गोलाबारूद की अभिरक्षा मात्र आयुध अधिनियम की धारा 25 (1-ख) के अधीन अपराध गठित करता है? अभिनिर्धारित, नहीं - सचेतन आधिपत्य अर्थात अपेक्षित मानसिक तत्व के साथ आधिपत्य आयुध अधिनियम की धारा 25 (1-ख) के अधीन अपराध गठित करने के लिये आवश्यक है।

Mrs. Rachelle Joel Oseran v. State of Maharashtra and anr.

Judgment dated 06.04.2018 passed by the Bombay High Court in Criminal Writ Petition No. 323 of 2017 (unreported)

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

HINDU SUCCESSION ACT, 1956 – Section 29

(i) Doctrine of *Escheat* – Section 29 comes into operation only on total absence of any heir to person dying intestate – Onus rests heavily on the person, who asserts absence of heirs of individual dying intestate, to establish his case.

(ii) Jurisdiction of Civil Court, exclusion of – Administrative authorities of State cannot adjudicate title – Recourse must be made to ordinary civil jurisdiction of Court of competent jurisdiction.

सिविल प्रक्रिया संहिता, **1908 -** धारा **9**

हिन्दू उत्तराधिकार अधिनियम, **1956 -** धारा **29**

(i) राजगामित्व का सिद्धांत - धारा 29 केवल तभी प्रभावशील होती है जब किसी व्यक्ति की, निर्वसीयती मृत्यु पूर्णतः उत्तराधिकारी विहीन होती है - मामले को स्थापित करने का भारी भार उस व्यक्ति पर होता है जो निर्वसीयती मृत व्यक्ति के उत्तराधिकारी के अभाव को प्रख्यात करता है।

(ii) सिविल न्यायालय की अधिकारिता का अपवर्जन - राज्य के प्रशासनिक प्राधिकारी स्वत्व विनिश्चित नहीं कर सकते - सक्षम क्षेत्राधिकार वाले साधारण सिविल न्यायालय का सहारा लिया जाना चाहिए।

Kutchi Lal Rameshwar Ashram Trust evam Anna Kshetra Trust Thr. Velji Devshi Patel. v. Collector, Haridwar and ors.

Judgment dated 22.09.2017 passed by the Supreme Court in Civil Appeal No. 3878 of 2009, reported in AIR 2018 SC 614

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

FAMILY COURTS ACT, 1984 – Section 8

Jurisdiction of Civil Court, exclusion of – Dispute as to legal character – Parties claiming as wife and heirs of deceased – Held, dispute between parties is of civil nature and not *interse* family dispute involving institution of marriage – Such dispute can be resolved only on the basis of evidence tendered in Civil Court – Jurisdiction of Civil Court is not barred.

सिविल प्रक्रिया संहिता, **1908 -** धारा **9**

परिवार न्यायालय अधिनियम, **1984 -** धारा **8**

सिविल न्यायालय के क्षेत्राधिकार का वर्जन - विधिक हैसियत के बारे में विवाद - पक्षकारों द्वारा मृतक की पत्नी और उत्तराधिकारी होने का दावा - अभिनिर्धारित, पक्षकारों के मध्य का विवाद सिविल प्रकृति का है और विवाह की संस्था के संबंध में आपसी पारिवारिक विवाद नहीं है - इस प्रकार का विवाद सिविल न्यायालय में प्रस्तुत साक्ष्य के आधार पर सुलझाया जा सकता है - सिविल न्यायालय का क्षेत्राधिकार वर्जित नहीं है।

R. Kasthuri and others v. M. Kasthuri and others

Judgment dated 16.01.2018 passed by the Supreme Court in Civil Appeal No. 432 of 2018, reported in AIR 2018 SC 786

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105. CIVIL PROCEDURE CODE, 1908 – Sections 11, 47 and 151

Constructive *Res judicata* – Applicability in execution proceedings – Omission to raise objection at proper stage – Whether bars from taking objection at later stage ? Held, Yes – Even if the objection is not redressed by an express order – Deemed to be barred by constructive *Res judicata*.

सिविल प्रक्रिया संहिता, **1908 -** धाराएं **11, 47** एवं **151**

आन्वयिक प्राङन्याय - निष्पादन कार्यवाहियों में प्रयोज्यता - उचित प्रक्रम पर आपत्ति उठाये जाने में लोप - क्या पश्चात्वर्ती प्रक्रम पर आपत्ति लिया जाना वर्जित करता है? अभिनिर्धारित, हाँ - भले ही आपत्ति को किसी अभिव्यक्त आदेश द्वारा प्रतितोषित नहीं किया गया - आन्वयिक प्राङन्याय द्वारा वर्जित समझा जावेगा।

Bhanu Shankar Raikwar v. Vijay Shankar Raikwar and ors.

Order dated 01.02.2018 passed by the High Court of Madhya Pradesh in Civil Revision No. 201 of 2016, reported in 2018 Law Suit (MP) 98

Relevant extracts from the order:

In the case of ***Fatimabi and other v. Mt. Tukobai and others, AIR 1945 Nag 95***, the Court held that the execution proceedings are continuance of a suit and a next friend or guardian, after a decree is passed, cannot enter into a compromise or an adjustment of the decree without the sanction of the Court. A specific question was framed for consideration before the Full Bench of the Patna High Court regarding extent, scope and applicability of doctrine of *res judicata* in execution cases. In the case of ***Baijnath Prasad Sah v. Ramphal Sahni and another, AIR 1962 Patna 72,*** in a majority view Justice Untwalia authored that the principle of constructive *res judicata* would apply to execution proceedings. In a similar situation, it was held that if the plea of transaction being void, not raised by the party at proper stage, the party will be barred from raising the plea subsequently under the principle of constructive *res judicata* under Section 11 of the CPC. The relevant portion of the said judgment is extracted hereunder:

> "The doctrine of *res judicata* is very much wider in scope than Section 11. It applies to execution proceedings. If a party takes an objection at a certain stage of a proceeding and does not make another objection which it might and ought to have taken at the same stage, it must be deemed the Court has adjudicated upon the other objection also and has held against it. This principle of constructive *res judicata* has been extended further. If a party has knowledge of a proceeding, and having had an opportunity when it might and ought to have raised an objection, it does not do so, it cannot be allowed to raise that objection subsequently, if the Court passes an order which it could not have passed in case that objection had succeeded, on the ground that it

must be deemed to have been raised by the party and decided against it. Though a transaction is void if a certain provision of law applies, it is for the court to decide whether that provision is applicable. Once a competent court has given a decision, holding expressly or by implication, that provision of law is inapplicable and the transaction is not void, that decision operates as *res judicata* between the parties. So also if an order of the Court is deemed to have decided the question, the order is binding upon the parties."

The above Full Bench decision has been further followed by a Division Bench of the Patna High Court in the case of ***Ramrup Rai v. Mst. Gheodhari Kuer and others, AIR 1980 Patna 197,*** wherein it is held that in spite of service of notice, the judgment-debtor fails to raise an objection which he might and ought to have have raised at that stage, the Court in passing the order for execution of the decree must be deemed to have decided the objection against him. Ordinarily the Court does not pass an express order to the effect that the decree be executed. That order is implied in the order for the issue of attachment. The relevant portion of para 7 of the judgment is reproduced hereunder:

"7. If in spite of service of notice, the judgment- debtor fails to raise an objection which he might and ought to have have raised at that stage, the Court in passing the order for execution of the decree must be deemed to have decided the objection against him. Ordinarily the court does not pass an express order to the effect that the decree be executed. That order is implied in the order for the issue of attachment. AIR 1962 Pat 72."

Thus, it is held that the principle of *res-judicata* would apply in the execution proceedings.

x x x

In view of the obtaining factual matrix, I am of the considered view that the objection being raised by the applicants in a subsequent application on same set of facts, under Order 21 Rule 90 of the CPC is barred by the principle of constructive *res judicata*. Even if the same objections have not been decided expressly in the previous round of litigation, the same shall be deemed to be barred by the principle of constructive *res judicata*. Even an illegal order is binging on the parties. This view of mine gets fortified by the judgment passed by the Hon'ble Supreme Court in the case of ***Mohanlal Goenka v. Benoy Kishna Mukherjee and others, AIR 1953 SC 65,*** where the Apex Court held that if an objection was raised but was not decided by the Executing Court, yet it was held that it was a *res judicata* by reason of explanation (4) to Section 11 of the CPC.

In the case of ***Baijnath Prasad Sah*** (supra) the Full Bench of Patna High Court held that if the judgment-debtor fails to raise an objection which he ought

to have raised, the Court passing the order for execution of the decree must be deemed to have decided all the objections.

A Division Bench of this Court in the case of ***Piarelal Khuman v. Bjhagwati Prasad Kanhayalal and others, AIR 1969 MP 35,*** relying on the principles laid down in the cases of ***Mohanlal Goenka*** and ***Baijnath Prasad Sah*** (supra), reiterated the same law in the following terms :

> "Turning now to the case of those judgment-debtors who did not object to the proceedings in execution, the contention is that they are not bound by the decision of the executing court. It is clear from the cases cited earlier that the rule of constructive *res judicata* applies to execution proceedings also and a plea on which the judgment- debtors could have objected to the execution cannot later be raised if there is omission to raise it at the proper occasion. We may only refer to ***Mohanlal Goenka*** (supra) in which an objection was raised but was not decided by the executing Court and yet it was held that it was *res judicata* by reason of Explanation 4 to Section 11 of the CPC. In the case of ***Baijnath Prasad Sah*** (supra), no objection was raised by the judgment-debtor but it was held that as the Court proceeded with execution, the point impliedly decided and the judgment-debtor could not raise it later."

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106. CIVIL PROCEDURE CODE, 1908 – Section 151 and Order 7 Rule 11

Inherent powers – Rejection of plaint for non-payment of deficit court fees – Application for restoration of suit under Section 151 before the same Court – Maintainability – Such restoration do not conflict with any express provision of the Code – Court can restore the suit using inherent powers on showing sufficient cause.

सिविल प्रक्रिया संहिता**, 1908 -** धारा **151** एवं आदेश **7** नियम **11**

अंतनिर्हित शक्तियाँ - अवशेष न्यायालय शुल्क के असंदाय के कारण वादपत्र का नामंजूर किया जाना - वाद के पुर्नस्थापन हेतु धारा 151 के अर्तगत उसी न्यायालय के समक्ष आवेदन - पोषणीयता - ऐसा पुर्नस्थापन संहिता के किसी अभिव्यक्त प्रावधान के प्रतिकूल नहीं है - न्यायालय पर्याप्त कारण दर्शित किये जाने पर अंतर्निहित शक्तियों का प्रयोग कर वाद को पुर्नस्थापित कर सकता है।

Jagdeesh v. Narayan and anr.

Order dated 22.02.2018 passed by the High Court of Madhya Pradesh in Misc. Petition No. 1132 of 2017, reported in 2018 Law Suit (MP) 360

Relevant extracts from the order:

This is trite law that inherent powers conferred by Section 151 CPC cannot be exercised when its exercise may be in conflict with any express provision provided in the Code or against the intention of the Legislature. The Apex Court reiterated this view in the case of ***Manohar Lal Chopra v. Seth Hiralal, AIR 1962 SC 527.*** Thus, in the present case, it is required to be considered whether any express provision is coming in the way of the respondents. In the instant case, the respondents have not chosen to avail the remedy of appeal to a higher court against an order rejecting a plaint for non-payment of court fees. There is no express provision in the CPC for redressal of this nature of court fees before the very same court. Thus, if application is filed under Section 151 CPC for restoration of suit, it cannot be treated to be an attempt to supplant the statutory provision of appeal. I am fortified in my view by a Full Bench judgment of Orissa High Court ***E.I.D. Parri Ltd. v. Agro Sales & Services, AIR 1980 Ori 162.*** The similar view was taken by Madhya Pradesh High Court in ***Ajab Singh v. Amar Singh, 2000 (1) MPWN 124.*** This Court followed the Division Bench judgment of Orissa High Court in the case of ***Padmalaya Panda v. Masinaath Mohanty, AIR 1990 Ori 102.*** This Court came to hold that application under Section 151 for restoration of suit is maintainable, even though rejection of plaint amounts to a decree which is appeallable. It was further held that Section 151 is available to get the suit restored which was rejected for non-payment of court fees. This principle is recently followed by this Court in ***Pravesh Pathak and others v. Shakuntala Sharma and others, 2016 (1) MPLJ 358***.

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107. CIVIL PROCEDURE CODE, 1908 – Order 2 Rule 2

Bar to subsequent suit – Withdrawal of the earlier suit for permanent injunction without permission to file fresh suit – Subsequent suit filed for specific performance based on same agreement for sale – Maintainability – Availability of the relief of subsequent suit while filing first suit is *sine qua non* for application of Order 2 Rule 2 – Cause of action for the suit of permanent injunction and specific performance are independent and cannot include each other – Subsequent suit is not barred by law.

सिविल प्रक्रिया संहिता, **1908 -** आदेश **2** नियम **2**

पश्चात्वर्ती वाद का वर्जन - स्थायी व्यादेश हेतु पूर्ववर्ती वाद का नवीन वाद संस्थित करने की अनुज्ञा के बिना प्रत्याहरण - समान विक्रय के लिये करार के आधार पर विनिर्दिष्ट अनुपालन हेतु पश्चात्वर्ती वाद प्रस्तुत - पोषणीयता - प्रथम वाद प्रस्तुत करते समय पश्चात्वर्ती वाद के अनुतोष की उपलब्धता आदेश 2 नियम 2 को लागू करने की आवश्यक शर्त है - स्थायी व्यादेश तथा विनिर्दिष्ट अनुपालन हेतु वाद में वाद कारण स्वतंत्र है एवं एक दूसरे को समाहित नहीं करते - पश्चात्वर्ती वाद विधि द्वारा वर्जित नहीं है।

Sucha Singh Sodhi (D) Thr. LRs. v. Baldev Raj Walia and anr.

Judgment dated 13.04.2018 passed by the Supreme Court in Civil Appeal No. 3777 of 2018, reported in AIR 2018 SC 2241

Relevant extracts from the judgment :

It is clear from the reading of Order 2 Rule (1) of Code of Civil Procadure, 1908 that whenever the plaintiff files a suit on the basis of a cause of action pleaded in the plaint, he is under a legal obligation to include and claim all the reliefs against the defendant, which have accrued to him on the cause of action pleaded by him in his plaint. In other words, if on the basis of cause of action pleaded by the plaintiff in the plaint, he is entitled to claim two reliefs, namely, “A” and “B” against the defendant(s), then he is under an obligation to claim both “A” and “B” reliefs together in the suit. Order 2 Rule 2 (1) of the Code enables the plaintiff to relinquish any portion of his relief with a view to bring the suit within the jurisdiction of any Court.

Order 2 Rule 2 (2) of the Code, however, provides that where a plaintiff omits to sue or intentionally relinquishes, any portion of his claim/relief in his suit, then in such event, he shall not be allowed afterwards to sue in respect of the claim/relief so omitted or/and relinquished by him in his suit. In other words Rule 2 (2) does not permit the plaintiff to file second suit to claim the omitted or/and relinquished relief.

In our opinion, the *sine qua non* for invoking Order 2 Rule 2(2) against the plaintiff by the defendant is that the relief which the plaintiff has claimed in the second suit was also available to the plaintiff for being claimed in the previous suit on the causes of action pleaded in the previous suit against the defendant and yet not claimed by the plaintiff.

Therefore, we have to examine the question as to whether the plaintiff was entitled to claim a relief of specific performance of agreement in the previous suit on the basis of cause of action pleaded by the plaintiff in the previous suit against the respondents/defendants in relation to suit property.

In other words, the question that arises for consideration is whether Sucha Singh (original plaintiff) could claim the relief of specific performance of agreement against the respondents/defendants in addition to his claim of permanent injunction in the previously instituted suit?

Our answer to the aforementioned question is in favour of the plaintiffs (appellants) and against the defendants (respondents). In other words, our answer to the aforementioned question is that the plaintiff could not claim the relief of specific performance of agreement against the defendants along with the relief of permanent injunction in the previous suit for the following reasons.

First, the cause of action to claim a relief of permanent injunction and the cause of action to claim a relief of specific performance of agreement are independent and one cannot include the other and vice versa.

In other words, a plaintiff cannot claim a relief of specific performance of agreement against the defendant on a cause of action on which he has claimed a relief of permanent injunction.

Second, the cause of action to claim temporary/permanent injunction against the defendants from interfering in plaintiff's possession over the suit premises accrues when defendant No.1 threatens the plaintiff to dispossess him from the suit premises or otherwise cause injury to the plaintiff in relation to the suit premises. It is governed by Order 39 Rule 1 (c) of the Code which deals with the grant of injunction. The limitation to file such suit is three years from the date of obstruction caused by the defendant to the plaintiff (See Part VII Articles 85, 86 and 87 of the Limitation Act).

On the other hand, the cause of action to file a suit for claiming specific performance of agreement arises from the date fixed for the performance or when no such date is fixed, when the plaintiff has noticed that performance is refused by the defendant. The limitation to file such suit is three years from such date (See Part II Article 54 of the Limitation Act).

Third, when both the reliefs/claims namely, (1) Permanent Injunction and (2) Specific Performance of Agreement are not identical, when the causes of action to sue are separate, when the factual ingredients necessary to constitute the respective causes of action for both the reliefs/claims are different and lastly, when both the reliefs/claims are governed by separate articles of the Limitation Act, then, in our opinion, it is not possible to claim both the reliefs together on one cause of action.

This Court in ***Rathnavathi and another v. Kavita Ganashamdas, (2015) 5 SCC 223,*** had the occasion to examine this very question on somewhat similar facts in detail. This Court after taking into account the earlier decisions of this Court which dealt with this question held in Paras 22 to 31 that bar contained in Order 2 Rule 2 of the Code on such facts is not attracted against the plaintiff so as to disentitle him from filing the subsequent suit to claim specific performance of agreement against the defendants in relation to the suit property.

We apply the law laid down in the case of ***Rathnavathi*** (supra) and hold that the suit filed by the original plaintiff for specific performance of agreement against the respondents (defendants) is not barred by Order 2 Rule 2 of the Code and is held maintainable for being tried on merits.

This takes us to examine another question as to whether in the absence of any permission/liberty granted by the Trial Court to the plaintiff at the time of withdrawing the previous suit filed for permanent injunction, the plaintiff was entitled to file the suit for specific performance of agreement against the defendants in relation to the suit property?

In our considered opinion, this question does not now survive for consideration in the light of what we have held above. In any event, keeping in

view the law laid down by this Court in ***Gurinderpal v. Jagmittar Singh, (2004) 11 SCC 219,*** the question is answered against the respondents.

In somewhat similar facts, the question arose before this Court in ***Gurinderpal's*** case (supra) namely, if the order granting permission to withdraw the suit under Order 23 Rule 1(3) of the Code does not specifically mention the fact of granting liberty to the plaintiff to file a fresh suit, whether filing of fresh suit would be hit by Order 2 Rule 2 of the Code?

This Court (three Judge Bench), speaking through Justice R.C. Lahoti (as His Lordship then was), held that filing of the second suit is not hit by Order 2 Rule 2 of the Code and is maintainable for being tried on merits. This is what this Court held in Para 6:

> "6. Having heard the learned counsel for the parties, we are satisfied that the judgment of the High Court as also of the first appellate court cannot be sustained to the extent to which the bar enacted under Order 2 Rule 2 CPC has been applied. The provisions of Order 2 Rule 2 CPC bar the remedy of the plaintiff-appellant and, therefore, must be strictly construed. The order of the trial court dated 15-6-1994 passed in the earlier suit, extracted and reproduced hereinabove, has to be read in the light of the statement of the plaintiff-appellant recorded by the court on that very date. The plaintiff-appellant had clearly stated that he was seeking leave to withdraw the suit with the liberty of filing a fresh suit. The trial court recorded that the suit was being dismissed as withdrawn "in view of the statement of the plaintiff". A conjoint reading of the order of the court and the statement of the plaintiff, clearly suggests that the suit was dismissed as withdrawn because the plaintiff wanted to file a fresh suit, obviously wherein the plaintiff would seek the decree of specific performance and not of a mere injunction as was prayed for in the suit which was sought to be withdrawn. In the subsequent suit, the first appellate court was not right in forming an opinion that liberty to file the fresh suit was not given to the plaintiff in the order dated 15.6.1994. That finding of the first appellate court ought not to have been sustained by the High Court."

Applying the aforementioned principle of law to the case at hand, we find that the original plaintiff (Sucha Singh), in clear terms, had stated in the previous suit that he wants to withdraw the suit because he wants to file appropriate proceedings before the competent forum in relation to the subject matter of the suit. The Trial Court recorded his statement on 27.11.1998 and allowed withdrawal of the suit.

In our considered opinion, reading of the statement of the original plaintiff (Sucha Singh) coupled with the permission granted by the Court to withdraw the suit satisfies the requirement of Order 23 Rule 1 (3) of the Code. It certainly enabled the plaintiff to file a fresh suit, namely, the civil suit for claiming specific performance of the agreement against the defendants. In our view, the Court was entitled to take into consideration the statement made by the original plaintiff (Sucha Singh) for withdrawing the suit and filing it afresh and his statement could be made a part of the order for granting permission to withdraw the civil suit and file a fresh suit as was held in the case of ***Gurinderpal*** (supra).

In our view, therefore, this submission urged by the learned counsel for the respondents has no merit.

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***108. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11**

CO-OPERATIVE SOCIETIES ACT, 1960 (M.P.) – Sections 64, 82 and 84

CO-OPERATIVE SOCIETIES RULES, 1960 – Rule 66 (6)

Jurisdiction of Civil Court – Suit for declaration and injunction against order issuing recovery certificate passed by the Joint Registrar – Order challenged on the ground that it was passed without opportunity of hearing, hence a nullity – Held, though dispute is in nature of matter touching the business of co-operative society, the jurisdiction of Civil Court is not excluded absolutely – The jurisdiction of Civil Court is not readily excluded where (1) provision of particular statute have not been complied with or (2) statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure or (3) if part of the action of the State is violative of the constitutional provision or (4) the mandatory requirement of statute or statutory rules are not followed (*Union of India v. Tarachand Gupta and Bros, (1971) 1 SCC 486, Rajasthan State Road Transport Corporation and another v. Bal Mukund Bairwa, (2009) 4 SCC 299, Dhulabhai v. State of Madhya Pradesh and another, AIR 1969 SC 78* and *District Collector, Kurnool v. J.S. Basappa, AIR 1964 SC 1873* relied on).

सिविल प्रक्रिया संहिता, **1908 -** आदेश **7** नियम **11**

म.प्र. सहकारी समिति अधिनियम, **1960 -** धाराएँ **64, 82** एवं **84**

सहकारी समिति नियम, **1960 -** नियम **66 (6)**

सिविल न्यायालय का क्षेत्राधिकार - संयुक्त रजिस्ट्रार द्वारा पारित वसूली प्रमाण पत्र जारी करने के आदेश के विरूद्ध घोषणा और व्यादेश हेतु वाद - आदेश को इस आधार पर चुनौती दी गई कि यह बिना सुनवाई के अवसर के पारित किया, अतः अकृत है - अभिनिर्धारित, यद्यपि विवाद की प्रकृति सहकारी समिति के कार्य से संबंधित है फिर भी सिविल न्यायालय का क्षेत्राधिकार आत्यंतिक रूप से अपवर्जित नहीं है - सिविल न्यायालय का क्षेत्राधिकार साधारणतः अपवर्जित नहीं है जहाँ (1) विशेष

संविधि के प्रावधान का पालन नहीं किया गया है, या (2) संविधिक अधिकरण ने न्यायिक प्रक्रिया के मौलिक सिद्धांतों के अनुसार कार्य नहीं किया या, (3) यदि राज्य का कार्य संवैधानिक प्रावधान के उल्लंघन में है या, (4) यदि संविधि या संविधि के नियमों की आज्ञापक अपेक्षाओं का पालन नहीं किया गया (भारत संघ वि. ताराचंद और अन्य, 1971 (1) एस.सी.सी. 486, राजस्थान राज्य सड़क परिवहन निगम और अन्य वि. बाल मुकुंद बैरवा, (2009) 4 एस.सी.सी. 299, धुलाभाई वि. मध्यप्रदेश राज्य और अन्य, ए.आई.आर. 1969 एस.सी. 78 तथा जिला कलेक्टर, कुरनूल वि. जे.एस. बसप्पा, ए.आई.आर. 1964 एस.सी. 1873, अवलंबित)

Prakash v. Manager, Smritinagarik Sahakari Bank & ors.

Judgment dated 17.11.2016 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 367 of 2009, reported in ILR (2017) MP 344

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109. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11

Rejection of plaint – Ground of suit being barred by limitation – Only averments in the plaint are germane – Plaint averments stating knowledge of the questioned sale deed of 1996 in the year 2013, after which suit was filed immediately – Defendant opposed on the ground of previous knowledge – Question of knowledge is a triable issue – Plaint cannot be rejected at threshold.

सिविल प्रक्रिया संहिता**, 1908 -** आदेश **7** नियम **11**

वादपत्र का नामंजूर किया जाना - वाद का परिसीमा द्वारा वर्जित होने का आधार - वादपत्र के प्रकथन मात्र तात्विक है - 1996 के प्रश्नाधीन विक्रय विलेख के ज्ञान का प्रकथन करते हुए वर्ष 2013 के वादपत्र के अभिवचन, जिसके शीघ्र पश्चात् वाद संस्थित किया गया - प्रतिवादी का पूर्व ज्ञान के आधार पर विरोध - परिसीमा का प्रश्न विचारणीय बिंदु है - वादपत्र प्रारंभतः नामंजूर नहीं किया जा सकता।

Chhotanben and anr. v. Kiritbhai Jalkrushnabhai Thakkar and ors.

Judgment dated 10.04.2018 passed by the Supreme Court in Civil Appeal No. 3500 of 2018, reported in AIR 2018 SC 2447

Relevant extracts from the judgment:

After having cogitated over the averments in the plaint and the reasons recorded by the Trial Court as well as the High Court, we have no manner of doubt that the High Court committed manifest error in reversing the view taken by the Trial Court that the factum of suit being barred by limitation, was a triable issue in the fact situation of the present case. We say so because the appellants (plaintiffs) have asserted that until 2013 they had no knowledge whatsoever about the execution of the registered sale deed concerning their ancestral property. Further, they have denied the thumb impressions on the registered sale deed as belonging to them and have alleged forgery and impersonation. In

the context of totality of averments in the plaint and the reliefs claimed, which of the Articles from amongst Articles 56, 58, 59, 65 or 110 or any other Article of the Limitation Act will apply to the facts of the present case, may have to be considered at the appropriate stage.

What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11 (d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d).

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***110. CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 6-A**

LIMITATION ACT, 1963 – Articles 64 and 65

Amendment in written statement to incorporate counter-claim regarding declaration of title by way of adverse possession – maintainability of – Held, after framing of the issues and commencement of trial, counter-claim is not maintainable – Further, plea of adverse possession can be taken only as shield to defence and not as a weapon of offence by way of counter-claim. (*Gurdwara Sahib v. Gram Panchayat Village Sirthala and another, (2014) 1 SCC 669,* relied on)

सिविल प्रक्रिया संहिता, **1908 -** आदेश **8** नियम **6-क**

परिसीमा अधिनियम, **1963 -** अनुच्छेद **64** एवं **65**

प्रतिकूल आधिपत्य के आधार पर स्वत्व की घोषणा हेतु प्रतिदावे को लिखित कथन में संशोधन द्वारा समाविष्ट करना - प्रचलनशीलता - अभिनिर्धारित, विवाद्यकों के स्थिरीकरण पश्चात् तथा विचारण प्रारंभ होने के पश्चात् प्रतिदावा पोषणीय नहीं है - आगे, प्रतिकूल आधिपत्य का अभिवाक् केवल प्रतिरक्षा के लिये ढाल की तरह है न कि प्रतिदावे में अपराध के हथियार की भाँति। (गुरूद्वारा साहिब विरूद्ध ग्राम पंचायत गाँव सिरथला एवं अन्य (2014) 1 एस.सी.सी. 669 अवलंबित)

Friends School Governing Board, India v. Municipal Council of Mumbai & ors

Order dated 30.11.2016 passed by the High Court of Madhya Pradesh in Writ Petition No. 20294 of 2011, reported in ILR (2017) MP 332

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111. CIVIL PROCEDURE CODE, 1908 – Order 9 Rule 13, Order 6 Rule 17 and Order 7 Rule 14

LIMITATION ACT, 1963 – Section 5

(i) Is it necessary for the Court to issue notice to defendant against whom it has proceeded *ex parte* before allowing subsequently filed application under Order 6 Rule 17 CPC and Order 7 Rule 14 CPC? Held, Yes.

(ii) Condonation of delay – Factors to be taken into consideration – Court should not take a rigid view but it should be liberal –Affidavit in support of application, mentioning the date of knowledge when *ex parte* decree was passed, should be believed – Mere failure to mention when application for obtaining copy of judgement and decree preferred is no ground to disbelieve the version.

सिविल प्रक्रिया संहिता, **1908 -** आदेश **9** नियम **13,** आदेश **6** नियम **17** एवं आदेश **7** नियम **14**

परिसीमा अधिनियम, **1963 -** धारा **5**

(i) क्या ऐसे प्रतिवादी को, जिसके विरूद्ध न्यायालय एक पक्षीय अग्रसर हुआ है, पश्चातवर्ती अवस्था में आदेश 6 नियम 17 सि.प्र.सं. एवं आदेश 7 नियम 14 सि.प्र.सं. का आवेदन स्वीकार करने के पहले न्यायालय द्वारा सूचना देना आवश्यक है? अभिनिर्धारित, हाँ।

(ii) विलंब माफी - विचारणीय कारक - न्यायालय को कठोर रूख नहीं अपनाना चाहिए बल्कि नरम रूख रखना चाहिए - आवेदन के समर्थन में शपथ पत्र में उस दिनांक का उल्लेख जिस दिन एकपक्षीय आदेश पारित किये जाने की जानकारी हुई थी, उस पर विश्वास किया जाना चाहिए - निर्णय व डिक्री की प्रति प्राप्त करने के लिए आवेदन कब प्रस्तुत किया गया, इस तथ्य का उल्लेख छूट जाने मात्र के आधार पर अभिकथन पर अविश्वास नहीं किया जाना चाहिए।

Chairman, M. S. Banga Hindustan Lever Ltd. v. Heera Agencies

Judgment dated 10.10.2017 passed by the High Court of Madhya Pradesh in M.A. No. 1829 of 2009, reported in 2018 (2) MPLJ 43

Relevant extracts from the judgment:

The parties are also at loggerheads on the decision taken on applications filed under Order 9 Rule 13 CPC. The learned counsel for the appellants placed reliance on certain judgments to bolster his submission that if amendment applications and application to take documents on record are filed and allowed subsequently, the decision to proceed ex-parte i.e. 15.09.2004, the Court below should have issued fresh notices to the appellants. This point requires serious consideration.

Justice Vivian Bose speaking for three Judges Special Bench in ***Ganesh Prasad Ramprasad v. Damayanti, AIR 1946 Nagpur 60,*** opined as under:

> "That apart, even if this had been an ordinary civil case resting on a plaint, no relief could have been given on averments essential to the claim which were not included in the plaint unless amendment were allowed; and it is patent that no amendment would be allowed without fresh notices to the other side. Parties are entitled to assume that matters will be litigated on the strength of the averments contained in the petition of plaint and that fresh statements of fact material to the issue not be introduced without affording the other side an opportunity of meeting, and if need be contesting the new face."

The Division Bench of Patna High Court in the case of ***Messrs Jharkhand Mines & Industries Ltd. & another v. Nand Kishore Prasad & others, AIR 1969 Patna 228,*** held as under:

> "The Code of Civil Procedure, in my opinion, casts a duty on the court to see that the defendants are made aware of any amendment in the plaint, whether the amendment be in regard to the addition of parties or in regard to the contents thereof. Unfortunately, the learned Subordinate Judge, who passed the ex parte decree, did not direct any notices to be issued to the defendants with a view to make

them aware about the amendment of the plaint. He should have issued such notices and awaited the service report, and, if the defendants so desired, granted them an opportunity to file a written statement before putting up the suit for hearing and disposal, whether ex parte or otherwise. On this ground alone, I am of the opinion that the ***ex parte*** decree is vitiated and must be set aside."

The Apex Court in ***Ramnik Vallabhdas Madhvani & others v. Taraben Pravinlal Madhvani, AIR 2004 SC 1084,*** poignantly held as under:

"On amendment of pleadings being allowed, the opposite party has to be given a chance to respond to the amended pleading and the plea is contested the Court has to give its decision thereon. Not affording an opportunity to the contesting party to contest a plea, which has been allowed to be amended, is negation of justice."

Similarly, in ***Tahil Ram Issardas Sadarangani & others v. Ramchand Issardas Sadarangani & another, AIR 1993 SC 1182,*** the Apex Court held that in cases of withdrawal of power of Advocate when client is present and not aware of the date of hearing, dismissal of petition for want of prosecution is improper.

Justice Fakhruddin in the case of ***Mahesh Singh and others v. Sewaram and others, AIR 2004 SC 1084,*** followed the principles laid down in the case of ***Ganesh Prasad Ramprasad*** (supra) and opined as under:

"9. Having considered the rival contentions advanced by the parties and having gone through the record, it is borne out from the record that though the counsel pleaded no instructions on 10-11-1986, but the notices were not issued to the parties. In view of the decisions reported in ***Tahil Ram Issardas Sadarangani v. Ramchand Issardas Sadarangani, AIR 1993 SC 1182,*** and ***Malkiat Singh v. Joginder Singh, (1998) 2 SCC 206,*** and in view of the facts and circumstances of the case discussed elaborately in earlier paras especially that of 3 to 6, in the opinion of this Court, the appellants deserve opportunity to contest the suit, on merits in the ends of justice. It is specifically so as the respondents/plaintiffs filed the application on 24-11-1990 changing cause of action from 28-8-1984 to 28-8-1974, which was allowed without notice to the other side. It is pertinent to mention here that where defendant is absent, no amendment should be allowed as has been done in this case. In view of the decision reported in ***Ganesh Prasad Ram Prasad v. Damayanti, AIR (33) 1946 Nagpur 60,*** the Court ought to have issued notice, before allowing amendment. In view of the discussion aforesaid, the first substantial

question of law is answered in favour of the appellants and the *ex parte* judgment and decree passed are set aside."

To counter, the said argument of learned counsel for the appellants that the stand of Mr. Fakhruddin was that although amendment application and application to take documents on record were allowed subsequently to the date of proceedings *ex parte*, the said applications were formal in nature.

Suffice it to say, that the Division Bench of Patna High Court in no uncertain terms held that a duty is cast on the Court to ensure that the defendants are made aware of any amendment in the plaint. In the considered opinion of this Court, only after receiving the copy of amendment application and application to take documents on record, the other party can examine and decide whether they need to contest the suit in view of amendment proposed and documents proposed to be filed. Thus, I find substance in the argument of appellants that common string/principles in the said judgments is that the Court below should put the other side to notice before putting the suit for hearing and disposal.

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The words "sufficient cause" used in Section 5 of the Limitation Act were considered by Supreme Court and it was held that these words give discretion to the Court to advance "substantial justice". The Courts should adopt a pragmatic approach. In the case of ***Sobhraj Sindhi v. Mohd. Jahoor, (2003) 1 MPHT 33,*** this Court opined that even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigating as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property.

Justice AM Sapre (as his Lordship then was) in ***Chhogalal v. Smt. Husain Bai, (2003) 4 MPHT 268***, opined that it cannot be lost sight of the fact that condoning the delay advances a cause of justice whereas not condoning the delay takes away the valuable right of the appellant to prosecute a first appeal under Section 96 of the CPC. A right of the appeal conferred under Section 96 of the CPC is one of the most valuable rights given to a litigant. It should not be lightly taken away from his hands unless the delay in filing the appeal is found to be grossly inadequate and/or unexplained. The recent view of the Supreme Court in the cases arising out of Section 5 of Limitation Act indicates that the approach of the Courts in condoning the delay should be liberal and the litigant cannot be expected to explain each and every day's delay as was the view earlier.

In the case of ***State of M.P. v. Ramesh Prasad Verma, (2003) 3 MPHT 367,*** this Court opined that length of delay is not material, acceptability of explanation is the only criteria. The words "sufficient cause" used in Section 5 of Limitation Act must receive liberal construction so as to advance substantial justice.

If the finding of Court below is examined on the anvil of aforesaid principles, it will be clear that the Courts have taken a very rigid view of the matter. Since the application under Section 5 of the Limitation Act was supported by an affidavit mentioning that the present appellants gathered knowledge about passing of *ex parte* judgment and decree in June, 2006 there was no justification in not believing the same. Merely because the appellants did not mention as to when they preferred the application for obtaining copy of judgment and decree, their version that they came to know about the judgment and decree in June, 2006 cannot be disbelieved. From the date of knowledge of judgment i.e., last week of June, 2006 the applications for setting aside the *ex parte* judgment were promptly filed on 14.08.2006. From the date of knowledge, the delay in filing the said applications is less than one month. From the date of original judgment i.e., 24.12.2005 also the delay is not inordinate. Thus, I find substance in the argument of learned Senior Counsel for the appellants that the Court below has erroneously rejected the applications filed under Section 5 of the Limitation Act.

So far the judgment cited by Mr. Fakhruddin, in the cases of ***State of M.P. and another v. Abdul Gani, 2014 (3) MPLJ 265, State of U.P. and another v. Amar Nath Yadav, 2014 (3) MPLJ 476, Office of the Chief Post Master General and ors. v. Living Media India Ltd. and anr., AIR 2012 SC 1506, State of MP v. Ranjana Yogi, 2014 (4) MPLJ 1, State of MP v. Ramkalibai, 2015 (1) MPLJ 286*** and ***Mst. Shabana Anjum and others v. Mohd. Sulman and others, 2017 (2) MPLJ 232,*** are concerned, it is noteworthy that in those cases, the amount of delay was huge and no plausible explanation was given for such delay. In ***Abdul Gani's*** case (supra) the delay was of 516 days, in ***Amar Nath Yadav's*** case (supra) the delay was 481 days, in ***Office of Chief Post Master General's*** case (supra) the delay was 427 days, in ***Ranjana Yogi's*** case (supra) the delay was 695 days, in ***Ramkali Bai's*** case (supra) the delay was of 952 days and in ***Mohd. Sulman's*** case (supra) the delay was of 1579 days. At the cost of repetition, in my view, the cause shown for delay cannot be said to be untrustworthy and, therefore, the Court below has rejected the application for condonation of delay on erroneous grounds.

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***112 CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 1**

Withdrawal of suit – Objection of defendant – Permissibility –

(i) Withdrawal of suit under Order 23 Rule 1 (1) without prayer for any leave to file fresh suit on the same subject-matter – Defendant has no right to object to such prayer except to claim the cost – Such withdrawal should always be permitted.

(ii) Withdrawal of suit under Order 23 Rule 1 (3) along with a prayer to grant leave to file fresh suit on the same subject-matter – Defendant can object to such prayer – It is for the Court to decide whether such permission should be granted and if so, on what terms as provided in O.23 R.1 (3).

सिविल प्रक्रिया संहिता, **1908 -** आदेश **23** नियम **1**

वाद का प्रत्याहरण - प्रतिवादी की आपत्ति - अनुज्ञेयता -

(i) आदेश 23 नियम 1 (1) के अधीन उसी विषय वस्तु पर पुनः वाद लाने की अनुमति की प्रार्थना के बिना वाद का प्रत्याहरण - प्रतिवादी को, केवल व्यय मांगने के अतिरिक्त, ऐसी प्रार्थना पर आपत्ति करने का अधिकार नहीं है - ऐसे प्रत्याहरण को सदैव अनुमति प्रदान की जानी चाहिए।

(ii) आदेश 23 नियम 1 (3) के अधीन उसी विषय वस्तु पर पुनः वाद लाने की अनुमति की प्रार्थना सहित वाद का प्रत्याहरण - प्रतिवादी ऐसी प्रार्थना पर आपत्ति कर सकता है - न्यायालय को यह विनिश्चित करना होगा कि क्या ऐसी अनुमति दी जानी चाहिए और यदि हां, तो आदेश 23 नियम 1 (3) में बताई गई किन शर्तों पर।

Anil Kumar Singh v. Vijay Pal Singh and others

Judgment dated 30.11.2017 passed by the Supreme Court in Civil Appeal No. 20007 of 2017, reported in AIR 2017 SC 5587

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113. CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 (a) and 2

WORDS AND PHRASES :

(i) Whether a defendant has any legal right to move an application under Order 39 Rules 1 and 2 of CPC for temporary injunction? Held, Yes – Rule 1 (a) of Order 39 provides remedy to "any party" including defendant, in case the property in dispute is in danger of being wasted, damaged or alienated or wrongfully sold in execution of decree – In other cases not covered by Rule 1 (a) – The courts have inherent jurisdiction to issue temporary injunction if interest of justice so requires.

(ii) Meaning of the words "Alienate", "Damage", "Waste/wasted" explained.

सिविल प्रक्रिया संहिता, **1908 -** आदेश **39** नियम **1 (**क) एवं **2**

शब्द एवं पद:

(i) क्या सिविल प्रक्रिया संहिता के आदेश 39 नियम 1 एवं 2 के अधीन प्रतिवादी को अस्थायी व्यादेश हेतु आवेदन प्रस्तुत करने का विधिक अधिकार है? अभिनिर्धारित हां - आदेश 39 नियम 1 (क) ''वाद के कोई भी पक्षकार'', जिसमें प्रतिवादी भी सम्मिलित है, को उपचार प्रदान करता है, यदि विवादग्रस्त संपत्ति खतरे में हो अथवा उसका दुव्र्यय या नुकसान या अन्य संक्रमण किया जा रहा हो अथवा डिक्री के निष्पादन में उसे गलत तरीके से विक्रय किया गया हो - जो मामले नियम 1 (क) से आवृत्त नहीं हैं - उनमें यदि न्यायहित में आवश्यक हो तो न्यायालय को अस्थायी व्यादेश जारी करने का अंतर्निहित क्षेत्राधिकार है।

(ii) 'संक्रात करने', 'नुकसान करने', 'दुव्र्ययन करने', पदों की व्याख्या की गई।

Nandu and anr v. Smt. Jamuna Bai and ors.

Order dated 24.06.2016 passed by the High Court of Madhya Pradesh (Gwalior Bench) in S.A. No. 365 of 2006, reported in ILR (2016) M.P. 3076

Relevant extracts from the order:

The moot question in controversy is scope of seeking injunction by the defendants under the provisions of Order XXXIX Rule 1 and 2 CPC. Before adverting to the controversy it is imperative to discuss the legal provisions in this regard.

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From perusal of Rule 1 and 2 of CPC, it is clear that that Rule 1 (a) provides remedy to "any party" in respect of any property in dispute in a suit if it is in danger or being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of decree. Therefore, the meaning of Waste, Damage or Alienate gains importance in the present context. As per the *Black's Law Dictionary,* the definition of Waste, Damage and Alienate is as under:

Alienate: to transfer or convey (property or a property right) to another.

Damage: loss or injury to person or property.

Waste: Permanent harm to real property committed by a tenant (for life or for years) to the prejudice of the heir, the reversioner, or the remainderman.

As per *Webster Comprehensive Dictionary to the English Language,* the definition of Waste, Damage and Alienate is as under:

Alienate: to make over, transfer, as property to the ownership of another.

Damage: destruction or impairment to value; injury; harm.

Damaged: to impair the usefulness or value of.

Waste: make desolate, ruined, dismal, slummy, causing site as worthless or no practical value, use or worn out, discarded.

Wasted: to cause to lose strength, vigor or bulk, make weak or feeble.

Therefore, if the property is in danger of being wasted, damaged or alienated then in that condition certainly, any party (or defendant in the present case) can move an application for injunction under Order XXXIX Rule 1(a) of the CPC.

The Madras High Court in the matter of ***Sivakami Achi v. Narayana Chettiar, AIR 1939 Madras 495,*** has held that an application under Order XXXIX Rule 1 (a) of the CPC can be made on behalf of defendant. Later on, the said judgment has been considered by the Division Bench of this Court in the matter of ***Churamani and another v. Ramadhar and others, 1991 MPLJ 311,*** and held that the defendant has right to move an application under Order XXXIX Rule 1 (a) of CPC if any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to a suit or wrongfully sold in execution of a decree.

Learned Counsel for the respondents/defendants has relied upon the judgment of this Court rendered in ***Chhitoo and others v. Sakharam and others, 1981 JLJ 487,*** also deals in respect of scope of Order XXXIX Rule 1 and 2 of CPC in respect of defendants and concluded that use of the expression 'any party' is certainly wide enough to cover the plaintiff as well as defendant. Similarly, the judgment rendered in the case of ***Sushila Singh (Smt.) v. Vijay Shanker Shukul, 1980 JLJ 496,*** deals in possession which is the scope of Order XXXIX Rule 1 (b) and (c) of the CPC and not of Order XXXIX Rule 1 (a) of the CPC. Same analogy can be advanced in respect of judgment rendered in the case of ***Ram Natayan Singh v. Rikhraj Singh, 1997 MPWN 34***.

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Here, the question is whether in the facts and circumstances of the case, defendants are seeking injunction in respect of possession or in respect of property being wasted, damaged or alienated. The contention of the defendants is that the plaintiffs are making construction over the suit property and therefore, in this way is causing damage to the suit property and would alter the nature of the property. Definition of word Waste (wasted) and Damage (damaged) do give substance to the submissions of the defendants because raising of construction over the suit property would not only alter the nature of the suit property but may cause damage to the suit property or render it as wasted. Definition as given in the *Black's Law Dictionary* as well as *Websters Comprehensive Dictionary* make it sufficiently clear that the loss in the nature of the property is imminent by the construction of the plaintiffs.

Even otherwise, there being no such expression in Section 94 of CPC which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order XXXIX of CPC or by any Rules made under the Code, the Courts have inherent jurisdiction to issue temporary injunction in circumstances which are covered by the provision of Order XXXIX of CPC, if the Court is of the opinion that the interest of justice requires the issuance of such temporary injunction. The inherent power has not been conferred upon the Court. It is a power inherent in the Court by virtue of its duties to do justice between the parties before it. [See: ***Manoharlal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527***]. Here, in the present case, there is no need to resort to Section 94 or 151 of CPC because the Order XXXIX Rule 1(a) of CPC itself provides the remedy to the defendant to seek injunction as per the parameters prescribed.

Therefore, it is concluded that the defendant can file an application under Order XXXIX Rule 1 (a) of CPC for injunction and the same is maintainable if the exigencies as provided under Order XXXIX Rule 1(a) of CPC exists. Therefore, defendants are entitled to get injunction.

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***114. CRIMINAL PROCEDURE CODE, 1973 – Section 41**

Power of arrest – Offences involving punishment upto 7 years imprisonment – Explained – Firstly accused should be summoned to co-operate in investigation – When he does not co-operate, then only police may resort to the extreme step of arrest.

दण्ड प्रक्रिया संहिता**, 1973 -** धारा **41**

गिरफ्तार करने की शक्ति - सात वर्ष के कारावास से दण्डनीय अपराध में - समझाई गई - प्रथमतः अभियुक्त को विवेचना में सहयोग देने के लिए समन किया जाना चाहिए - जब वह सहयोग न करे, केवल तब पुलिस गिरफ्तार करने के चरम कदम का आश्रय ले सकती है।

Ravi Singh Jadon v. State of M.P.

Order dated 27.04.2017 passed by the High Court of Madhya Pradesh (Gwalior Bench) in M.Cr.C.No. 2095 of 2016, reported in ILR 2016 MP SN 34

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

(i) Grant of maintenance to second wife – Husband contracting second marriage by suppressing the factum of first surviving marriage – Second wife be treated as legally wedded wife and entitled for maintenance – Husband cannot be permitted to take advantage of his own wrong.

(ii) Presumption of marriage, when not applicable – Where a woman knowingly enters into a relationship with a married male, the presumption of marriage is not applicable despite long cohabitation.

दण्ड प्रक्रिया संहिता**, 1973 -** धारा **125**

(i) दूसरी पत्नी को भरणपोषण प्रदान किया जाना - प्रथम विवाह के विद्यमान होने के तथ्य को छिपाते हुए पति ने दूसरा विवाह किया - दूसरी पत्नी को विधितः विवाहित पत्नि की तरह माना जायेगा और वह भरणपोषण पाने की हकदार है - पति को अपने दोष का लाभ लेने के लिये अनुमत नहीं किया जा सकता है।

(ii) विवाह की उपधारणा, कब प्रयोज्य नहीं - जहाँ महिला जानते हुए विवाहित पुरूष से संबंध स्थापित करती है, लम्बे समय तक सहवास के बावजूद, विवाह की उपधारणा प्रयोज्य नहीं है।

Pushpa Pandey (Smt.) and another v. Suresh Pandey

Order dated 24.11.2016 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 368 of 2006, reported in ILR 2017 MP 450

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***116. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 156 (3)**

Whether FIR lodged in compliance of order under Section 156 (3) automatically loses its effect when the order itself is quashed? Held, No – Police can continue with investigation considering complaint as an independent source of information. (*Lalita Kumari v. State of U.P., (2014) 2 SCC 1,* relied on)

दंड प्रक्रिया संहिता**, 1973 -** धाराएं **154** एवं **156 (3)**

क्या धारा 156 (3) के अधीन आदेश के अनुपालन में संस्थित प्रथम सूचना रिपोर्ट स्वयं आदेश के अपास्त होने से स्वमेव निष्प्रभावी हो जाती है? अभिनिर्धारित, नहीं - पुलिस परिवाद को स्वतंत्र सूचना का स्त्रोत मानकर अन्वेषण को जारी रख सकती है। (ललिता कुमारी विरूद्ध उ.प्र. राज्य, (2014) 2 एस.सी.सी. 1, अवलंबित)

Dinesh Singh Raghuwanshi & anr. v. State of M.P. & anr.

Order dated 11.04.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Misc. Cri. Case No. 10475 of 2017, reported in 2018 Law Suit (MP) 473

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117. CRIMINAL PROCEDURE CODE, 1973 – Section 188

INDIAN PENAL CODE, 1860 – Section 498-A

(i) Whether sanction of Central Government is required for carrying out investigation where offence has taken place outside India? Held, No – No previous sanction is required from the Central Government for investigation – Sanction is required and can be obtained after taking cognizance by Magistrate.

(ii) Whether case of cruelty is made out against husband, if FIR lodged after the annulment of marriage and offence alleged to have been committed when informant was legally wedded wife? Held, Yes.

दण्ड प्रक्रिया संहिता**, 1973 -** धारा **188**

भारतीय दंड संहिता**, 1860 -** धारा **498-**क

(i) क्या अन्वेषण जारी रखने के लिए केंद्र सरकार की मंजूरी अपेक्षित है जबकि अपराध भारत के बाहर घटित हुआ है? अभिनिर्धारित, नहीं - अन्वेषण हेतु केंद्र सरकार से पूर्व मंजूरी अपेक्षित नहीं है - मंजूरी मजिस्ट्रेट द्वारा संज्ञान लिए जाने के उपरांत अपेक्षित है और ली जा सकती है।

(ii) क्या विवाह के शून्यकरण के पश्चात प्रस्तुत प्रथम सूचना प्रतिवेदन पर, जबकि अभिकथित अपराध तब किया गया था जब सूचनाकर्ता विधिपूर्ण विवाहित पत्नी थी, पति के विरूद्ध क्रूरता का मामला बनता है? अभिनिर्धारित, हाँ।

Ankit Neema and ors. v. State of M.P. and anr.

Order dated 16.11.2015 passed by the High Court of Madhya Pradesh (Indore Bench) in M.Cr.C No. 9148 of 2012, reported in ILR (2016) MP 3174

Relevant extracts from the order:

The question is whether, the investigation can be carried out without sanction of Central Government as mandated by Section 188 of Cr.P.C. On this point, judgment of Hon'ble the Supreme Court in the case of ***Thota Venkateshwarlu v. State of A.P. Tr. Princl. Sec. and anr., 2001 (4) Crimes 19 (SC)*** may be referred to. In this judgment, Hon'ble the Supreme Court held that upto taking cognizance, no previous sanction would be required from the Central Government in terms of proviso to Section 188 of Cr.P.C., however, trial cannot proceed beyond cognizance stage without sanction of the Central Government. It was further held that the Magistrate may proceed with the trial regarding the offence alleged to have been committed in India. However, in respect of offence alleged to have been committed outside India, Magistrate would not proceed with the trial without sanction of Central Government as envisaged in the proviso to Section 188 of Cr.P.C.

Accordingly, at this stage, when the investigation is going on, no sanction of Central Government is required. However, for particular offence which has taken place outside India, sanction of the Central Government is required which can be obtained after taking of cognizance by the Magistrate. Accordingly, at this stage, the investigation can go on and the arguments put forth by counsel for the applicants in respect of application of Section 188 of Cr.P.C. are not applicable in this case.

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When the offence is alleged to have taken place, respondent No.2 was wedded wife of applicant No.1, therefore, he cannot now be heard to say that after divorce, no case is made out against him.

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***118. CRIMINAL PROCEDURE CODE, 1973 – Section 207**

Supply of Copies – Voluminous documents – Accused may be allowed to inspect it either personally or through pleader in Court.

दण्ड प्रक्रिया संहिता**, 1973 -** धारा **207**

प्रतियों का प्रदान किया जाना - विशालकाय दस्तावेज - अभियुक्त को या तो स्वयं या न्यायालय में उसके प्लीडर द्वारा निरीक्षण की अनुमति दी जा सकती है।

K.K. Mishra v. State of M.P.

Order dated 12.09.2016 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 16361 of 2016, reported in ILR (2017) MP 477

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***119. CRIMINAL PROCEDURE CODE, 1973 – Section 227**

INDIAN PENAL CODE, 1860 – Sections 176, 336, 338, 286, 304 and 304 A

EXPLOSIVES ACT, 1884 – Sections 9B and 9C

EXPLOSIVE SUBSTANCES ACT, 1908 – Section 5

Vicarious liability of Managing Director or any other official of a company, when arises? Massive explosion took place in the premises of company which manufactures, stores and sells explosives – Company not arrayed as accused – Held, vicarious liability of Managing Director or any other official of a company only arises when company is arrayed as accused. (*Aneeta Hada v. God Father Tours and Travels, (2012) 5 SCC 661* and *Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781,* relied on)

दण्ड प्रक्रिया संहिता, **1973 -** धारा **227**

भारतीय दण्ड संहिता, **1860 -** धाराएं **176, 336, 338, 286, 304** एवं **304-**क

विस्फोटक अधिनियम, **1884 -** धाराएं **9**ख एवं **9**ग

विस्फोटक पदार्थ अधिनियम, **1908 -** धारा **5**

किसी कंपनी के प्रबंध निदेशक या अन्य अधिकारी का प्रतिनिधिक दायित्व कब उत्पन्न होती है? कंपनी जो विस्फोटक का उत्पादन, संग्रहण तथा विक्रय करती है, के परिसर में भारी विस्फोट हुआ - कंपनी को अभियुक्त नहीं बनाया गया - अभिनिर्धारित, कंपनी के प्रबंध निदेशक या अन्य अधिकारी का प्रतिनिधिक दायित्व केवल तब उत्पन्न होता है जब कंपनी को अभियुक्त बनाया गया हो। (*अनीता हाडा वि. गॉड फादर ट्रअर्स एण्ड ट्रेवल्स,* ***(2012) 5*** *एससीसी* ***661*** *एवं शरद कुमार संघी वि. संगीता राने,* ***(2015) 12*** *एससीसी* ***781*** अवलंबित)

P. Sadanand Reddy & anr. v. State of M.P.

Order dated 14.10.2016 passed by the High Court of Madhya Pradesh in Criminal Revision No. 662 of 2013, reported in ILR (2017) MP 426

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***120. CRIMINAL PROCEDURE CODE, 1973 – Section 319**

Exercise of power – Court must look into all the available material while forming an opinion – Incriminating statements made during examination-in-chief but plethora of evidence collected by Investigation Officer indicating otherwise – "Much stronger evidence" than mere possibility of their complicity is must – When additional accused's plea of *alibi* has been established after police investigation, exercise of power by trial Court under Section 319 CrPC to summon him would not be justified – Order summoning the accused set aside.

दण्ड प्रक्रिया संहिता, **1973 -** धारा **319**

शक्ति का प्रयोग - न्यायालय को राय निर्मित करते समय समस्त उपलब्ध सामग्री को देखना चाहिए - मुख्य परीक्षण के अनुक्रम में संलिप्तता संबंधी कथन किए गए परन्तु विवेचना अधिकारी द्वारा संकलित अधिकांश साक्ष्य अन्यथा इंगित करती है - संलिप्तता की संभावना मात्र से ''अधिक मजबूत साक्ष्य'' आवश्यक है - जहाँ अतिरिक्त अभियुक्त का अन्यत्र उपस्थिति का अभिवाक् पुलिस अन्वेषण द्वारा स्थापित हो चुका है, वहाँ विचारण न्यायालय द्वारा दं.प्र.सं. की धारा 319 की शक्तियों का प्रयोग कर उसे आहूत करना न्यायसंगत नहीं होगा- अभियुक्त को समन करने का आदेश अपास्त किया गया।

Brijendra Singh and ors. v. State of Rajasthan

Judgment dated 27.04.2017 passed by the Supreme Court in Criminal Appeal No. 763 of 2017, reported in 2018 CriLJ 98

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***121. CRIMINAL PROCEDURE CODE, 1973 – Section 319**

(i) Whether accused has a legal right to be heard under section 319 of the Code before issuance of summons? Held, No – Accused can defend only after appearance in compliance with summons.

(ii) Impleading any person as accused, on the instance of an accused, whether permissible? Held, Yes – Power under Section 319 Cr.P.C. can be exercised by the Court *suo motu* or on an application by someone, including the accused, already before the Court.

(iii) Issuance of warrant, principles explained. (*Vikas v. State of Rajasthan, (2014) 3 SCC 321*, relied on)

दण्ड प्रक्रिया संहिता, **1973 -** धारा **319**

(i) क्या समन जारी किये जाने से पूर्व अभियुक्त को संहिता की धारा 319 के अंतर्गत सुनवाई का विधिक अधिकार है? अभिनिर्धारित, नहीं - अभियुक्त समन के अनुपालन में उपस्थिति पश्चात् ही बचाव रख सकता है।

(ii) क्या किसी व्यक्ति को, एक अभियुक्त के आग्रह पर, अभियुक्त बनाया जा सकता है? अभिनिर्धारित, हाँ - शक्तियों का प्रयोग न्यायालय या तो स्वप्रेरणा से या न्यायालय किसी व्यक्ति के, जिसमें पूर्व से उपस्थित अभियुक्त शामिल है, आवेदन पर कर सकता है।

(iii) वारंट जारी किया जाना, सिद्धांतों की व्याख्या की गई। (विकास वि. स्टेट आफ राजस्थान, (2014) 3 एससीसी 321, अवलंबित)

Mangilal v. State of M.P.

Order dated 30.06.2016 passed by the High Court of Madhya Pradesh in Criminal Revision No. 3010 of 2015, reported in ILR (2016) MP 3371

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122. CRIMINAL PROCEDURE CODE, 1973 – Sections 372, 378, 385 and 393

(i) Section 393 – Order passed by Appellate Court upon an appeal shall be final except some exceptions.

(ii) Appeal against acquittal filed by victim under Section 372 – State was not impleaded as party – Appeal dismissed on merit – Subsequent appeal by State under Section 378 (3) is not maintainable.

(iii) Appeal filed by victim – State not impleaded as party – Section 385 imposes duty on appellate court to issue notice to State, without fail.

दण्ड प्रक्रिया संहिता**, 1973 -** धाराएं **372, 378, 385** एवं **393**

(i) धारा 393 - अपील में अपीलीय न्यायालय द्वारा पारित आदेश कुछ अपवादों के सिवाय अन्तिम होता है।

(ii) दोषमुक्ति के विरूद्ध आहत द्वारा धारा 372 के अधीन प्रस्तुत अपील - राज्य को पक्षकार के रूप में संयोजित नहीं किया गया - अपील गुण दोष पर निरस्त - धारा 378 (3) के अधीन राज्य द्वारा प्रस्तुत अपील पोषणीय नहीं है।

(iii) आहत द्वारा प्रस्तुत अपील - राज्य को पक्षकार के रूप में संयोजित नहीं किया गया - धारा 385 अपीलीय न्यायालय पर कर्तव्य अधिरोपित करती है कि वह बिना चूक राज्य को सूचना जारी करे।

State of M.P. v. Rampal & anr.

Order dated 30.06.2016 passed by the High Court of Madhya Pradesh in M.Cr.C No. 14708 of 2013, reported in ILR (2016) MP 3188

Relevant extracts from the order:

On perusal of record it is noticed that against the impugned judgment of acquittal private parties as victims had filed an appeal under the amended provision of section 372 Cr.P.C, which was registered as Criminal Appeal No. 8/2014 before the Sessions Court, Satna, on 16.8.2013 in which the State was not made party and the said criminal appeal was dismissed on merit on 6.3.2014 affirming the impugned order of acquittal. Now, the question is whether this application filed by the State under section 378 (3) Cr.P.C is maintainable or has become infructuous.

Under the provisions of the Cr.P.C in State case, the State has a right to file an appeal against the order of acquittal under section 378 (1) (b) subject to provisions of sub-section (3). In exercising this power the State has filed this Application for leave to appeal.

Similarly, under section 372 Cr.P.C. after the amendment made by the Code of Criminal Procedure Amendment Act (No. 5 of 2009) section 29, victim also has a right to file appeal against the order of acquittal in the Court where an appeal ordinarily lie against the order of conviction of such Court.

X X X

The word “victim’’ has also been defined by the same Amendment Act inserting provision of clause ‘wa’ in section 2 of the Cr.P.C.

X X X

In the present case, on perusal of record of the Lower Court, it is evident that the applicants who filed the appeal before the Sessions Judge, were injured person in the incident, hence they come within the purview of the victims. Therefore, they have rightly exercised their right to appeal given by the amended provision of section 372 Cr.P.C.

Learned Panel Lawyer appearing for the State has contended that in the appeal before the Sessions Court, the State was not made party and, hence, right of the State to file appeal against the order of acquittal cannot be considered to be extinguished, therefore, this application under section 378 (3) Cr.P.C. is not infructuous and it is maintainable in law.

The aforesaid condition of learned panel lawyer is not acceptable as the provision of section 393 Cr.P.C. makes it clear that the order passed by the appellate court upon an appeal shall be final except some exceptions.

X X X

The facts and circumstances of the case do not come in the purview of any exceptions mentioned in the provision of section 393 Cr.P.C. In such circumstances, the order passed by the Appellate Court i.e. Sessions Court, is final in this case. In such circumstances, no further appeal by the State would lie against the impugned order of acquittal.

In the circumstances of this case, if the State is not agreed and having grievance against the final order of the appellate court on account of not impleading the State as a party and giving any opportunity to support its case or for any other reason, the State may file revision or may also invoke the provision of section 482 Cr.P.C. or Articles 226 and 227 of the Constitution of India according to its grievance. But, the State cannot claim that even the appeal against the impugned order is dismissed by the Sessions Judge and has become final, the State shall be given an opportunity to pursue its application for leave to appeal under section 378 (3) Cr.P.C. Hence, it is held that in the aforesaid circumstances, the application of the State has become infructuous and is accordingly dismissed.

Before parting with this case with a view to avoid such situation in future, I would like to record a note of caution to bring into the notice of all criminal appellate Courts below in the State that without failing they shall follow the provisions of section 385 Cr.P.C. which imposes duty on the appellate Courts to issue notice to the State, in case State is not party as appellant.

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***123. CRIMINAL PROCEDURE CODE, 1973 – Section 437**

Bail, factors for consideration – Seriousness of the offence – Cannot in itself be a ground for rejection of bail – Other circumstances may justify granting bail – An overall review of the material against the accused and its sufficiency to prove the guilt may also be considered.

दण्ड प्रक्रिया संहिता, **1973 -** धारा **437**

जमानत के लिए विचार हेतु कारक - अपराध की गंभीरता - यह स्वयं में जमानत की नामंजूरी का आधार नहीं हो सकता - अन्य परिस्थितियां जमानत प्रदान करना न्यायनुमत कर सकती हैं - अभियुक्त के विरूद्ध सामग्री का समग्र परीक्षण और दोषिता साबित करने हेतु इसकी पर्याप्तता पर भी विचार किया जा सकता है।

Seema Singh v. Central Bureau of Investigation and anr.

Judgment dated 18.04.2018 passed by the Supreme Court in Criminal Appeal No. 569 of 2018, reported in AIR 2018 SC 2161

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124. CRIMINAL PROCEDURE CODE, 1973 – Sections 438 and 439

N.D.P.S. ACT, 1985 – Section 37

(i) Bail – Limitations on power to grant bail enshrined under Section 37 of the NDPS Act are in addition to those prescribed under CrPC and other laws – Order passed without considering the limitations of Section 37 is not good.

(ii) Interim anticipatory bail – Order of High Court – Factors to be considered by trial Courts while following such orders –Sessions Court should have enquired whether final order has been passed – When application for anticipatory bail was pending before the High Court, accused had no business to surrender before Sessions Court and seek regular bail – In such cases, accused is not automatically entitled to regular bail under Section 439 CrPC.

(iii) Protection of anticipatory bail – It is available only till the Court summons the accused on the basis of charge sheet – On appearance, accused has to seek regular bail under Section 439 of the CrPC from Court. (see Editor's Note).

दण्ड प्रक्रिया संहिता, **1973 -** धाराएं **438** एवं **439**

एन.डी.पी.एस. एक्ट, **1985 -** धारा **37**

(i) जमानत - जमानत देने की शक्तियों पर एन.डी.पी.एस. एक्ट की धारा 37 में उल्लेखित निर्बंधन द.प्र.सं. एवं अन्य विधियों के द्वारा विहित निर्बंधनों के अतिरिक्त हैं - धारा 37 के निर्बंधनों पर विचार किये बिना पारित आदेश उचित नहीं है।

(ii) अंतरिम अग्रिम जमानत - उच्च न्यायालय का आदेश - विचारण न्यायालयों द्वारा ऐसे आदेशों का अनुसरण करते समय विचारणीय घटक - सत्र न्यायालय को जानकारी लेनी चाहिये कि क्या अंतिम आदेश पारित किया गया है - जब उच्च न्यायालय के समक्ष अग्रिम जमानत आवेदन लंबित था तब अभियुक्त को सत्र न्यायालय में समर्पण कर नियमित जमानत प्राप्त करने का प्रयास करने की आवश्यकता नहीं थी - ऐसे मामलों में, अभियुक्त स्वमेव नियमित जमानत प्राप्त करने का अधिकारी नहीं हो जाता है।

(iii) अग्रिम जमानत की सुरक्षा - यह तभी तक उपलब्ध है जब तक कि न्यायालय अभियोग पत्र के आधार पर अभियुक्त को आहूत नहीं करता है - उपस्थित होने पर, अभियुक्त को न्यायालय से द.प्र.सं. की धारा 439 के अधीन नियमित जमानत प्राप्त करना आज्ञापक है। (संपादक की टिप्पणी देखें)

Satpal Singh v. State of Punjab

Judgment dated 27.03.2018 passed by the Supreme Court in Criminal Appeal No. 462 of 2018, reported in AIR 2018 SC 2011 (Three Judges Bench)

Relevant extracts from the judgment:

Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27A and also for offences involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the Court must be satisfied that there are reasonable grounds for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under the Cr.P.C or any other law in force on the grant of bail. In view of the seriousness of the offence, the law makers have consciously put such stringent restrictions on the discretion available to the Court while considering application for release of a person on bail. It is unfortunate that the provision has not been noticed by the High Court. And it is more unfortunate that the same has not been brought to the notice of the Court.

X X X

It is unfortunate that the Sessions Court did not take note of the final order passed by the High Court. The Court should have enquired as to whether the matter had been finally disposed of, particularly after noticing the interim order. The casual approach adopted by the learned Sessions Judge has apparently led to the accused being released on regular bail, on the basis of the interim order passed by the High Court. When the application for anticipatory bail was the subject-matter before the High Court, the accused had no business to go

and surrender before the Sessions Court and seek regular bail on the basis of an interim order.

X X X

In any case, the protection under Section 438, Cr.P.C. is available to the accused only till the Court summons the accused based on the charge sheet (report under Section 173 (2), Cr.P.C.). On such appearance, the accused has to seek regular bail under Section 439, Cr.P.C. and that application has to be considered by the court on its own merits. Merely because an accused was under the protection of anticipatory bail granted under Section 438, Cr.P.C. that does not mean that he is automatically entitled to regular bail under Section 439, Cr.P.C. The satisfaction of the court for granting protection under Section 438, Cr.P.C. is different from the one under Section 439, Cr.P.C. while considering regular bail.

***EDITOR'S NOTE : The above observation is with regard to the bail order passed by the High Court, which reads as under -**

"Keeping in view the above fact but without expressing any opinion on the merits of the case, this petition is allowed and the order dated 14.07.2017 is made absolute till the presentation of challan, subject to the following terms:-

(i) that the petitioners shall make themselves available for interrogation by the police as and when required;

(ii) that the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that the petitioners shall not leave India without the prior permission of the Court.

(iv) that the petitioners will seek regular bail on the presentation of challan in Court, which the trial Court will decide on the basis of evidence collected during investigation."

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125. CRIMINAL PROCEDURE CODE, 1973 – Section 439

Cancellation of bail – Only where cogent case, based on supervening event is made out – Law explained in *Dolatram* and *Dataram Singh* cases reiterated.

दण्ड प्रक्रिया संहिता**, 1973 -** धारा **439**

जमानत का रद्दकरण - केवल तब, जब बीच में उत्पन्न होने वाली घटनाओं के आधार पर दृढ़ मामला निर्मित होता हो - दौलतराम तथा दाताराम सिंह के मामलों में व्याख्या की गई विधि को पुनरोद्धरित किया गया।

Ms. X v. State of Telangana and anr.

Judgment dated 17.05.2018 passed by the Supreme Court in Criminal Appeal No. 1130 of 2018, reported in AIR 2018 SC 2446

Relevant extracts from the judgment:

In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in ***Dolatram v. State of Haryana, (1995) 1 SCC 349,*** observed that:

> "Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted.
>
> Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

These principles have been reiterated by another two Judge Bench decision in ***Central Bureau of Investigation, Hyderabad v. Subramani Gopalakrishnan, (2011) 5 SCC 296,*** and more recently in ***Dataram Singh v. State of Uttar Pradesh, (2018) 2 Scale 285*** :

> "It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused

in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

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126. EVIDENCE ACT, 1872 – Sections 3 and 8
INDIAN PENAL CODE, 1860 – Section 302
Last seen theory – Weak kind of evidence by itself – May become pressing if coupled with "other circumstances" – "Other circumstances" and their effect explained.

साक्ष्य अधिनियम**, 1872 -** धाराएं **3** एवं **8**

भारतीय दंड संहिता**, 1860 -** धारा **302**

अंतिम बार देखे जाने का सिद्धान्त - स्वयं में दुर्बल प्रकृति की साक्ष्य है - महत्वपूर्ण हो सकता है यदि ''अन्य परिस्थितियों'' से संबद्ध हो - ''अन्य परिस्थितियाँ'' एवं उनके प्रभाव की व्याख्या की गई।

Satpal v. State of Haryana

Judgment dated 01.05.2018 passed by the Supreme Court in Criminal Appeal No. 1892 of 2017, reported in AIR 2018 SC 2142

Relevant extracts from the judgment:

We have considered the submissions and the evidence on record. There is no eye witness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available *inter alia* in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused,

incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine.

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***127. EVIDENCE ACT, 1872 – Section137**

CIVIL PROCEDURE CODE, 1908 – Section 151

Examination of witness – Permissibility of cross-examination of a defendant by the co-defendant – Conflict of interest between the defendants – Interest of one will be affected if not allowed to cross examine – Such defendant can cross-examine the other defendant.

साक्ष्य अधिनियम**, 1872 -** धारा **137**

सिविल प्रक्रिया संहिता**, 1908 -** धारा **151**

साक्षियों की परीक्षा - सह-प्रतिवादी द्वारा प्रतिवादी के प्रतिपरीक्षण की अनुज्ञेयता - प्रतिवादियों के मध्य हित का टकराव - यदि प्रतिपरीक्षण हेतु अनुमत न किया गया तो किसी एक का हित प्रभावित होगा - ऐसा प्रतिवादी, अन्य प्रतिवादी का प्रतिपरीक्षण कर सकता है।

Shiv Pratap Singh Tomar v. Seema Tomar and ors.

Order dated 09.01.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Misc. Petition No. 1731 of 2017, reported in 2018 Law Suit (MP) 158

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***128 HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 – Sections 3 and 10**

Adoption of married son – Considerations and proof

(i) Whether a married person can be taken in adoption? Held, according to Section 10, a married person cannot be adopted unless there is a custom or usage as defined under Section 3 (a) applicable to parties which permits married persons being taken in adoption.

(ii) Whether custom of adoption of married person is not required to be proved because it is judicially recognised? Held, No – Custom of adoption of married person is a matter of proof – It must be proved that such practice has attained the status of general custom in the concerned community – It cannot be based on *apriori reasoning* or logical and analogical deductions.

(iii) Proof of custom of adoption of married sons in a community – Continuity, certainty, long usage and reasonability must be established by specific pleadings and cogent evidence to the satisfaction of the Court – Further, burden of proving adoption is a heavy one – In absence of documentary evidence, Court should be very cautious in relying upon oral evidence.

हिन्दु दत्तक और भरण पोषण अधिनियम**, 1956 -** धाराएं **3** एवं **10**

विवाहित पुत्र का दत्तकग्रहण - विचार एवं सबूत

(i) क्या विवाहित व्यक्ति दत्तकग्रहण में लिया जा सकता है? अभिनिर्धारित - धारा 10 के अनुसार, विवाहित व्यक्ति दत्तक नहीं लिया जा सकता जब तक कि, पक्षकारों पर लागू, धारा 3 (क) में यथा परिभाषित कोई रूढ़ि या प्रथा विद्यमान नहीं है, जो विवाहित व्यक्तियों को दत्तक लेना अनुमत करती है।

(ii) यदि विवाहित व्यक्ति के दत्तकग्रहण की रूढ़ि न्यायिक रूप से मान्य है तो क्या इसे साबित किया जाना आवश्यक नहीं है? अभिनिर्धारित, नहीं - विवाहित व्यक्ति के दत्तकग्रहण की रूढ़ि सबूत का विषय है - यह साबित किया जाना चाहिए कि ऐसी प्रथा ने संबंधित समुदाय में सामान्य रूढ़ि का दर्जा प्राप्त कर लिया है - इसे अनुभव निरपेक्ष तर्क या तर्कसम्मत या औपचारिक अनुमानों पर आधारित नहीं किया जा सकता।

(iii) किसी समुदाय में विवाहित पुत्रों के दत्तकग्रहण की रूढ़ि का सबूत - निरंतरता, निश्चितता, लंबे समय तक उपयोग, तर्कसंगतता को विनिर्दिष्ट अभिवचन व न्यायालय के संतुष्टि योग्य ठोस साक्ष्य के द्वारा स्थापित किया जाना आवश्यक है - आगे यह भी कि, दत्तकग्रहण साबित करने का भार अधिक होता है - दस्तावेजी साक्ष्य के अभाव में, मौखिक साक्ष्य पर विश्वास करने में न्यायालय को बहुत सतर्क रहना चाहिए।

Ratanlal alias Babulal Chunilal Samsuka v. Sundarabai Govardhandas Samsuka (D) Th. L.Rs. and others

Judgment dated 22.11.2017 passed by the Supreme Court in Civil Appeal No. 6378 of 2013, reported in AIR 2017 SC 5797

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129. HINDU SUCCESSION ACT, 1956 – Section 6

(i) Daughter of a coparcener born prior to the enactment of the Hindu Succession Act, 1956, whether entitled to share in coparcenary property after passing of Hindu Succession (Amendment) Act, 2005? Held,Yes.

(ii) Birth of daughter born prior to the enactment of the Hindu Succession Act – Effects, explained.

हिन्दू उत्तराधिकार अधिनियम**, 1956 -** धारा **6**

(i) क्या हिन्दू उत्तराधिकार अधिनियम, 1956 के अधिनियमन से पूर्व जन्मी सहदायिक की पुत्री, हिन्दू उत्तराधिकार (संशोधन) अधिनियम, 2005 के पारित होने के पष्चात् सहदायिकी संपत्ति के अंश की हकदार है? अभिनिर्धारित, हाँ।

(ii) हिन्दू उत्तराधिकार अधिनियम के अधिनियमन से पूर्व पुत्री का जन्म - प्रभावों की व्याख्या की गई।

Danamma alias Suman Surpur and another v. Amar and others

Judgment dated 01.02.2018 passed by the Supreme Court in Civil Appeal No. 188 of 2018, reported in AIR 2018 SC 721

Relevant extracts from the judgment:

One G, propositus of a joint Hindu family, died in the year 2001 leaving behind his wife, two daughters and two sons R and V. After the death of G, the son of R filed a civil suit for partition and separate possession with respect to the suit schedule properties stating the same to be the joint family properties. In that suit, though the plaintiff admitted that the two sons and the widow of G were in joint possession of the said properties as coparceners, he denied that the two daughters of G were coparceners in the said joint family on the ground that they were born prior to the enactment of the Hindu Succession Act, 1956 (hereinafter referred to as "the HS Act"). It was also pleaded that the daughters were married and at the time of their marriage they had received gold and money and had, hence, relinquished their share in the joint family properties. However, the daughters contested the suit by claiming that they were also entitled to share in the joint family properties. The trial Court decreed the suit holding that the daughters were not entitled to any share as they were born prior to the enactment of the HS Act and, therefore, could not be considered as caparceners. The trial Court also rejected the alternate contention that the daughters had acquired share in the said properties after the amendment in the HS Act vide Amendment Act, 2005. The said view of the trial Court was upheld by the High Court confirming the decree dated 09.08.2007 passed in the suit.

The law relating to a joint Hindu family governed by the Mitakshara law has undergone unprecedented changes. The said changes have been brought forward to address the growing need to merit equal treatment to the nearest female relatives, namely daughters of a coparcener. The section stipulates that a daughter would be a coparcener from her birth, and would have the same rights and liabilities as that of a son. The daughter would hold property to which she is entitled as a coparcenary property, which would be construed as property being capable of being disposed of by her either by a will or any other testamentary disposition. These changes have been sought to be made on the touchstone of equality, thus seeking to remove the perceived disability and prejudice to which a daughter was subjected. The fundamental changes brought forward about in the Hindu Succession Act, 1956 by amending it in 2005, are perhaps a realization of the immortal words of Roscoe Pound as appearing in his celebrated treaties, The Ideal Element in Law, that "the law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and the need of change."

Section 6, as amended, stipulates that on and from the commencement of the amended Act, 2005, the daughter of a coparcener shall by birth become a

coparcener in her own right in the same manner as the son. It is apparent that the status conferred upon sons under the old section and the old Hindu Law was to treat them as coparceners since birth. The amended provision now statutorily recognizes the rights of coparceners of daughters as well since birth. The section uses the words in the same manner as the son. It should therefore be apparent that both the sons and the daughters of a coparcener have been conferred the right of becoming coparceners by birth. It is the very factum of birth in a coparcenary that creates the coparcenary, therefore the sons and daughters of a coparcener become coparceners by virtue of birth. Devolution of coparcenary property is the later stage of and a consequence of death of a coparcener. The first stage of a coparcenary is obviously its creation as explained above, and as is well recognized. One of the incidents of coparcenary is the right of a coparcener to seek a severance of status. Hence, the rights of coparceners emanate and flow from birth (now including daughters) as is evident from sub-s (1)(a) and (b).

X X X

In the present case, no doubt, suit for partition was filed in the year 2002. However, during the pendency of this suit, Section 6 of the Act was amended as the decree was passed by the trial Court only in the year 2007. Thus, the rights of the appellants got crystallised in the year 2005 and this event should have been kept in mind by the trial Court as well as by the High Court. This Court in ***Ganduri Koteshwaramma & anr.v. Chakiri Yanadi & anr., (2011) 9 SCC 788,*** held that the rights of daughters in coparcenary property as per the amended S. 6 are not lost merely because a preliminary decree has been passed in a partition suit. So far as partition suits are concerned, the partition becomes final only on the passing of a final decree. Where such situation arises, the preliminary decree would have to be amended taking into account the change in the law by the amendment of 2005.

On facts, there is no dispute that the property which was the subject matter of partition suit belongs to joint family and Gurulingappa Savadi was propositus of the said joint family property. In view of our aforesaid discussion, in the said partition suit, share will devolve upon the appellants as well. Since, Savadi died leaving behind two sons, two daughters and a widow, both the appellants would be entitled to1/5 th share each in the said property. Plaintiff (respondent No.1) is son of Arun Kumar (defendant No.1). Since, Arun Kumar will have 1/5 th share, it would be divided into five shares on partition i.e. between defendant No.1 Arun Kumar, his wife defendant No.2, his two daughters defendant Nos.3 and 4 and son/plaintiff (respondent No.1). In this manner, the plaintiff/respondent No.1 would be entitled to 1/25 th share in the property.

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***130. HINDU SUCCESSION ACT, 1956 – Section 14**

Limited estate – Consent decree in the year 1932 conferring lifetime possessory rights to husband – Also stated that wife will get same right in case of death of husband – Effect of Section 14 – Does not become absolute property by virtue of Section 14 as widow has no pre-existing right in the property – Only restrictive possessory rights were given – Wife cannot acquire better title than husband.

हिंदू उत्तराधिकार अधिनियम**, 1956 -** धारा **14**

सीमित संपदा - पति को जीवनपर्यंत आधिपत्य संबंधी अधिकारों को प्रदान करने वाली वर्ष 1932 की सहमति आज्ञप्ति - यह भी कथित किया गया कि पति की मृत्यु पर पत्नी को समान अधिकार प्राप्त होगा - धारा 14 का प्रभाव - धारा 14 के आधार पर पूर्ण संपत्ति नहीं हो जाती क्योंकि विधवा को संपत्ति में कोई पूर्व हित नहीं था - मात्र निर्बंधित आधिपत्य संबंधी अधिकार प्रदान किये गये थे - पत्नी, पति से बेहतर स्वत्व प्राप्त नहीं कर सकती।

Basanti Devi (D) by L.Rs. and others. v. Rati Ram and ors.

Judgment dated 08.05.2018 passed by the Supreme Court in Civil Appeal No. 7919 of 2011, reported in AIR 2018 SC 2336

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***131INDIAN PENAL CODE, 1860 – Section 84**

EVIDENCE ACT, 1872 – Section 105

Defence of insanity; entitlement of – Law explained:

(i) On whom the burden to prove lies that offence was committed on account of insanity? Held, burden of proof is on accused.

(ii) What is the crucial point of ascertaining existence of insanity? Held, it is the time when offence is committed.

(iii) Whether absence of motive to commit offence can be a ground to prove insanity? Held, No.

(iv) Whether previous as well as post mental status of accused may be considered to prove insanity? Held, Yes.

(v) Difference between medical insanity and legal insanity – Every insanity is not legal insanity – A person may be suffering from medical insanity but it may not be sufficient to treat the same as legal insanity so as to give the benefit of Section 84 IPC.

(vi) Accused not taking defence of insanity in examination under Section 313 Cr.P.C – This singular circumstance, by itself, is not sufficient to discard defence of accused.

(vii) Eye witnesses specifically stated that accused was of unsound mind – Witness who medically examined accused also stated that accused was suffering from insanity since long – Further,

case adjourned from time-to-time awaiting improvement of accused – Proceedings remained stalled for 10 long years – Non-filing of medical document showing treatment of accused prior to incident, not fatal – Accused, held, entitled to benefit of section 84 IPC.

भारतीय दण्ड संहिता**, 1860 -** धारा **84**

साक्ष्य अधिनियम**, 1872 -** धारा **105**

विकृतिचित्तता के बचाव**;** का अधिकार - विधि समझाई गई

(i) अपराध विकृतचित्तता के कारण कारित किया गया था, यह साबित करने का भार किस पर होता है? अभिनिर्धारित, सबूत का भार अभियुक्त पर है।

(ii) विकृतचित्तता की विद्यमानता को अभिनिश्चित करने का निर्णायक बिंदु क्या है? अभिनिर्धारित, वह समय जब अपराध कारित किया गया।

(iii) क्या अपराध कारित करने में हेतु का अभाव विकृतचित्तता साबित करने का आधार हो सकता है? अभिनिर्धारित, नहीं।

(iv) क्या अभियुक्त की पूर्व व पश्चात मानसिक अवस्था विकृतचित्तता साबित करने के लिए विचार में ली जा सकती है? अभिनिर्धारित, हां।

(v) चिकित्सीय विकृतचित्तता व विधिक विकृतचित्तता में अंतर - प्रत्येक विकृतचित्तता विधिक विकृतचित्तता नहीं होती - एक व्यक्ति मानसिक विकृतचित्तता से प्रभावित हो सकता है किंतु धारा 84 भा.दं.सं. के अधीन लाभ देने हेतु पर्याप्त विधिक विकृतचित्तता नहीं भी हो सकती है।

(vi) धारा 313 दं.प्र.सं. के अंतर्गत परीक्षण में अभियुक्त ने विकृतचित्तता का बचाव नहीं लिया - यह परिस्थिति स्वमेव अभियुक्त का बचाव निरस्त करने के लिए पर्याप्त नहीं है।

(vii) चक्षुदर्शी साक्षियों ने स्पष्टतः कहा कि अभियुक्त विकृतचित्त था - जिस साक्षी ने अभियुक्त का चिकित्सीय परीक्षण किया, ने भी कहा कि अभियुक्त विकृतचित्तता से लंबे समय से ग्रसित था - यह भी कि, मामले को अभियुक्त में सुधार हेतु समय-समय पर स्थगित किया गया - कार्यवाहियां दस वर्ष तक स्थगित रहीं - घटना के पूर्व के अभियुक्त के उपचार के चिकित्सीय दस्तावेज प्रस्तुत न करना घातक नहीं - अभियुक्त को धारा 84 भा.दं.सं. के लाभ का हकदार माना गया।

Pratap v. State of M.P.

Judgment dated 25.09.2017 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Cri. Appeal. No. 635 of 2006, reported in 2018 CriLJ 1644

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132. INDIAN PENAL CODE, 1860 – Section 149

(i) Constructive Liability, ingredients of – To invoke Section 149, essential ingredients of Section 141 have to be established – Once the two ingredients of Section 149 are fulfilled, every member of the assembly at the time of commission of offence is guilty – Court is neither required to see who actually did the offensive act nor the prosecution is required to prove which member did what ingredient.

(ii) Existence of common object amongst the members of the assembly – Factors explained.

भारतीय दंड सहिता**, 1860 -** धारा **149**

(i) प्रलक्षित दायित्व के मुख्य तत्व - धारा 149 को लागू करने के लिए धारा 141 के आवश्यक तत्व स्थापित किया जाना चाहिए - जैसे ही धारा 149 के दोनों तत्वों की पूर्ति हो जाती है, तो अपराध किये जाते समय, जमाव का प्रत्येक सदस्य दोषी है - न तो न्यायालय को यह देखना आवश्यक है कि आपराधिक कृत्य वास्तव में किसने किया और न ही अभियोजन के लिये यह सिद्ध करना आवश्यक है कि उन सदस्यों में से किसने उन दोनो तत्वों में से किसको किया है।

(ii) जमाव के सदस्यों के मध्य सामान्य उद्देश्य की विद्यमानता - कारकों की व्याख्या की गई।

Joseph v. State of Tamil Nadu

Judgment dated 14.12.2017 passed by the Supreme Court in Criminal Appeal No. 662 of 2016, reported in 2018 (1) Crimes 73

Relevant extracts from the judgment:

The requirements for invoking the vicarious liability under Section 149 IPC. Section 149 IPC consists of two parts:

> The first part of the section means that there exists common object and that the offence has been committed in prosecution of the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member.
>
> The second part of the section means that even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section149, if it can be shown that the offence was such as the members knew was likely to be committed.
>
> What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was the one which the members knew to be likely to be committed. Once the court finds that the ingredients of Section 149 IPC are fulfilled, every person who at the time of committing

that offence was a member of the assembly has to be held guilty of that offence. After such a finding, it would not be open to the Court to see as to who actually did the offensive act nor would it be open to the Court to require the prosecution to prove which of the members did which of the above two ingredients.

Whether the members of the unlawful assembly really had the common object to cause the murder of the deceased has to be decided in the facts and circumstances of each case, nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the circumstances under which the occurrence took place. It is an inference to be deduced from the facts and circumstances of each case (vide ***Lalji and ors. v. State of U.P., (1989) 1 SCC 437; Ranbir Yadav v. State of Bihar, (1995) 4 SCC 392,*** and ***Rachamreddy Chenna Reddy and ors. v. State of A.P., (1999) 3 SCC 97***).

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***133. INDIAN PENAL CODE, 1860 – Sections 300 and 304**

Culpable homicide not amounting to murder – Sudden quarrel without any pre-meditation – Death due to single blow of *ballam* on the chest – Accused did not take any undue advantage of the weapon – Intention to murder or cause such bodily injury as is likely to cause death, cannot be readily inferred – Convicted under Section 304 part-II IPC.

भारतीय दंड संहिता, **1860 -** धाराएं **300** एवं **304**

हत्या की कोटि में न आने वाला आपराधिक मानव वध - बिना किसी पूर्व चिन्तन के अचानक झगड़ा - सीने पर बल्लम के एक प्रहार से मृत्यु - अभियुक्त ने औजार का कोई अनुचित फायदा नहीं उठाया - हत्या करने या ऐसी शारीरिक क्षति कारित करने जिससे मृत्यु होना संभाव्य है सहजतापूर्वक अनुमानित नहीं किया जा सकता - धारा 304 भाग-II भा.द.सं. के अंर्तगत दोषसिद्ध किया गया।

Tularam v. State of Madhya Pradesh

Judgment dated 02.05.2018 passed by the Supreme Court in Criminal Appeal No. 663 of 2018, reported in AIR 2018 SC 2146

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134. INDIAN PENAL CODE, 1860 – Sections 302, 395 and 396

DAKAITI AUR VYAPHARAN PRABHAVIT KSHETRA ADHINIYAM (M.P.), 1981 – Sections 11 and 13

(i) Whether an accused charged of an offence of dacoity with murder under Section 396 IPC can be convicted under section 302 IPC, if dacoity is not established? Held, Yes – Charges of Sections 395 and 302 IPC are consolidated under Section 396 IPC – Accused can be convicted under Section 302 IPC, if murder is established but offence of dacoity is not established. (*Rafiq Ahmed @ Rafi v. State of UP, AIR 2011 SC 3114,* relied on).

(ii) Dacoity with murder, essentials of – To hold an accused guilty of offence under Section 396 IPC, robbery must be committed by five persons – If the offence is not proved, accused cannot be convicted under Section 396 IPC but can be convicted for offence under Section 394 read with Section 397 of IPC.

भारतीय दण्ड संहिता**, 1860 -** धाराएं **302, 395** एवं **396**

डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम**, 1981 (**म.प्र.) - धाराएं **11** एवं **13**

(i) क्या एक अभियुक्त को जिसे भारतीय दण्ड संहिता की धारा 396 के अंतर्गत हत्या सहित डकैती के अपराध के लिये आरोपित किया गया, डकैती सिद्ध न होने पर धारा 302 के अंतर्गत दोषसिद्ध किया जा सकता है? - अभिनिर्धारित, हाँ - भारतीय दण्ड संहिता की धाराओं 395 तथा 302 के आरोप भारतीय दण्ड संहिता की धारा 302 के अंतर्गत समेकित अभियुक्त को धारा 302 भादवि के अंतर्गत हैं - दोषसिद्ध किया जा सकता है यदि हत्या प्रमाणित हो गई है किन्तु डकैती प्रमाणित नहीं हो पाई है। (रफीक अहमद उर्फ रफी वि. उत्तरप्रदेश राज्य, ए.आई.आर., 2011 एस.सी. 3114, अवलंबित)

(ii) हत्या सहित डकैती के आवश्यक तत्व - किसी अभियुक्त को भारतीय दण्ड संहिता की धारा 396 के अंतर्गत अपराध का दोषी बनाने के लिये पाँच व्यक्तियों द्वारा लूट कारित किया जाना आवश्यक है - यदि अपराध सिद्ध नहीं हुआ तो उसे भारतीय दण्ड संहिता की धारा 396 के अधीन दण्डित नहीं किया जा सकता किन्तु भारतीय दण्ड संहिता की धारा 394 सहपठित धारा 397 के अधीन अपराध के लिये दोषसिद्ध किया जा सकता है।

Narendra @ Chunna Kirar & ors. v. State of M.P.

Judgment dated 19.05.2016 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 168 of 2007, reported in ILR (2017) MP 364

Relevant extracts from the judgment:

It is true that no offence of Section 396 of IPC is constituted against the appellants in the absence of fifth culprit, however, in charges under Section 396 of IPC a charge of Section 395 and Section 302 of IPC are consolidated and therefore if no offence under Section 396 of IPC is constituted then the appellants may be convicted of offence under Section 302 of IPC under the same charges and therefore the trial court did not convict the appellants separately for offence under Section 302 of IPC. In this connection, the judgment passed by the Apex Court in the case of ***Rafiq Ahmed @ Rafi v. State of U.P., AIR 2011 SC 3114,*** may be perused in which it is held that in charge of Section 396 of IPC the culprits can be convicted of offence under Section 302 of IPC. If dacoity is not established then still they can be convicted of offence under Section 302 of IPC if murder is established.

X X X

When five persons were not involved in a crime of robbery then it is not a crime of dacoity. For proof of offence under Section 396 of IPC, it is necessary to prove that the crime was done by five persons. When it is not proved then none of the appellants can be convicted of offence under Section 396 of IPC, however, they can be convicted of offence under Section 394 read with Section 397 of IPC.

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

Abetment – Abusing and compelling the subordinate to do extra work – Whether can be equated with abetment to suicide? – Held, No – The subordinate has other options as well – Cannot be said that the only option left, is to commit suicide – Prosecution under Section 306 cannot sustain.

भारतीय दंड संहिता**, 1860 -** धारा **306**

दुष्प्रेरण - अधीनस्थ को अपशब्द कहना और अतिरिक्त कार्य करने हेतु विवश करना - क्या आत्महत्या हेतु दुष्प्रेरण के समतुल्य है? - अभिनिर्धारित, नहीं - अधीनस्थ के पास अन्य विकल्प मौजूद हैं - यह नहीं कहा जा सकता कि केवल आत्महत्या करना ही, अंतिम विकल्प बचा था - धारा 306 के अधीन अभियोजन स्थिर नहीं रखा जा सकता।

Shama Parveen Beg and anr.v. State of Madhya Pradesh & anr.
Judgment dated 05.04.2018 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 2753 of 2017, reported in 2018 Law Suit (MP) 482

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***136. INDIAN PENAL CODE, 1860 – Section 366**

Abduction to compel woman for marriage etc – Essential requisites for the offence of – Mere abduction is not sufficient – Intent of the accused to compel the women to marry or to force or seduce her to illicit intercourse is essential – Absence of such intent will not constitute offence under Section 366.

भारतीय दंड संहिता**, 1860 -** धारा **366**

विवाह आदि के लिए किसी स्त्री को विवश करने के लिए अपहरण - के अपराध हेतु मूलभूत आवश्यकताएं - मात्र अपहरण पर्याप्त नहीं है - अभियुक्त का स्त्री को विवाह हेतु विवश करने का या अयुक्त संभोग हेतु विवश या विलुब्ध करने का आशय आवश्यक है - उक्त आशय का अभाव धारा 366 के अधीन अपराध गठित नहीं करेगा।

Kavita Chandrakant Lakhani v. State of Maharashtra and anr.
Judgment dated 24.04.2018 passed by the Supreme Court in Criminal Appeal No. 459 of 2016, reported in AIR 2018 SC 2099

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137. INDIAN PENAL CODE, 1860 – Sections 420, 467, 468, 471, 474 and 120-B

Private complaint – Dispute of civil nature – Applicants purchased property through registered sale deed from title holder – Complainant/Respondent filed complaint against applicant claiming possession on basis of pending suit of specific performance of contract on basis of oral agreement – Held, there is no element of criminality or forgery or fraud in complaint – The allegations in complaint are vague which do not disclose any criminal offence – Dispute is primarily of a civil nature – Hence, complaint quashed.

भारतीय दण्ड संहिता**, 1860 -** धाराएं **420, 467, 468, 471, 474** एवं **120-**ख

प्राइवेट परिवाद - सिविल प्रकृति का विवाद - आवेदकगण द्वारा स्वामी से पंजीकृत विक्रय पत्र के माध्यम से संपत्ति क्रय की गई - परिवादी/प्रत्यर्थी द्वारा मौखिक करार के आधार पर प्रस्तुत संविदा के विनिर्दिष्ट पालन के वाद के आधार पर कब्जा दर्शाते हुए आवेदकगण के विरूद्ध परिवाद प्रस्तुत किया गया - अभिनिर्धारित, परिवाद में आपराधिकता या कूटरचना या धोखाधड़ी के कोई तत्व नहीं - परिवाद अभिकथन अस्पष्ट हैं जो कोई दाण्डिक अपराध का गठन होना प्रकट नहीं करते - विवाद प्रथमतया सिविल प्रकृति का है - अतः, परिवाद अभिखंडित किया गया।

Vishnu Shastri and ors. v. Deepak Suryavanshi and ors.

Order dated 04.11.2015 passed by the High Court of Madhya Pradesh (Indore Bench) in M.Cr.C. No. 1366 of 2015, reported in ILR (2016) MP 3158

Relevant extracts from the order:

In the present case it is not the case of the respondent No.1, that a registered sale deed was executed in his favour in respect of the property in question, on the contrary he has filed a suit for specific performance of contract and the same is still pending. It is an undisputed fact that late Maharani Mrunalini Devi Puar was the exclusive owner of the property in question and during her lifetime through a sale deed she has sold the property to the present applicants. In the considered opinion of this Court unless and until a decree of specific performance of contract is granted to the plaintiff, he does not become a title holder of the property, that too unless and until the sale deed is executed in his favour. Mere pendency of a suit of specific performance of contract does not make a person to be the title holder of the property and, therefore, in the considered opinion of this Court complaint itself was a vague complaint and it was filed to place pressure upon the applicants, who are the bonafide purchasers.

X X X

In the present case, the dispute is primarily of civil nature and if there is any civil dispute between the parties the question of proceeding ahead against the applicants for alleged forgery and fraud as there is no element of criminality involved in the present case, does not arise.

X X X

Keeping in view the aforesaid, in the present case, even if there was some oral agreement between late Maharani Mrunalini Devi Puar and the respondent No.1 on mere breach of contract by Maharani Mrunalini Devi Puar will not amount to cheating and the intention of the applicant was never dishonest and the ingredients of Sections 491 and 420 are not made out and, therefore, the complainant's proceedings and the FIR deserves to be quashed.

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138. LAND ACQUISITION ACT, 1894 – Sections 4, 6 and 23

Post-notification sale exemplar, whether to be considered for determination of market value of acquired land? Held, No – Rise in market value of land subsequent to notification under Section 4(1) of the Act cannot be taken into consideration. (*Kolkata Metropolitan Dev. Authority v. Gobinda Chandra Makal and anr, (2011) 9 SCC 207,* relied on)

भू-अर्जन अधिनियम**, 1894 -** धाराएं **4, 6** एवं **23**

क्या पोस्ट-नोटिफिकेशन (अधिसूचना पश्चात्) विक्रय नमूने को अर्जित भूमि के बाजार मूल्य निर्धारण हेतु विचार में लिया जा सकता है? अभिनिर्धारित, नहीं - अधिनियम की धारा 4(1) के अंतर्गत अधिसूचना के पश्चात् भूमि के बाजार मूल्य में हुई वृद्धि को विचार में नहीं लिया जा सकता है। (कोलकाता मैट्रोपाॅलिटिन डिवैलपमिंट अथाॅरिटी विरूद्ध गोविन्दा चन्द्रा मकला तथा अन्य, (2011) 9 एससीसी, 207 अवलंबित)

Maya Devi (Dead) through Legal Representatives and others v. State of Haryana and another

Judgment dated 25.01.2018 passed by the Supreme Court in Civil Appeal No. 873 of 2018, reported in (2018) 2 SCC 474

Relevant extracts from the judgment:

Sub-section (1) of Section 23 of the Act provides that the compensation to be awarded shall be determined by the reference Court, based upon the market value of the acquired land at the date of the publication of the notification under Section 4 (1). In ***Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal and anr., (2011) 9 SCC 207,*** it was held that the relevant date for determining the compensation is the date of publication of the notification under Section 4(1) of the Act in the Gazette. In para (34), it was held as under:-

> "34. One of the principles in regard to determination of the market value under Section 23 (1) is that the rise in market value after the publication of the notification under

Section 4 (1) of the Act should not be taken into account for the purpose of determination of market value. If the deeming definition of "publication of the notification" in the amended Section 4(1) is imported as the meaning of the said words in the first clause of Section 23(1), it will lead to anomalous results. The owners of the lands which are the subject-matter of the notification and neighbouring lands will come to know about the proposed acquisition, on the date of publication in the Gazette or in the newspapers. If the giving of public notice of the substance of the notification is delayed by two or three months, there may be several sale transactions in regard to nearby lands in that period, showing a spurt or hike in value in view of the development contemplated on account of the acquisition itself."

Applying the ratio of the above decision, we are of the view that the post notification instances cannot be taken into consideration for determining the compensation of the acquired land.

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139. LAND ACQUISITION ACT, 1894 – Section 23

Assessment of compensation – Factors, considerations and mode – Explained.

(i) When "Belting System" for determining the fair market value of the acquired land can be applied? Held, "Belting system" is appropriate when different parcels of land with different survey numbers belonging to different owners and having different locations together comprising a large chunk of land and having a frontage abutting to highway/main road are acquired.

(ii) What factors should be taken into consideration while determining fair and reasonable market value of acquired land on the date of acquisition? Held –

(a) sale of the acquired land;

(b) in its absence, sale of neighboring lands possessing similar potentiality or fertility or other advantageous features;

(c) such sale must be a bonafide transaction and within a reasonable time from the date of notification;

(d) to ascertain bonafideness of transaction, judges are required to draw from their experience and normal human conduct.

(iii) What are the relevant considerations for determining the potentiality of land? Held –

(a) condition and situation of land;

(b) use to which it is put or reasonably capable of being put;

(c) whether it has any proximity to residential, commercial or industrial areas or institutions ;

(d) existing amenities such as water, electricity and possibility of their further extension;

(e) whether near about town is developing or has prospect of development.

भू-अर्जन अधिनियम**, 1894 -** धारा **23**

क्षतिपूर्ति का निर्धारण - कारण**,** विचार और प्रणाली - समझाई गई

(i) अर्जित भूमि का न्यायसंगत बाजार मूल्य निर्धारित करने के लिए ''बैल्टिंग सिस्टम'' कब उपयोग किया जा सकता है? अभिनिर्धारित - जब भिन्न भूस्वामियों के विभिन्न खसरा नंबरों के विभिन्न स्थानों पर स्थित भूमि के विभिन्न खण्डों को, जो मिलाकर एक बड़ा भूमि का टुकड़ा बनाते हैं और जिसका अग्रभाग हाईवे/मुख्य सड़क से लगा हुआ है, अर्जित की जाती हैं, तब ''बैल्टिंग सिस्टम'' उपयुक्त है।

(ii) अर्जन की तिथि पर अर्जित भूमि का न्यायसंगत व उचित बाजार मूल्य निर्धारित करने के लिए किन कारकों पर विचार किया जाना चाहिए? अभिनिर्धारित -

(a) अर्जित भूमि का विक्रय;

(b) इसकी अनुपलब्धता में, आसपास की भूमियों, जिनकी समान क्षमता या उर्वरता या अन्य उपयोगी लक्षण हों, का विक्रय;

(c) ऐसा विक्रय सद्भाविक संव्यवहार हो तथा अधिसूचना की दिनांक से युक्तियुक्त समय के अंदर का हो;

(d) न्यायाधीशों को स्वयं के अनुभव व सामान्य मानवीय आचरण से संव्यवहार की सद्भाविकता को परखना चाहिए।

(iii) भूमि की संभाव्यता निर्धारित करने के लिए क्या सुसंगत कारक हैं? अभिनिर्धारित -

(a) भूमि की अवस्था व स्थिति;

(b) उसे किस उपयोग में लिया गया है या युक्तियुक्त रूप से लिया जा सकता है;

(c) क्या उसकी रहवासी, व्यावसायिक या औद्योगिक क्षेत्रों या संस्थानों से निकटता है;

(d) पानी, बिजली जैसी मौजूदा सुविधाएं तथा उनकी भविष्य में विस्तार की संभावना;

(e) क्या आसपास कोई नगर विकसित हो रहा है या विकसित होने की संभावना है।

Bijender and others v. State of Haryana and another

Judgment dated 27.10.2017 passed by the Supreme Court in Civil Appeal No. 2846 of 2017, reported in AIR 2017 SC 5811

Relevant extracts from the judgment:

Coming first to the question as to whether the Courts below were justified in applying the "Belting System" for determining the market rates of the acquired land in question?

We are of the considered opinion that keeping in view the nature, extent, size, surrounding and location of the acquired land, the Courts below were justified in applying Belting System for determining the market rate of the acquired land.

One cannot dispute that the Belting System is a judicially accepted method for determining the fair market value of the acquired land. It is applied in appropriate cases when different parcels of lands with different survey numbers belonging to different owners and having different locations are acquired which put together comprises of a large chunk of land. Such chunk cannot be taken as a compact block.

The acquired land having a frontage abutting the highway/main road always has a better value as compared to the land, which is away from the highway/main road. Indeed, farther the land from the highway/main road, lesser the value of such land. In such a situation, where large pieces of land having different locations are acquired, Belting System is considered apposite for determining the market value of the lands. (see - ***Union of India and ors. v. Mangatu Ram and ors., AIR 1997 SC 2704*** and ***Andhra Pradesh Industrial Infrastructure Corporation Limited v. G. Mohan Reddy and ors., (2010) 15 SCC 412***.

In Belting System, the acquired land is usually divided in two or three belts depending upon the facts of each case. The market value of the front belt abutting the main road is taken to fetch maximum value whereas the second belt fetches two third or so of the rate determined in relation to the first belt and the third belt, if considered proper to carve out, fetches half or so of the maximum. It is again depending upon facts of each case.

X X X

We are of the considered opinion that the Collector was justified in applying the Belting System to the acquired land in question. Since the acquired land was a large chunk of land having its frontage abutting the roadside, the Belting System was rightly applied to the acquired land for determination of its fair market rate.

X X X

Similarly, this Court has consistently held on the question as to what is fair and reasonable market value of any acquired land on the date of its acquisition. It is held that such a question is always a question of fact and its answer depends on the nature of evidence, circumstances and probabilities appearing in each case.

It is held that one of the guiding factors in such cases is the conduct of a hypothetical willing vendor, who would offer the land and a willing purchaser in normal human conduct, would be willing to buy the land as a prudent man in normal market condition on the date of the notification under Section 4(1) of the Act but not an anxious buyer dealing at arm's length nor facade or fictitious sales brought about in quick succession or otherwise to inflate the market value.

It is held that when the Courts are called upon to fix the market value of the land in compulsory acquisition, one of the types of evidence of the value of the property is the sale of the acquired land to which the claimant is a party and in its absence, the sale of the neighboring lands.

It is held that the transactions relating to acquired land of recent dates or in the neighborhood lands that possessed of similar potentiality or fertility or other advantageous features are considered to be relevant piece of evidence.

It is held that in proof of the sale transactions, the relationship of the parties to the transactions, the market conditions, the terms of the sale and the date of the sale are to be looked into. These features need to be established by examining either the vendor or vendee and if they are not available, the attesting witnesses who have personal knowledge of the transaction etc. The original or certified copies of the sale deeds are required to be tendered in evidence to prove such facts. One of the underlying principles to fix a fair market value with reference to comparable sale is to reduce the element of speculation.

It is held that in comparable sale, the features are (1) it must be within a reasonable time of the date of the notification (2) it should be a bona fide transaction (3) it should be a sale of the land acquired or land adjacent to the land acquired and (4) it should possess similar advantages.

These factors should be established by adducing material evidence by examining the parties to the sale or persons having personal knowledge of the sale transactions. The proof thereof focuses on the fact whether the transactions relied on are genuine and bona fide transactions or not.

It is further held that it is the paramount duty of the Courts of facts to subject the evidence to close scrutiny with a view to objectively assess the evidence tendered by the parties on proper considerations thereof in its correct perspective to arrive at a reasonable market value. The attending facts and circumstances in each case always furnish guidance to arrive at the market value of the acquired land. The neighborhood lands possessed of similar

potentialities or same advantageous features/circumstances available in each case are also to be taken into account.

Indeed, it is held that the object of the assessment of the evidence is to enable the Courts to arrive at a fair and reasonable market value of the lands and in that process, sometimes the Courts are required to trench on the border of the guesswork but mechanical assessment has to be eschewed.

It is also held that Judges are required to draw from their experience and the normal human conduct of the parties as to which transaction is bona fide and genuine sale transaction because that is one of the guiding factors in evaluating the evidence.

It is also held that the amount awarded by the Land Acquisition Collector forms an offer and that it is for the landowners to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value and the amount offered by the Land Acquisition Collector is inadequate and that he proceeded on wrong principle. (See – ***Periyar and Pareekanni Rubbers Ltd. v. State of Kerala, AIR 1990 SC 2192***.

X X X

This Court also examined the question as to how the Courts should judge the potentiality of the acquired land and what are the relevant consideration, which should be taken into consideration for deciding the potentiality of the land.

It is held that potentiality means capacity or possibility for changing or developing into state of actuality. The question as to whether the land has a potential value or not is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and whether it has any proximity to residential, commercial or industrial areas or institutions. The existing amenities such as water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development need to be taken into consideration.

It is also held that the value of the smaller plots, which is always on the higher side, is usually not taken into consideration for determining the large block of the land. One of the reasons being that the substantial area of the large block is used for development of sites like laying out the roads, drains sewers, water and electricity lines and several civic amenities and to provide these facilities, lot of time is consumed. The deduction is, therefore, made, which ranges from 20% to 50% or in appropriate cases even more. (See - ***Atma Singh (Dead) Thr. L.Rs. and ors. v. State of Haryana and anr., AIR 2008 SC 709***.)

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140. MOTOR VEHICLES ACT, 1988 – Section 166

(i) Assessment of compensation – In cases of permanent or temporary disability – Principles reiterated.

(ii) Future prospects – Benefit is also available to self-employed individuals.

(iii) A victim who has lost both his hands in accident and is unable to eat and visit the toilet without assistance of attendant – Held, disability is total (100%).

मोटरयान अधिनियम**, 1988 -** धारा **166**

(i) प्रतिकर का निर्धारण - स्थायी अथवा अस्थायी निःशक्तता के मामलों में - सिद्धांत पुनर्रुद्धरित किये गये।

(ii) भविष्यवर्ती संभावनायें - लाभ स्वयं के रोजगार में संलिप्त व्यक्तियों को भी उपलब्ध है।

(iii) ऐसा पीड़ित व्यक्ति जो अपने दोनों हाथ दुर्घटना में खो चुका हो और जो किसी सहायक के बिना भोजन करने एवं शौचालय जाने में असमर्थ है - अभिनिर्धारित, वहां पूर्ण निर्योग्यता (100 प्रतिशत) है।

Jagdish v. Mohan and others

Judgment dated 06.03.2018 passed by the Supreme Court in Civil Appeal No. 2217 of 2018, reported in AIR 2018 SC 1347

Relevant extracts from the judgment:

In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

(i) Pain, suffering and trauma resulting from the accident;

(ii) Loss of income including future income;

(iii) The inability of the victim to lead a normal life together with its amenities;

(iv) Medical expenses including those that the victim may be required to undertake in future; and

(v) Loss of expectation of life.

In ***Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd., 2011 (12) SCALE 658,*** this Court held:

> "The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment,

but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

In ***K Suresh v. New India Assurance Company Ltd., (2012) 12 SCC 274,*** this Court adverted to the earlier judgments in ***Ramesh Chandra v. Randhir Singh, (1990) 3 SCC 723,*** and ***B. Kothandapani v. Tamil Nadu State Transport Corporation Limited, (2011) 6 SCC 420.*** The Court held that compensation can be granted for disability as well as for loss of future earnings for the first head relates to the impairment of a person's capacity while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

In ***Govind Yadav v. New India Insurance Company Limited, (2011) 10 SCC 683*** this Court adverted to the earlier decisions in ***R D Hattangadi v. Pest Control (India) (Pvt) Ltd., (1995) 1 SCC 551, Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka, (2009) 6 SCC 1, Reshma Kumari v. Madan Mohan, (2009) 13 SCC 422, Arvind Kumar Mishra v. New India Assurance Company Limited, (2010) 10 SCC 254,*** and ***Raj Kumar v Ajay Kumar, (2011) 1 SCC 343,*** and held thus:

"18. In our view, the principles laid down in ***Arvind Kumar Mishra v. New India Assurance Co. Ltd.*** (supra) and ***Raj Kumar v. Ajay Kumar*** (supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

These principles were reiterated in a judgment of this Court in ***Subulaxmi v. MD Tamil Nadu State Transport Corporation,*** Civil Appeal No. 7750 of 2012, decided on 1st November 2012 delivered by one of us, Justice Dipak Misra (as the learned Chief Justice, then was).

Having regard to these principles, it would be now appropriate to assess the case of the appellant for enhancement of compensation. The accident took place on 24th November 2011. The appellant was a skilled carpenter and self-employed. The claim of the appellant that his earnings were ` 6,000/- per month cannot be discarded. This claim cannot be regarded as being unreasonable or contrary to a realistic assessment of the situation on the date of the accident. In the judgment of the Constitution Bench in ***National Insurance Company Limited v. Pranay Sethi, (2017) 13 SCALE 12,*** this Court has held that the benefit of future

prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40 per cent of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the present case, the appellant would be entitled to an enhancement of ` 2400/- towards loss of future prospects.

In making the computation in the present case, the Court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete Civil Appeal No.7750 of 2012, decided on 1st November 2012 deprivation of the ability to earn. Nothing – at least in the facts of this case – can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.

The Tribunal has noted that the appellant is unable to even eat or to attend to a visit to the toilet without the assistance of an attendant. In this background, it would be a denial of justice to compute the disability at 90 per cent. The disability is indeed total.

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141. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 142

Condonation of delay – Application for condonation of delay cannot be entertained after taking cognizance of the complaint – Showing of sufficient cause for not making the complaint within prescribed period is pre-condition for taking cognizance of complaint.

परक्राम्य लिखत अधिनियम**, 1881 -** धाराएं **138** एवं **142**

विलंब का उपमर्षण - विलंब के उपमर्षण के आवेदन पर परिवाद पर संज्ञान लेने के पश्चात् सुनवाई नहीं की जा सकती - विहित अवधि में परिवाद प्रस्तुत न करने का पर्याप्त कारण दर्शित करना परिवाद पर संज्ञान लेने की पूर्ववर्ती शर्त है।

Manav Sharma v. Umashankar Tiwari

Order dated 08.09.2015 passed by the High Court of Madhya Pradesh (Gwalior Bench) in M.Cr.C. No. 1354 of 2012, reported in ILR 2016 MP 3154

Relevant extracts from the order:

Admittedly, when the Court below took cognizance on the complaint and issued notices to the other side, the application for condonation of delay under Section 142 was not filed. It was filed almost at the stage of final hearing. A simple reading of proviso to Section 142 (b) shows that the Court can take cognizance of a complaint provided the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. Thus, the complainant needs to satisfy the Court by explaining the delay before cognizance is taken. Showing of sufficient cause for not making a complaint within prescribed period is precondition of taking cognizance of a complaint. I find support in my view from the judgement of Madras High Court in the case of ***S. Janki v. R. Thiagarajan (Cri. OP No. 12167/2005 and Cr.MP.No. 4089/2005, decided on 20.7.2009***). In the said case, it is held that Section 142 is a substantive provision and complaint being filed beyond the period of limitation, cannot be entertained by allowing the respondent to file an application after cognizance has been taken by the Magistrate. That being the position, cognizance taken by Judicial Magistrate is without any sanction of law and, therefore, same must be quashed and set aside.

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The Apex Court in ***U.P.Pollution Control Board v. M/s Mode Distilleries and others, (1987) 3 SCC 684,*** opined that infirmity which could easily be removed by having the matter remitted back to the Magistrate to call upon the appellant to make a formal application, the permission to this extent can be granted, otherwise it would be a travesty of justice to defeat the prosecution on technical grounds.

In ***Haryana State Cooperative Supply and Marketing Federation Ltd., v. Jayam Textiles and another, (2014) 4 SCC 704,*** the Apex Court considered various provisions of NI Act and opined that procedural defects and irregularities which are curable should not be allowed to defeat substantive right or to cause injustice. The procedure, a handmaid to justice, should never be made a tool to deny justice or perpetuate injustice.

In view of aforesaid, in my view, the entire complaint cannot be dismissed. Liberty needs to be given to the complainany to file application under Section 142 of NI Act and satisfy the Court.

Resultantly, the proceedings of Court below up to the stage of taking cognizance of complaint are set aside. Respondent is given liberty to file the application under Section 142 of NI Act. The Court below may decide that application in accordance with law.

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142. PREVENTION OF CORRUPTION ACT, 1988 – Section 13 (1) (d)
CRIMINAL PROCEDURE CODE, 1973 – Section 228

(i) Procedure to be adopted by Special Judge under PC Act, where prosecution under PC Act is terminated – Prosecution case involving offence under PC Act and IPC – Offence under PC Act is terminated due to subsequent quashing of prosecution sanction under section 19 by the High Court – Special Judge can neither transfer the case under section 228 (1)(a) Cr.P.C. nor terminate the proceedings by discharge – Remedy available to the Special Judge under such situation is to address to the High Court for necessary order – The High Court while exercising its inherent power under section 482 Cr.P.C. can direct the Special Judge to return the complaint to the prosecution agency with direction to present before the proper court having jurisdiction.

(ii) Whether trial as regard to offences in IPC shall be terminated, where prosecution under PC Act is terminated? Held, No – Once cognizance is taken as regard to various offences, including offences under the PC Act, trial as regard to IPC offences will have to proceed before the competent court – It cannot be said that prosecution in respect to offences under IPC is terminated once the prosecution under the PC Act stands barred.

भ्रष्टाचार निवारण अधिनियम, **1988 -** धारा **13 (1) (**घ)

दण्ड प्रक्रिया संहिता, **1973 -** धारा **228**

(i) विशेष न्यायाधीश द्वारा भ्रष्टाचार निवारण के मामलों में अनुसरित प्रक्रिया जहाँ भ्रष्टाचार निवारण अधिनियम के अधीन अभियोजन समाप्त हो गया है - भ्रष्टाचार निवारण अधिनियम एवं भारतीय दण्ड संहिता के अधीन अपराध को संलिप्त करते हुए अभियोजन का मामला - धारा 19 के अंतर्गत अभियोजन मंजूरी के पश्चात्वर्ती अभिखण्डन के कारण उच्च न्यायालय द्वारा भ्रष्टाचार निवारण अधिनियम के अधीन अभियोजन समाप्त किया गया - विशेष न्यायाधीश दण्ड प्रक्रिया संहिता की धारा 228 (1)(क) के अंतर्गत न तो मामले को अंतरित कर सकता है और न ही उन्मोचित करते हुए कार्यवाहियों को समाप्त कर सकता है - इस स्थिति में विशेष न्यायाधीश के पास उपचार यह है कि वह उच्च न्यायालय को आवश्यक आदेश हेतु संबोधित करें - उच्च न्यायालय दण्ड प्रक्रिया संहिता की धारा 482 के अंतर्गत अपनी अंतर्निहित शक्तियों का प्रयोग करते हुए विशेष न्यायाधीश को अभियोजन शाखा को शिकायत वापस करने का निर्देश दे सकता है और निर्देशित कर सकता है कि वह क्षेत्राधिकार रखने वाले उचित न्यायालय के समक्ष प्रस्तुत करे।

(ii) क्या भारतीय दण्ड संहिता से संबंधित अपराध का विचारण समाप्त हो जायेगा जहाँ भ्रष्टाचार निवारण अधिनियम के अंतर्गत अभियोजन समाप्त हो गया है? अभिनिर्धारित, नहीं - जहाँ भ्रष्टाचार निवारण अधिनियम के अधीन अपराधों को सम्मिलित करते हुए विभिन्न अपराधों के संबंधों में एक बार संज्ञान लिया जा चुका है तो भारतीय दण्ड संहिता से संबंधित अपराधों का विचारण सक्षम न्यायालय में जारी रहेगा - यह नहीं कहा जा सकता कि भ्रष्टाचार निवारण अधिनियम के अंतर्गत एक बार अभियोजन वर्जित हो गया तो भारतीय दण्ड संहिता के संदर्भ में अपराधों का अभियोजन समाप्त हो गया है।

C.K. Sathyanathan and anr.v. State of Kerala and anr.

Order dated 12.04.2017 passed by High Court of Kerala in Criminal MC No. 7082 of 2015, reported in 2018 (1) Crimes 372

Relevant extracts from the Order:

Cognizance in criminal procedure is the act of application of mind, and the formation of a judicious decision on such application of mind, to proceed further for necessary steps towards prosecution on the complaint or the police report. In this case, the learned Trial Judge applied his mind, and also decided judiciously to act on the final report submitted by the CBI, for prosecution on the basis of the allegations made by the CBI in the final report, constituting the various offences, inclusive of the IPC offences. Thus, the act of cognizance taken by the Court below was not merely as regards the offences under the PC Act. When the learned Trial Judge decided to take cognizance on the final report as regards the PC Act offences, he also decided to take cognizance for prosecution as regards the IPC offences. Just because a prosecution is not possible under the PC Act, or that it is barred under the law, the accused cannot be mechanically absolved of all liabilities under the criminal law, and they cannot be let free unconditionally without any action, as regards the other offences alleged to have been committed by them. The Code of Criminal Procedure is applicable for trial in Special Courts. So, once the court has taken cognizance of the IPC offences, the trial will have to proceed before the competent forum.

In this case, the impugned order does not show that it is an order passed under Section 228(1)(a) Cr.P.C. The request of the accused for discharge was practically disallowed, and the accused were directed to face prosecution before the Chief Judicial Magistrate Court, Ernakulam. Now, the question is what procedure is actually possible in a case like this, when prosecution under the PC Act is barred, and trial as regards the PC Act offences is terminated. The answer is contained in the earlier discussion as regards cognizance that once cognizance is taken as regards various offences, including the PC Act offences, trial as regards the non PC Act offences will have to proceed before the competent court. It cannot be said that such a prosecution as regards the IPC offences is not possible anywhere once the prosecution under the PC Act stands barred.

Now, the question is what procedure is possible. This is not a case where the case can be transferred by the Special Court under Section 228(1)(a) Cr.P.C. The special Court has no independent jurisdiction to try the offences under the Indian Penal Code. A Court of Session can transfer a case under Section 228(1)(a) Cr.P.C. because, a Court of Session is authorised under the law to try any offence along with a sessions offence. When the procedure under Section 228(1)(a) Cr.P.C. is not possible, and when no other specific provision is there in the Code of Criminal Procedure, or the PC Act to deal with the given situation, this Court will have to exercise the inherent jurisdiction under Section 482 Cr.P.C. for the ends of justice. What is not possible, or what is barred is only the prosecution under the PC Act. A legitimate prosecution proceeding on the basis of a cognizance rightly taken by the Special Court in exercise of the powers available at that time, cannot be mechanically terminated. The trial Court cannot also exercise any discretionary power to find out a solution, in such a circumstance. The proper way must be to address the High Court for necessary orders. Here, even without such a reference, the matter is now before the High Court in this proceeding brought under Section 482 Cr.P.C. The only possible procedure, in the interest of justice, and to see that the accused are not let free, is to return the final report to the CBI for presentation before the proper court having jurisdiction to try the IPC offences. If the inherent jurisdiction under Section 482 Cr.P.C. is not exercised by the High Court in such a situation, an unpleasant situation of legal confusion would arise as to what procedure is possible, and where the accused will have to face trial for the IPC offences. This is a case where the trial Court cannot do anything. The trial Court cannot terminate the proceedings by discharge. The trial Court also cannot transfer the case under Section 228(1)(a) Cr.P.C.. The complaint cannot be returned under Section 201 Cr.P.C. also because that stage is over. Then the only alternative, or the only way out to resolve the situation is, that the High Court will have to exercise the inherent jurisdiction under Section 482 Cr.P.C., and direct the Court below to return the complaint to the prosecuting agency with direction to present it before the proper Court having jurisdiction.

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***143. PREVENTION OF CORRUPTION ACT, 1988 – Sections 13 (1) (d) (i) and 13 (1) (d) (ii)**

INDIAN PENAL CODE, 1860 – Sections 409, 420, 465, 468, 471 and 120-B

Charge – Factors to be considered– Public servants issuing notification without approval of Cabinet and facilitating wrongful gains to companies, causing huge loss to exchequer – Held, offence under Sections 120-B, 409, 420, 465, 468, 471 IPC not made out – Charges framed under Sections 13 (1) (d) (i) and 13 (1) (d) (ii) PC Act held to be proper.

भ्रष्टाचार निवारण अधिनियम**, 1988 -** धाराएं **13 (1) (**घ) **(i)** एवं **13 (1) (**घ) **(ii)**

भारतीय दंड संहिता**, 1860 -** धाराएं **409, 420, 465, 468, 471** एवं **120-**ख

आरोप - विचार योग्य कारक - लोक सेवकों द्वारा बिना कैबिनट की अनुमति के अधिसूचना जारी की गई तथा कंपनियों को अनुचित लाभ पहुंचाते हुए, राजकोष को भारी हानि पहुंचाई गई - अभिनिर्धारित, धाराएं 120-ख, 409, 420, 465, 468, 471 भा.द.वि. के अपराध नहीं बनते - धाराएं 13 (1) (घ) (i) एवं 13 (1) (घ) (ii) के अधीन आरोप विरचित किया जाना उचित अभिनिर्धारित किया गया।

Mauvin Godinho v. State of Goa

Judgment dated 17.01.2018 passed by the Supreme Court in Criminal Appeal No. 315 of 2011, reported in 2018 CriLJ 1717

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***144. PREVENTION OF MONEY LAUNDERING ACT, 2002 – Section 45**

Bail – Constitutional validity of twin conditions under Section 45 (1) – Held, twin conditions i.e. (i) Giving opportunity to Public Prosecutor to oppose bail application; and (ii) Satisfaction of Court as to existence of reasonable grounds to believe that accused is not guilty of offence alleged and not likely to commit any offence while on bail – Violation of Articles 14 and 21 of the Constitution, being arbitrary and providing a procedure which is not just and fair – Hence, Section 45 (1) insofar as it imposes these twin conditions for release on bail – Declared unconstitutional.

धन शोधन निवारण अधिनियम**, 2002 -** धारा **45**

जमानत - धारा 45 (1) की दो शर्तों की संवैधानिक वैधता - अभिनिर्धारित, दोनों शर्तें यथा (i) लोक अभियोजक को जमानत आवेदन का विरोध करने का अवसर प्रदान करना; तथा (ii) न्यायालय का समाधान कि यह विश्वास करने के समुचित आधार हैं कि अभियुक्त कथित अपराध का दोषी नहीं है और जमानत पर छोड़े जाने पर उसके द्वारा कोई अपराध किए जाने की संभावना नहीं है - यह शर्तें मनमानी होने और ऐसी प्रक्रिया प्रावधानित करने से, जो कि न्यायसंगत और ऋजु नहीं हैं, संविधान के अनुच्छेद 14 तथा 21 का उल्लंघन करती हैं - अतः, धारा 45 (1) जहां तक जमानत पर छोड़े जाने हेतु इन दो शर्तों को अधिरोपित करती है - असंवैधानिक घोषित।

Nikesh Tarachand Shah v. Union of India and anr.

Judgment dated 23.11.2017 passed by the Supreme Court in W.P. (Criminal) No. 67 of 2017, reported in AIR 2017 SC 5500 (Constitution Bench)

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145. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Section 35

Speedy trial – Many cases pending at evidence stage beyond one year – Section 35 (2) and intent of the legislature mandates completion of trial "as far as possible" within one year – Directions issued.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम**, 2012 -** धारा **35**

त्वरित विचारण - बहुत से मामले साक्ष्य प्रक्रम पर एक वर्ष से अधिक से लंबित - धारा 35 (2) तथा विधायिका का आशय, जहाँ तक संभाव्य हो, विचारण का एक वर्ष के भीतर पूर्ण होना आज्ञापक बनाते हैं - दिशा निर्देश जारी किये गये।

Alakh Alok Shrivastava v. Union of India and ors.

Judgment dated 01.05.2018 passed by the Supreme Court in Writ Petition (C) No. 76 of 2018, reported in AIR 2018 SC 2440

Relevant extracts from the judgment:

Keeping in view the protection of the children and the statutory scheme conceived under the POCSO Act, it is necessary to issue certain directions so that the legislative intent and the purpose are actually fructified at the ground level and it becomes possible to bridge the gap between the legislation remaining a mere parchment or blueprint of social change and its practice or implementation in true essence and spirit is achieved.

Mr. Srivastava has provided us a chart relating to the cases pending under the POCSO Act in all States except Andhra Pradesh, Telangana, Rajasthan and Jammu and Kashmir in respect of which the data is not available. We may take the example of two States, namely, Madhya Pradesh and Uttar Pradesh. The pendency of such cases in the State of Uttar Pradesh is approximately 30884 and in the State of Madhya Pradesh, approximately 10117.

It is submitted by Mr. Srivastava that in both the States, the cases are pending at the evidence stage beyond one year. We are absolutely conscious that Section 35 (2) of the Act says "as far as possible". Be that as it may, regard being had to the spirit of the Act, we think it appropriate to issue the following directions:-

(i) The High Courts shall ensure that the cases registered under the POCSO Act are tried and disposed of by the Special Courts and the presiding officers of the said Courts are sensitized in the matters of child protection and psychological response.

(ii) The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the POCSO Act.

(iii) The instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following

the procedure laid down in the POCSO Act and thus complete the trial in a time-bound manner or within a specific time frame under the Act.

(iv) The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act. The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.

(v) The Director General of Police or the officer of equivalent rank of the States shall constitute a Special Task Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial Courts.

(vi) Adequate steps shall be taken by the High Courts to provide child friendly atmosphere in the Special Courts keeping in view the provisions of the POCSO Act so that the spirit of the Act is observed.

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***146.RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 – Section 24**

Lapse of acquisition proceedings – Operation of judgment of Supreme Court in *Indore Development Authority v. Shailendra, AIR 2018 SC 824,* impliedly stayed – Matter reserved on question of hearing whether to refer it to a larger Bench or not – High Courts and other Benches of Supreme Court requested not to hear cases relating to interpretation of Section 24 till such decision is taken.

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्षिता का अधिकार अधिनियम, **2013 -** धारा **24**

अधिग्रहण की कार्यवाहियों का व्यपगत होना - उच्चतम न्यायालय द्वारा इन्दौर विकास प्राधिकरण विरुद्ध शैलन्द्र, ए.आई.आर. 2018 एस.सी. 824, में पारित निर्णय के क्रियान्वयन को विवक्षित रूप से रोका गया - प्रकरण इस प्रश्न पर सुनवाई हेतु रखा गया कि क्या इसे वृहद पीठ को सुनवाई हेतु प्रतिप्रेषित किया जाये - सभी उच्च न्यायालय एवं उच्चतम न्यायालय की अन्य पीठों से निवेदन किया गया कि इस मामले में निर्णय होने तक धारा 24 के निर्वचन से संबंधित मामलों की सुनवाई न करें।

State of Haryana v. M/s. G.D. Goenka Tourism Corporation Limited
Judgment dated 21.02.2018 passed by the Supreme Court in Civil Appeal No. 6235 of 2017, reported in AIR 2018 SC 1190

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147. SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Sections 13, 17 and 34

CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11

Bar on jurisdiction of Civil Court – Prohibition under Section 34 – It would also be in regard to "measures" provided under Section 13 (4) – It bars not only in respect of action taken but also action that may be taken later on by/before Tribunal – Aggrieved person can take recourse to Section 17.

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, **2002 -** धाराएं **13, 17** एवं **34**

सिविल प्रक्रिया संहिता**, 1908 -** आदेश **7** नियम **11**

सिविल न्यायालय के क्षेत्राधिकार का वर्जन - धारा 34 के अंर्तगत रोक - यह धारा 13 (4) में प्रावधानित ''उपाय'' के संबंध में भी होगा - यह वर्जन किये गये कार्य के संबंध में ही नहीं अपितु अधिकरण के द्वारा/समक्ष पश्चात् में किये जा सकने वाले कार्य के संबंध में भी है - पीड़ित व्यक्ति धारा 17 का अवलंब ले सकता है।

Indusind Bank Ltd. and anr. v. Smt. Sunita Gauli

Order dated 06.02.2018 passed by the High Court of Madhya Pradesh in Civil Revision No. 139 of 2012, reported in 2018 Law Suit (MP) 95

Relevant extracts from the order:

The Supreme Court considered the impact of Section 13 and 34 of the Act in the case of ***Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311***. In the said judgment, the Apex Court held that a full reading of Section 34 shows that the jurisdiction of the civil Court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken 'or' to be taken in pursuance of any power conferred under this Act'. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil Court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil Court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.

A Seven Judges Bench of Supreme Court in the case of ***Kamala Mills Ltd. v. State of Bombay, AIR 1965 (SC) 1942,*** has considered the issue- under what circumstances a suit of civil nature can be held to be barred by special statute.

It was held that for deciding the issue, the Court is to be very cautious about the words used in the statutory provisions on which the plea is rested, the scheme of relevant provision, their object and purpose. The issue became more important when the bar is pleaded by necessary implication and it becomes pertinent to inquire as to whether remedy is normally associated with actions in Civil Courts are prescribed by the said institution or not.

The judgment of ***Mardia Chemicals*** (supra) was again considered in catena of judgments. In ***Jagdish Singh v. Heeralal, (2014) 1 SCC 479,*** it was poignantly held that the opening portion of Section 34 clearly states that no civil Court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil Court. The civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

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The contention is based on Para 51 of the judgment of ***Mardia Chemicals*** (supra) wherein it was clarified that "to a very limited extent jurisdiction of Civil Court can also be invoked, where for example, the action of secured creditor is alleged to be fraudulent or their scheme may be so absurd and untenable, which may not require any probe whatsoever. Pertinently, this principle is applied by Delhi High Court in the case of ***Ritu Gupta and another v. Usha Dhand and others, 2013 SCC online Del. 4628, Ashok Kumar Raizada v. The Bank of Rajasthan and another, ILR (2014) 1 Delhi 356, Sadanand Properties Pvt. Ltd and others v. Punjab National Bank and others, 2015 SCC online Del. 7179,*** and ***Ram Prakash Mehra v. Union Bank of India and others, 2011 SCC online Del. 4542.*** In the case of ***Ritu Gupta 2013 SCC online Del 4628,*** (supra) the allegation of fraud made in the plaint averments were not disputed by the defendant-Bank and in this fact situation, it was held that suit was maintainable. In the instant case, no such admission is made by the secured creditor. In ***Ashok Kumar Raizada, 2014 (1) ILR (Del) 356,*** (supra) also the Court recorded that the plaintiff has admittedly nothing to do with defendant No.1 and 2 (Para 14). In ***Sadanand Properties, 2015 SCC online Del 7179,*** (supra) also the principle laid down in ***Mardia Chemicals*** (supra) was applied where the claim of Bank was held to be so absurd and untenable, that the jurisdiction of Civil Court

cannot be excluded. In ***Ram Prakash Mehra, 2011 SCC online Del 4542,*** (supra) also the same principle flowing from ***Mardia Chemicals*** (supra) were pressed into service. In ***Mardia Chemicals,*** (supra) it was held that where claim is so absurd and untenable, which may not require any probe whatsoever, suit may be maintainable. In the instant case, the parties are at loggerheads on the factual aspects and there is no clinching material as per plaint averments and documents to establish that the respondent No.1/plaintiff has nothing to do with the transaction. Thus, the aforesaid judgments are distinguishable and are of no help to the plaintiff in the present case.

A Division Bench of this Court in ***Manoj Kumar Jain v. Corporation-Bank, 2008 (1) MPLJ 619,*** considered the similar question. In the said case, the plaintiff filed the suit for declaration that they are the absolute owners in possession of the house situated at Gol Bazaar, Jabalpur. The Bank filed an application under Order 7 Rule 11 of the CPC by contending that the suit is not maintainable because of bar mentioned in Section 34 of the Act. The learned District Judge upheld the objection of Bank, allowed the application under Order 7 Rule 11 of the CPC and consequently dismissed the suit. The Division Bench after considering the judgment of ***Mardia Chemicals***, (supra) opined that Section 34 is normally attracted. Resultantly, the appeal was dismissed and order passed under Order 7 Rule 11 of the CPC was affirmed.

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148. SPECIFIC RELIEF ACT, 1963 – Sections 16, 20 and 23

Specific performanc of contract – Agreement to sale of immovable property – Agreement only mentioning amount to be paid as damages in the event of its breach by either party – Omitting to make specific provision for specific performance – Held, liquidation (mentioning of certain amount) of damages in agreement is no bar to specific performance – Further, mere omission of a statement in agreement that in the event of breach, specific performance can be sought, does not bar specific performance of such contract – Even in the absence of such a specific provision, in the event of breach, the aggrieved party will be entitled to seek/obtain specific performance. (*Man Kaur (Dead) by Lrs v. Hartar Singh Sangha, (2010) 10 SCC 512* relied on)

विनिर्दिष्ट अनुतोष अधिनियम, **1963 -** धाराएं **16, 20** एवं **23**

संविदा का विनिर्दिष्ट अनुपालन - अचल संपत्ति विक्रय करने का करार - करार में, किसी भी पक्ष द्वारा करार भंग करने की दशा में, केवल क्षतिपूर्ति के रूप में अदा की जाने वाली राशि का उल्लेख - विनिर्दिष्ट अनुपालन हेतु स्पष्ट प्रावधान का उल्लेख नहीं - अभिनिर्धारित, करार में क्षति का परिसमापन (कुछ राशि का उल्लेख) होना विनिर्दिष्ट अनुपालन में बाधा नहीं - आगे यह भी कि, ऐसे करार में केवल इस कथन

के उल्लेख के अभाव में कि करार भंग की दशा में विनिर्दिष्ट अनुपालन प्राप्त किया जा सकता है, ऐसे करार के विनिर्दिष्ट अनुपालन को बाधित नहीं करता है - ऐसे स्पष्ट प्रावधान के अभाव में भी, करार भंग की दशा में, व्यथित पक्षकार विनिर्दिष्ट अनुपालन मांगने/प्राप्त करने का अधिकारी होगा। (मान कौर (मृत) द्वारा विधिक प्रतिनिधि विरूद्ध हरतार सिंह सांघा, (2010) 10 एस सी सी 512 अवलंबित)

Kamal Kant Jain v. Surinder Singh (D) Thr L.Rs.

Judgment dated 27.10.2017 passed by the Supreme Court in Civil Appeal No. 17321 of 2017, reported in AIR 2017 SC 5592

Relevant extracts from the judgment:

The legislature, in the new Section 23, explicitly provided that the mere naming of a certain amount which may sound in damages is not good enough by itself to non-suit a person seeking specific performance unless it is clear on the facts that the said sum was named in lieu of specific performance. This is normally explicitly spelled out in the agreement itself.

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In a fairly recent judgment, in ***Man Kaur (Dead) by Lrs. v. Hartar Singh Sangha, (2010) 10 SCC 512,*** after referring to some of the earlier precedents, the law is stated thus:

> "It is thus clear that for a plaintiff to seek specific performance of a contract of sale relating to immovable property, and for a court to grant such specific performance, it is not necessary that the contract should contain a specific provision that in the event of breach, the aggrieved party will be entitled to specific performance. The Act makes it clear that if the legal requirements for seeking specific enforcement of a contract are made out, specific performance could be enforced as provided in the Act even in the absence of a specific term for specific performance in the contract. It is evident from section 23 of the Act that even where the agreement of sale contains only a provision for payment of damages or liquidated damages in case of breach and does not contain any provision for specific performance, the party in breach cannot contend that in view of specific provision for payment of damages, and in the absence of a provision for specific performance, the Court cannot grant specific performance. But where the provision naming an amount to be paid in case of breach is intended to give to the party in default an option to pay money in lieu of specific performance, then specific performance may not be permissible.

We may attempt to clarify the position by the following illustrations (not exhaustive):

(A). The agreement of sale provides that in the event of breach by the vendor, the purchaser shall be entitled to an amount equivalent to the earnest money as damages. The agreement is silent as to specific performance. In such a case, the agreement indicates that the sum was named only for the purpose of securing performance of the contract. Even if there is no provision in the contract for specific performance, the Court can direct specific performance by the vendor, if breach is established. But the Court has the option, as per Section 21 of the Act, to award damages, if it comes to the conclusion that it is not a fit case for granting specific performance.

(B). The agreement provides that in the event of the vendor failing to execute a sale deed, the purchaser will not be entitled for specific performance but will only be entitled for return of the earnest money and/ or payment of a sum named as liquidated damages. As the intention of the parties to bar specific performance of the contract and provide only for damages in the event of breach, is clearly expressed, the Court may not grant specific performance, but can award liquidated damages and refund of earnest money.

(C). The agreement of sale provides that in the event of breach by either party the purchaser will be entitled to specific performance, but the party in breach will have the option, instead of performing the contract, to pay a named amount as liquidated damages to the aggrieved party and on such payment, the aggrieved party shall not be entitled to specific performance. In such a case, the purchaser will not be entitled to specific performance, as the terms of the contract give the party in default an option of paying money in lieu of specific performance.

In this case, Clauses 11 and 12 of the agreement deal with consequences of breach. They are extracted below :

“11. That in case the seller fails to perform his part of contract of sale according to the terms and conditions agreed upon in this agreement to sell in matter of

execution of the sale deed and its registration, on the receipt of the balance sale price, he shall be liable to pay double the amount of the earnest money received by her from the purchaser.

12. That in case the purchaser fails to get the transaction of the sale completed by means of execution and registration of sale deed according to the terms of this agreement for sale, he shall forfeit his earnest money of ` 10,000/- advanced by the purchaser to the said seller."

The agreement does not specifically provide for specific performance. Nor does it bar specific performance. It provides for payment of damages in the event of breach by either party. The provision for damages in the agreement is not intended to provide the vendor an option of paying money in lieu of specific performance. Therefore, we are of the view that plaintiff will be entitled to seek specific performance (even in the absence of a specific provision therefor) subject to his proving breach by the defendant and that he was ready and willing to perform his obligation under the contract, in terms of the contract."

At this stage it is necessary to point out that the impugned judgement referred to and allowed only in ***Dadarao and anr v. Ramrao & ors, 1999 AIR SCW 4818,*** which we have seen was stated to be ***per incurium*** atleast in two other judgements of this Court, apart from being distinguishable on facts in that the relevant clause of the agreement in ***Dadarao's case*** (supra) contained a specific clause to the effect that in the event of breach, only damages would be paid and no specific performance of the contract could be claimed. This is, therefore, the basic infirmity in the impugned judgement under appeal. Apart from that, as is clear from the judgement in ***Man Kaur's case*** (supra), paragraph 6 of the agreement to sell refers to paragraph 6 of the authorisation letter and makes it clear that the refund of the amount of earnest money with an equal amount as penalty is only to secure the performance of the contract and cannot be stated to be a sum in lieu of specific performance. The mere omission of a statement in the said clause that specific performance ought to be allowed would, therefore, be of no consequence, as has been held in ***Man Kaur's case*** (supra). It is clear that in both para 6 of the authorisation letter (which explicitly referred to specific performance) and para 6 of the agreement to sell (which omitted reference to specific performance) earnest money with equal amount as penalty/damages remains the same, making it clear that there is no change in the position that this amount is only to secure performance of the contract, and is not in lieu of specific performance.

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149. SPECIFIC RELIEF ACT, 1963 – Section 41 (b)

CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 and 2

Anti-suit injunction, grant of – Injunction to restrain divorce proceedings pending before the Foreign Court – Ground of similar case pending before the Family Court in India – Held, although Section 41 (b) does not apply where the other Court is Foreign Court, but for anti-suit injunction, grave injustice must be established – Plaintiff must show that proceedings in Foreign Court will be oppressive or vexatious – Absence of such factors – Anti-suit injunction refused.

विनिर्दिष्ट अनुतोष अधिनियम**, 1963 -** धारा **41 (**ख)

सिविल प्रक्रिया संहिता**, 1908 -** आदेश **39** नियम **1** एवं **2**

वाद विरोधी व्यादेश का अनुदत्त किया जाना - विदेशी न्यायालय के समक्ष लंबित विवाह विच्छेद की कार्यवाहियों को रोकने हेतु व्यादेश - भारत में कुटुम्ब न्यायालय के समक्ष समान प्रकार का मामला होने का आधार - अभिनिर्धारित, यद्यपि धारा 41 (ख) वहां लागू नहीं होती है जहां कि अन्य न्यायालय विदेशी न्यायालय है, परन्तु वाद विरोधी व्यादेश हेतु, गंभीर अन्याय स्थापित किया जाना आवश्यक है - वादी द्वारा यह दर्शित करना आवश्यक है कि विदेशी न्यायालय के समक्ष कार्यवाहियाँ दमनकारी या तंग करने वाली होंगी - उक्त कारकों का अभाव - वाद विरोधी व्यादेश नामंजूर किया गया।

Dinesh Singh Thakur v. Sonal Thakur

Judgment dated 17.04.2018 passed by the Supreme Court in Civil Appeal No. 3878 of 2018, reported in AIR 2018 SC 2094

Relevant extracts from the judgment:

The appellant husband argued that Section 41 (b) is not applicable to the instant case, rather it is applicable only to those cases where question is regarding the injunction for proceedings in the Indian court. In support of this argument, learned senior counsel placed reliance on ***Oil and Natural Gas Commission v. Western Company of North America, (1987) 1 SCC 496,*** wherein this Court, while interpreting the provision of Section 41 (b) of the Specific Relief Act, 1963 has held as follows:-

> "18. This provision, in our opinion, will be attracted only in a fact-situation where an injunction is sought to restrain a party from instituting or prosecuting any action in a court in India which is either of coordinate jurisdiction or is higher to the court from which the injunction is sought in the hierarchy of Courts in India .."

Learned senior counsel for the appellant-husband further placed reliance on ***Modi Entertainment Network and Another v. WSG Cricket PTE Ltd, (2003) 4 SCC 341,*** wherein this Court while dealing with the matter laid down certain principles required to be taken into consideration by any Court while granting an anti-suit injunction. These principles are as under:-

(a) The defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court.

(b) If the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated and;

(c) The principle of comity-respect for the court in which the commencement or continuation of action/proceeding is sought to be restrained-must be borne in mind.

In Modi Entertainment Networks, this Court has reiterated this position by holding that the Courts in India like Court in England are Courts of law and equity. The principles governing the grant of anti-suit injunction being essentially an equitable relief; the Courts in India have the powers to issue anti-suit injunction to a party over whom it has personal jurisdiction in an appropriate case; this is because the Courts of equity exercise jurisdiction *in personam*; this power has to be exercised sparingly where such an injunction is sought and if not granted, it would amount to the defeat of ends of justice and injustice would be perpetuated.

In ***Vivek Rai Gupta v. Niyati Gupta, Civil Appeal No. 1123 of 2006,*** decided on February 10, 2016, this Court has held as under:-

> "If the execution proceedings are filed by the respondent-wife for executing the aforesaid decree dated 18.09.2012 passed by the Court of Common Pleas, Cuyahoga Country, Ohio, USA against any other movable/immovable property in India it would be open to the appellant-husband to resist the said execution petition on any grounds available to him in law taking the position that such a decree is not executable."

Further, in ***Harmeeta Singh v. Rajat Taneja, 2003 (67) DRJ 58,*** the Delhi High Court considering the fact that the parties have lived together for a very short time in the United States of America had granted anti suit injunction.

Y. Narasimha Rao & others v. Y. Venkata Lakshmi and another, (1991) 3 SCC 451, this Court has held as under:-

> "From the aforesaid discussion the following rule can be deduced for recognising a foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign Court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i)

where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties."

Further, during the course of hearing, various documents such as pan card, Aadhar card of the respondent-wife, lease deed which was executed by her in 2015 etc., which are also placed on record, are sufficient to show that respondent-wife is ordinarily living in India. Further, as it appears from the proceedings recorded before the US Court that the respondent herself has admitted that the Family Court Gurgaon has jurisdiction in the given case. The evidence placed on record is sufficient enough to show that the respondent is amenable to the personal jurisdiction of Gurugram Family Court. Though the respondent-wife is amenable to the jurisdiction of Family Court, Gurgaon, there is nothing on record to hold that the other party will suffer grave injustice if the injunction is not granted. There is no dispute to the fact that both the parties are permanent citizens of U.S. Undisputedly, the Circuit Court, Florida, USA is also having the concurrent jurisdiction in the given case. The contention that the appellant-husband will suffer grave injustice if the proceedings are allowed to be continued in the Circuit Court, Florida USA doesn't stand to the ground as the appellant himself has been residing there after 2007 and the proceedings for grant of anti-suit injunction were initiated by him in India through another person by empowering him through a power of attorney to file and pursue the disputed litigation on his behalf. Further, there is nothing brought on record to show how the appellant-husband would suffer grave injustice if the injunction restraining the respondent-wife from pursuing the divorce petition in Florida, is not granted. Still further, even if the injunction is declined, it cannot be said that the ends of justice will be defeated and injustice will be perpetuated.

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150. TRANSFER OF PROPERTY ACT, 1882 – Section 53A

SPECIFIC RELIEF ACT, 1963 – Section 20

(i) Doctrine of part performance – Essential ingredients – Enunciated.

(ii) Specific performance of contract – Defendant alongwith other co-owners entered into agreement to sale with plaintiffs –

Possession of the entire land was also transferred to plaintiffs in pursuance of the agreement – Possession of plaintiffs over the suit property also proved by cogent evidence – Held, plaintiffs are entitled to the relief of specific performance of agreement – Mere possibility of injury to the interest of third party does not, by itself, disentitle the plaintiff from specific performance.

संपत्ति अंतरण अधिनियम**, 1882 -** धारा **53**क

विनिर्दिष्ट अनुतोष अधिनियम**, 1963 -** धारा **20**

(i) भागिक पालन का सिद्धांत- आवश्यक तत्व - व्यक्त किये गये।

(ii) संविदा का विनिर्दिष्ट अनुपालन - प्रतिवादी ने अन्य सह-स्वामियों के साथ मिलकर वादीगण से विक्रय अनुबंध किया था - अनुबंध के अनुपालन में संपूर्ण भूमि का आधिपत्य भी वादीगण को अंतरित किया गया - वादग्रस्त संपत्ति पर वादीगण का आधिपत्य निश्चयात्मक साक्ष्य से प्रमाणित भी किया गया - अभिनिर्धारित, वादीगण अनुबंध के विनिर्दिष्ट अनुपालन के अधिकारी हैं - मात्र तृतीय पक्ष के हित को क्षति की संभावना, अपने आप में, वादी को विनिर्दिष्ट अनुपालन के अनुतोष से वंचित नहीं करेगी।

Shivaji Yallappa Patil v. Ranajeet Appasaheb Patil

Judgment dated 16.04.2018 passed by the Supreme Court in Civil Appeal No. 5012 of 2008, reported in AIR 2018 SC 1961

Relevant extracts from the Judgment:

The following postulates are *sine qua non* for basing a claim on Section 53-A of the T.P. Act, 1882:

- There must be a contract to transfer for consideration any immovable property.
- The contract must be in writing signed by the transferor, or by someone on his behalf.
- The writing must be in such words from which the terms necessary to construe the transfer can be ascertained.
- The transferee must have in part performance of the contract, taken possession of the property, or of any part thereof.
- The transferee must have done some act in furtherance of the contract.
- The transferee must have performed or be willing to perform his part of the contract.

It is well settled law that Section 53-A of the TP Act confers no right on a party who was not willing to perform his part of the contract. A transferee has to prove that he was honestly ready and willing to perform his part under the contract.

In the present case, during the course of hearing, it is brought to our knowledge that both the trial court as well as the lower appellate court had proceeded to arrive at the conclusion that there was no delivery of possession in favour of the Respondent Nos. 1 and 2 herein as per the agreement to sell dated 28.05.1981 on the ground that there was no mention of delivery of possession. It is submitted that the said courts below had failed to appreciate the said judgment and decree dated 24.09.1987 of the learned Additional Munsiff, Hukkeri in O.S. No. 129 of 1984 in proper prospective which clearly shows that the said court having found the possession of Respondent Nos. 1 and 2 herein in respect of the said entire property including suit property had granted injunction in the matter and restrained the third party to interfere with the possession of Respondent Nos. 1 and 2 herein. Henceforth, Respondent Nos. 1 and 2 have been in possession of suit land against all other persons and can claim right of possession even against the subsequent purchaser.

In the present case, the whole case revolves around the one question, whether Respondent Nos. 1 and 2 got the possession of entire suit land. It is undisputed fact that deceased husband of Respondent No.3, along with other owners in Survey No. 77, entered into an agreement with the Respondent Nos. 1 and 2 but later on Respondent No. 3 refused to execute the said agreement. In pursuance of the same, it is alleged that the possession of the entire land got transferred to Respondent Nos.1 and 2. However, Respondent No. 3 herein denied this fact and alleged that possession of her share never transferred to the original plaintiffs. After perusal of the factual matrix of the entire case and peculiar facts, we are of the considered view that on the basis of the finding in OS No. 129 of 1984, it is well established that the present Respondent Nos. 1 and 2 were put into the possession of entire land. The decree passes by the Munsiff in the year 1987 regarding possession in an independent suit filed in the year 1984 is indicative of the fact that the plaintiffs/respondent Nos. 1 and 2 were in possession.

In view of the foregoing discussion, we do not find any reason for not granting specific performance in favour of Respondent Nos. 1 and 2. Hence, in the interest of justice and since the Respondent Nos. 1 & 2 are in possession of suit land for long time, we do not find any illegality with the reasoned judgment passed by the High Court in granting specific performance in their favour subject to paying of the sale consideration by them as per the present prevailing market value within six months from today.

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PART - II A

GUIDELINES

DIRECTIVES ISSUED BY THE SUPREME COURT TO MEET CHALLENGES OF AGONISING EFFECT OF HONOUR CRIMES

Rule of law as concept is meant to have order in society. It respects human rights. When two adults consensually choose each other as life partners, it is manifestation of their choice which is recognized under Arts. 19 and 21 of the Constitution. Once that is constitutionally recognized, said right needs to be protected. Consent of family or community or clan is insignificant once two adult individuals agree to enter into wedlock.

Majority in name of class or elevated honour of clan cannot call for their presence or force their appearance. 'Khap Panchayats' or such assembly should not take law into their hands and further cannot assume character of law implementing agency, for that authority has not been conferred upon them under any law. Law has to be allowed to sustain by law enforcement agencies.

Honour killing guillotines individual liberty, freedom of choice and one's own perception of choice. To meet challenges of agonising effect of honour crime, there has to be preventive, remedial and punitive measures. Accordingly, Supreme Court in the case of ***Shakti Vahini v. Union of India, AIR 2018 SC 1601*** has stated broad directives to executive and police administration of concerned States to add further measures to evolve robust mechanism for stated purposes.

I. Preventive Steps :-

(a) State Govt. should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in recent past, e.g., in last five years.

(b) Secretary, Home Department of concerned States shall issue directives/advisories to Superintendent of Police of concerned Districts for ensuring that Officer In-charge of Police Stations of identified areas are extra cautious if any instance of inter-caste or inter-religious marriage within their jurisdiction comes to their notice.

(c) If information about any proposed gathering of Khap Panchayat comes to knowledge of any police officer or any officer of District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate jurisdictional Deputy Superintendent of Police and Superintendent of Police.

(d) On receiving such information, Deputy Superintendent of Police (or such senior police officer as identified by State Govt. with respect to area/district) shall immediately interact with members of Khap Panchayat and impress upon them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such meeting. Additionally, he should issue

appropriate directions to Officer In-charge of jurisdictional Police Station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of proposed gathering.

(e) Despite taking such measures, if meeting is conducted, Deputy Superintendent of Police shall personally remain present during meeting and impress upon assembly that no decision can be taken to cause any harm to couple or family members of couple, failing which each one participating in meeting besides organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of discussion and participation of members of assembly is done on basis of which law enforcing machinery can resort to suitable action.

(f) If Deputy Superintendent of Police, after interaction with members of Khap Panchayat, has reason to believe that gathering cannot be prevented and/or is likely to cause harm to couple or members of their family, he shall forthwith submit proposal to District Magistrate/Sub-Divisional Magistrate of District/Competent Authority of concerned area for issuing orders to take preventive steps under Cr.P.C., including by invoking prohibitory orders under S.144, Cr.P.C. and also by causing arrest of participants in assembly under S.151, Cr.P.C.

(g) Home Department of Government of India must take initiative and work in co-ordination with State Governments for sensitising law enforcement agencies and by involving all stake holders to identify measures for prevention of such violence and to implement constitutional goal of social justice and rule of law.

(h) There should be institutional machinery with necessary co-ordination of all stakeholders. Different State Govt. and Centre ought to work on sensitization of law enforcement agencies to mandate social initiatives and awareness to curb such violence.

II. Remedial Measures :-

(a) Despite preventive measures taken by State Police, if it comes to notice of local police that Khap Panchayat has taken place and it has passed any diktat to take action against couple/family of inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), jurisdictional police official shall cause to immediately lodge F.I.R. under appropriate provisions of Penal Code including Ss.141, 143, 503 read with 506 of IPC.

(b) Upon registration of F.I.R., intimation shall be simultaneously given to Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of crime is done and taken to its logical end with promptitude.

(c) Additionally, immediate steps should be taken to provide security to couple/family and, if necessary, to remove them to safe house within same district or elsewhere keeping in mind their safety and threat perception. State Government may consider of establishing safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate -

(i) young bachelor-bachelorette couples whose relationship is being opposed by their families /local community/Khaps and

(ii) young married couples (of an inter-caste or inter-religious or any other marriage being opposed by their families/local community/Khaps).

Such safe houses may be placed under supervision of jurisdictional District Magistrate and Superintendent of Police.

(d) District Magistrate/Superintendent of Police must deal with complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided logistical support for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After marriage, if couple so desire, they can be provided accommodation on payment of nominal charges in safe house initially for period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending on their threat assessment on case-to-case basis.

(e) Initial inquiry regarding complaint received from couple (bachelor-bachelorette or young married couple) or upon receiving information from independent source that relationship/marriage of such couple is opposed by their family members/local community/Khaps shall be entrusted by District Magistrate/ Superintendent of Police to officer of rank of Additional Superintendent of Police. He shall conduct preliminary inquiry and ascertain authenticity, nature and gravity of threat perception. On being satisfied as to authenticity of such threats, he shall immediately submit report to Superintendent of Police in not later than one week.

(f) District Superintendent of Police, upon receipt of such report, shall direct Deputy Superintendent of Police incharge of concerned sub-division to cause to register F.I.R. against persons threatening couple(s) and, if necessary, invoke S. 151 of Cr.P.C. Additionally, Deputy Superintendent of Police shall personally supervise progress of investigation and ensure that same is completed and taken to its logical end with promptitude. In course of investigation, concerned persons shall be booked without any exception including members who have participated in assembly. If involvement of members of Khap Panchayat comes to fore, they shall also be charged for offence of conspiracy or abetment, as case may be.

III. Punitive Measures :-

(a) Any failure by either police or district officer/officials to comply with aforesaid directions shall be considered as act of deliberate negligence and/or misconduct for which departmental action must be taken under service rules. Departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by authority of first instance.

(b) In terms of ruling of Supreme Court in ***AIR 2011 SC 1859,*** States are directed to take disciplinary action against concerned officials if it is found that (i) such official(s) did not prevent incident, despite having prior knowledge of it, or (ii) where incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against culprits.

(c) State Govt. shall create Special Cells in every District comprising of Superintendent of Police, District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.

(d) These Special Cells shall create 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to couple.

(e) Criminal cases pertaining to honour killing or violence to couple(s) shall be tried before designated Court/Fast Track Court earmarked for that purpose. Trial must proceed on day-to-day basis to be concluded preferably within six months from date of taking cognizance of offence. This direction shall apply even to pending cases. Concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof.

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"The judge is the living oracle working in dry light of realism pouring life and force into the dry bones of law to articulate the felt necessities of the time. "

– K. Ramaswamy J.

in Krishna Swami v. Union of India (1992) 2 SCC 605

PART – III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 22.05.2018 OF THE MINISTRY OF ROAD TRANSPORT AND HIGHWAY REGARDING AMENDMENT IN THE SECOND SCHEDULE OF THE MOTOR VEHICLES ACT, 1988

S.O. 2022 (E). – In exercise of the powers conferred by sub-Section (3) of section 163A of the Motor Vehicles Act, 1988 the Central Government, keeping in view the cost of living, hereby makes the following amendment to the Second Schedule to the said Act, namely :-

In the Motor Vehicles Act, 1988, for the Second Schedule, the following Schedule shall be substituted namely:-

"THE SECOND SCHEDULE"

(See Section 163A)

SCHEDULE FOR COMPENSATION FOR THIRD PARTY FATAL ACCIDENTS/ INJURY CASES CLAIMS

1. **(a) Fatal Accidents :**

   Compensation payable in case of death shall be five lakh rupees.

   (b) Accidents resulting in permanent disability :

   Compensation payable shall be = [Rs. 5,00,000/- x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923]:

   (c) Accidents resulting in minor injury :

   A fixed compensation of twenty five thousand rupees shall be payable:

2. On and from the date of 1st day of January, 2019 the amount of compensation specified in the clauses (a) to (c) of paragraph (1) shall stand increased by 5 per cent annually";

3. This notification shall come into force from the date of its publication in the Official Gazette."

[F.NO. RT-11021/65/2017-MVL]
ABHAY DAMLE, Jt. Secy.

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NOTIFICATION DATED 17.04.2018 REGARDING AMENDMENT IN MADHYA PRADESH FAMILY COURT RULES, 2002

F.No.1713/2018/21-B(One)/ In exercise of the powers conferred by section 23 of the Family Courts Act, 1984 (No. 66 of 1984), the State Government, in consultation with the High Court of Madhya Pradesh, hereby, makes the following amendment in the Madhya Pradesh Family Court Rules, 2002, namely :-

AMENDMENT

In the said rules, after rule 18, the following rule shall be added, namely :-

"18-A. Eligibility for empanelment of Amicus Curiae. –

(1) The following persons shall be eligible for empanelment of Amicus Curiae in the Family Court :-

(a) Any retired Judge of the Supreme Court of India;

(b) Any retired Judge of the High Court;

(c) Any retired member of the Higher Judicial Service;

(d) Any Legal Practitioner with minimum 10 years standing at the bar at the level of the Supreme Court, High Court or the District Court or equivalent status.

(2) Disqualification. –

A person shall be disqualified for being empanelled as amicus curiae if he,

(a) has been adjudged as insolvent; or

(b) is facing criminal charges involving moral turpitude, framed by a criminal court and which are pending; or

(c) has been convicted and sentenced to imprisonment for an offence involving moral turpitude; or

(d) is facing disciplinary proceedings initiated by the appropriate disciplinary authority which are pending or have resulted in a penalty; or

(e) is interested or connected with the subject-matter of dispute (s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing; or

(f) is a legal practitioner who is appearing for any of the parties in the suit or in other proceeding (s).

(3) Addition to or deletion from panel. –

(a) The process of empanelment of amicus-curiae will be that the person fulfilling the criteria of eligibility may apply to the High Court or the District and Sessions Judge of concerning District on or before 31st January of each calendar year alongwith declaration/proof of his eligibility.

(b) The High Court/the District and Sessions Judge may call from the concerning Bar Association, the name of the person interested and fulfilling the eligibility criteria for empanelment.

(c) The Principal Judge of the Family Court with prior approval of the High Court may in his discretion, from time to time, add or delete the name of any person in the panel of amicus curiae.

(4) The duties of the amicus curiae. –

The duties of the amicus curiae shall be as under:

(a) The amicus curiae shall assist the court with regard to the case but not to the any particular petitioner/party. He shall be required to help the court by expanding the law impartially.

(b) When a person is approached in connection with his proposed appointment as amicus curiae, he shall disclose circumstances likely to give rise to a reasonable doubt as to his independence or impartially;

(c) Every Amicus Curia shall from the time of his appointment and during continuance of the proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in clause (b).

(5) withdrawal of appointment. –

Upon information furnished by the Amicus Curiae or upon any other information received from the parties or other persons, if the court, in which the suit or proceedings is pending, is satisfied that the said information has raised a reasonable doubt as to the amicus curiae independence or impartiality, he may withdraw the appointment and replace him by another amicus curiae.

(6) Confidentiality, disclosure and inadmissibility of information. –

(a) Receipt or perusal of any document by the amicus curiae or receipt of information orally by the amicus curiae while serving in that capacity, shall be confidential and the amicus curiae shall not be compelled to divulge information regarding the document or record or oral information not as to what transpired during the proceedings.

(b) Parties shall maintain confidentiality in respect of events that transpired during the amicus curiae and shall not rely on or introduce the said information in any proceedings.

(7) Communication between amicus curiae and the Court. –

(a) In order to preserve the confidence of parties in the Court and the neutrality of the amicus curiae, there should be no communication between the amicus curiae and the Court, except as stated in sub-rule (2) and (3) of this rule.

(b) If any communication between amicus curiae and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their constituted attorneys or the counsel.

(c) All communication between the amicus curiae and the Court shall be made only by the amicus curiae and in respect of the following matters-

(i) The failure of a party or parties to attend;

(ii) The amicus curiae's assessment that the case is not shited for settlement;

(iii) Settlement of dispute or disputes arrived at between parties; or

(iv) Any opinion regarding any point of law, if referred to the amicus curiae for assistance by the Family Court.

फा. क्रमांक 1713/2018/21-ब (एक), कुटुम्ब न्यायालय अधिनियम, 1984 (1984 का 66) की धारा 23 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य सरकार, मध्यप्रदेश उच्च न्यायालय के परामर्श से, एतद् द्वारा, मध्यप्रदेश कुटुम्ब न्यायालय नियम, 2002 में निम्नलिखित संशोधन करती है, अर्थात:-

संशोधन

उक्त नियमों में, नियम 18 के पश्चात्, निम्नलिखित नियम जोड़ा जाए, अर्थात्:-

''18 - क. न्यायमित्र को पैनलबद्ध होने हेतु पात्रता -

(1) कुटुम्ब न्यायालय में न्यायमित्र पैनलबद्ध हेतु निम्नलिखित व्यक्ति पात्र होंगे:

(एक) भारत के उच्चतम न्यायालय का कोई सेवानिवृत्त न्यायाधीश;

(दो) उच्च न्यायालय का कोई सेवानिवृत्त न्यायाधीश;

(तीन) उच्चतर न्यायिक सेवा का कोई सेवानिवृत्त सदस्य ;

(चार) उच्चतम न्यायालय, उच्च न्यायालय या जिला न्यायालय या समकक्ष स्तर की बार की न्यूनतम 10 वर्षों की वकालत वाला कोई किसी विधि व्यवसायी की अवस्थिति।

(2) निर्हताएं:-

कोई व्यक्ति, न्यायमित्र के रूप में पैनलबद्ध होने के लिए निरर्हित होगा यदि वह: -

(क) दिवालिया घोषित किया जा चुका है; या

(ख) किसी आपराधिक न्यायालय द्वारा विरचित किए गए नैतिक, अधमता अव्क्तवलित करने वाले आरोपों का सामना कर रहा है और जो लंबित है; या

(ग) नैतिक अधमता से अन्तग्र्रस्त किसी अपराध के लिए सिद्ध दोष ठहराया जा चुका है तथा कारावास की सजा सुनाई गई है; या

(घ) समुचित अनुशासनात्मक प्राधिकारी द्वारा शुरू की गई अनुशासनात्मक कार्यवाहियों का सामना कर रहा है, जो लंबित हैं या जिसकी सजा सुनाई जा चुकी है; या

(ङ) विवाद/विवादों की विषय-वस्तु से हितबद्ध या संबद्ध है या पक्षकारों के किसी एक से संबंधित है या वे जो उनका प्रतिनिधित्व करते हैं, जब तक कि समस्त पक्षकारों द्वारा ऐसी आपत्ति लिखित में माफ की गई है; या

(च) एक विधि व्यवसायी है जो वाद में या किसी अन्य कार्यवाही/कार्यवाहियों मेंे किसी पक्षकार हेतु उपस्थित हुआ है।

(3) पैनल से जोड़ना या हटाना -

(क) न्यायमित्र के पैनलबद्ध की प्रक्रिया यह होगी कि पात्रता के मानदंडों को पूरा करने वाला व्यक्ति अपनी पात्रता की घोषणा/सबूत के साथ प्रत्येक कैलेण्डर वर्ष की 31 जनवरी को या उसके पूर्व उच्च न्यायालय या संबंधित जिले के जिला एवं सत्र न्यायाधीश को आवेदन कर सकता है।

(ख) उच्च न्यायालय/जिला एवं सत्र न्यायाधीश संबंधित बार एसोसिएशन से इच्छुक व्यक्ति का नाम तथा पैनलबद्ध होने के मानदंडो की पात्रता को पूर्ण करने वालों को बुला सकता है।

(ग) उच्च न्यायालय के पूर्व अनुमोदन के साथ कुटुम्ब न्यायालय के प्रधान न्यायाधीश स्वविवेक से, समय-समय पर, न्यायमित्र के पैनल में किसी व्यक्ति का नाम जोड़ या हटा सकते हैं।

(4) न्यायमित्र के कर्तव्य -

न्यायमित्र के कर्तव्य निम्नानुसार होगें -

(क) न्यायमित्र प्रकरण के संबंध में न्यायालय की सहायता करेगा किन्तु किसी विशिष्ट याचिकाकर्ता/पक्षकार के लिए नहीं। उससे निष्पक्ष रूप से विधि विस्तार द्वारा न्यायालय की मदद करने की अपेक्षा की जाएगी।

(ख) जब किसी व्यक्ति से न्यायमित्र के रूप में उसकी प्रस्तावित नियुक्ति के संबंध में संपर्क किया जाता है, तो वह उन परिस्थितियों को प्रकट करेगा जिससे उसकी स्वतंत्रता या निष्पक्षता के बारे में उचित संदेह उद्भूत होना संभाव्य है।

(ग) प्रत्येक न्यायमित्र अपनी नियुक्ति के समय से तथा कार्यवाहियों को जारी रहने के दौरान, बिना किसी विलंब के खण्ड (ख) में निर्दिष्ट किसी परिस्थिति के अस्तित्व के बारे में पक्षकारों से खुलासा करेगा।

(5) नियुक्ति वापस लेना -

न्यायमित्र द्वारा दी गई जानकारी पर या पक्षकारें या अन्य व्यक्तियों से प्राप्त किसी अन्य जानकारी पर, यदि न्यायालय, जिसमें वाद या कार्यवाहियां लंबित हैं, का यह समाधान हो जाता है कि उक्त सूचना ने न्यायमित्र की स्वतंत्रता या निष्पक्षता के बारे में उचित संदेह उद्भूत किया है, तो वह नियुक्ति वापस ले सकता है तथा किसी अन्य वाद मित्र से उसको प्रतिस्थापित कर सकता है।

(6) जानकारी की गोपनीयता, प्रकटीकरण तथा अग्राह्यता -

(क) न्यायमित्र द्वारा किसी दस्तावेज की प्राप्ति या परिशीलन या जबकि उस हैसियत में सेवारत् हो न्यायमित्र द्वारा मौखिक रूप से सूचना की प्राप्ति गोपनीय होगी तथा न्यायमित्र को दस्तावेज या अभिलेख या मौखिक जानकारी के बारे में जानकारी प्रकट करने के लिए मजबूर नहीं किया जाएगा जैसा कि कार्यवाहियों के दौरान घटित होने वाली जानकारी में क्या हुआ है।

(ख) पक्षकार वादमित्र के दौरान घटित होने वाली घटनाओं के बारे में गोपनीयता बनाए रखेंगे तथा उन पर निर्भर नहीं होंगे या किन्हीं कार्यवाहियों में उक्त जानकारी प्रस्तावित नहीं करेंगे।

(7) न्यायमित्र तथा न्यायालय के मध्य संसूचना -

(क) न्यायालय में पक्षकारों के विश्वास को सुरक्षित रखने के क्रम में, तथा न्यायमित्र की तटस्थता को बनाए रखने के लिए इस नियम के उप-नियम (2) तथा (3) में यथा कथित के सिवाय न्यायमित्र तथा न्यायालय के मध्य कोई संसूचना नहीं होनी चाहिए।

(ख) यदि न्यायमित्र तथा न्यायालय के मध्य कोई संसूचना आवश्यक है, तो यह लिखित में होगी तथा उसकी प्रतियां पक्षकारों या उनके नियत न्यायवादी या काउंसेल को दी जाएंगी।

(ग) न्यायमित्र तथा न्यायालय के मध्य समस्त संसूचना केवल न्यायमित्र द्वारा तथा निम्नलिखित मामलों के बारे में होगी -

(एक) पक्षकार या पक्षकारों की उपस्थिति में असफल होने पर;

(दो) न्यायमित्र का निर्धारण कि प्रकरण निपटारे हेतु उपयुक्त नहीं है;

(तीन) पक्षकारों के मध्य उद्भूत होने वाले विवाद या विवादों के निटारे; या

(चार) विधि के किसी बिन्दु के बारे में, कोई अभिमत यदि कुटुम्ब न्यायालय द्वारा साहायता के लिए न्यायमित्र को निर्दिष्ट की गई है।"

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार
(ए. एम. सक्सेना)
प्रमुख सचिव,
मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

PART – IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE CRIMINAL LAW (AMENDMENT) ORDINANCE, 2018

(No. 2 of 2018)

Promulgated by the President in the Sixty-ninth Year of the Republic of India.

An Ordinance further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

CHAPTER I

PRELIMINARY

1. Short title and commencement – (1)This Ordinance may be called **the Criminal Law (Amendment) Ordinance, 2018.**

(2) It shall come into force at once.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE

2. Amendment of Section 166A – In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in Section 166A, in clause (c), for the words, figures and letters “Section 376B, Section 376C, Section 376D,”, the words, figures and letters “Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB,” shall be substituted;

3. Amendment of Section 228A – In Section 228A of the Penal Code, in sub-Section (1), for the words, figures and letters “Section 376A, Section 376B, Section 376C, Section 376D”, the words, figures and letters “Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB” shall be substituted.

4. Amendment of Section 376 – In Section 376 of the Penal Code,–

(a) in sub-Section (1), for the words “shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine”, the words “shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine” shall be substituted;

(b) in sub-Section (2), clause (i) shall be omitted;

(c) after sub-Section (2), the following sub-Section shall be inserted, namely:-

“(3) Whoever, commits rape on a women under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine;

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim;

Provided further that any fine imposed under this sub-Section shall be paid to the victim.”.

5. Insertion of new Section 376AB – After Section 376A of the Penal Code, the following Section shall be inserted, namely:-

“376AB. Punishment for rape on woman under twelve years of age – Whoever, commits rape on a women under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine or with death;

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this Section shall be paid to the victim”.

6. Insertion of new Sections 376 DA and 376 DB – After Section 376D of the Penal Code, the following Sections shall be inserted, namely:-

“376DA. Punishment for gang rape on woman under sixteen years of age – Where a woman under sixteen years of age is raped by one or more persons constituting

a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this Section shall be paid to the victim".

"376DB. Punishment for gang rape on woman under twelve years of age – Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this Section shall be paid to the victim".

CHAPTER III

AMENDMENTS TO THE INDIAN EVIDENCE ACT, 1872

7. Amendment to Section 53 – In Section 53A of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), for the words, figures and letters "Section 376A, Section 376B, Section 376C, Section376D", the words, figures and letters "Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB" shall be substituted.

8. Amendment to Section 146 – In Section 146 of the Indian Evidence Act, in the proviso, for the words, figures and letters "Section 376A, Section 376B, Section 376C, Section 376D", the words, figures and letters "Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB" shall be substituted.

CHAPTER IV

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

9. Amendment of Section 26 – In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in Section 26, in clause (a), in the proviso, for the words, figures and letters "Section 376A, Section 376B, Section 376C, Section 376D", the words, figures and letters "Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB" shall be substituted.

10. Amendment of Section 154 – In Section 154 of the Code of Criminal Procedure, in sub-Section (1),-

(i) in the first proviso, for the words, figures and letters "Section 376A, Section 376B, Section 376C, Section 376D", the words, figures and letters "Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB" shall be substituted.

(ii) in the second proviso, in clause (a), for the words, figures and letters "Section 376A, Section 376B, Section 376C, Section 376D", the words, figures and letters "Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB" shall be substituted.

11. Amendment of Section 161 – In Section 161 of the Code of Criminal Procedure, in sub-Section (3), in the second proviso, for the words, figures and letters "Section 376A, Section 376B, Section 376C, Section 376D", the words, figures and letters "Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB" shall be substituted.

12. Amendment of Section 164 – In Section 164 of the Code of Criminal Procedure, in sub-Section (5A), in clause (a), for the words, figures and letters "Section 376A, Section 376B, Section 376C, Section 376D", the words, figures and letters "Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB" shall be substituted.

13. Amendment of Section 173 – In Section 173 of the Code of Criminal Procedure,-

(i) in sub-Section (1A), for the words "rape of a child may be completed with three months", the words, figures and letters "an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code shall be completed with two months" shall be substituted;

(ii) in sub-Section (2), in clause (i), in sub-clause (h), for the figures, letters and word “376A, 376B, 376C, Section 376D”, the figures and letters “376A, 376AB, 376B, 376C, 376D, 376DA, 376DB”, shall be substituted;

14. Amendment of Section 197 – In Section 197 of the Code of Criminal Procedure, in sub-Section (1), in the *Explanation,* for the words, figures and letters “Section 376A, Section 376C, Section 376D”, the words, figures and letters “Section 376A, Section 376AB, Section 376C, Section 376D, Section 376DA, Section 376DB” shall be substituted.

15. Amendment of Section 309 – In Section 309 of the Code of Criminal Procedure, in sub-Section (1), in the proviso, for the words, figures and letters “Section 376A, Section 376B, Section 376C or Section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible”, the words, figures and letter “Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA or Section 376DB of the Indian Penal Code, the inquiry or trial shall” shall be substituted.

16. Amendment of Section 327 – In Section 327 of the Code of Criminal Procedure, in sub-Section (2), in clause (a), for the words, figures and letters “Section 376A, Section 376B, Section 376C, Section 376D”, the words, figures and letters “Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB” shall be substituted.

17. Amendment of Section 357B – In Section 357B of the Code of Criminal Procedure, for the words, figures and letters “under Section 326A or Section 376D of the Indian Penal Code”, the words, figures and letters “under Section 326A, Section 376AB, Section 376D, Section 376DA and Section 376DB of the Indian Penal Code” shall be substituted.

18. Amendment of Section 357C – In Section 357C of the Code of Criminal Procedure, for the figures and letters “376A, 376B, 376C, 376D”, the figures and letters “376A, 376AB, 376B, 376C, 376D, 376DA, 376DB”, shall be substituted;

19. Amendment of Section 374 – In Section 374 of the Code of Criminal Procedure, after sub-Section (3), the following sub-Section shall be inserted, namely:-

“(4) When an appeal has been filed against a sentence passed under Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D Section 376DA, Section 376DB or Section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filling of such appeal”.

20. Amendment of Section 377 – In Section 377 of the Code of Criminal Procedure, after sub-Section (2), the following sub-Section shall be inserted, namely:-

"(3) When an appeal has been filed against a sentence passed under Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D Section 376DA, Section 376DB or Section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filling of such appeal".

21. Amendment of Section 438 – In Section 438 of the Code of Criminal Procedure, after sub-Section (3), the following sub-Section shall be inserted, namely:-

"(4) Nothing in this Section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-Section (3) of Section 376 or Section 376AB or Section 376DA and Section 376DB of the Indian Penal Code".

22. Amendment of Section 439 – In Section 439 of the Code of Criminal Procedure,-

(a) In sub-Section (1), after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-Section (3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application";

(b) After sub-Section (1), the following sub-Section shall be inserted, namely:-

"(1A) The presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub-Section (3) of Section 376 or Section 376A or Section 376DA or Section 376DB of the Indian Penal Code";

23. Amendment of First Schedule – In the First Schedule to the Code of Criminal Procedure, under the heading "I.-OFFENCES UNDER THE INDIAN PENAL CODE",-

(a) against Section 376,-

(i) for the entry under column 3, the following entries shall be substituted, namely:-

1	2	3	4	5	6
		"Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine".			

(ii) the following entries shall be inserted at the end, namely:-

1	2	3	4	5	6
	"Persons committing offence of rape on a woman under sixteen years of age.	"Rigorous imprisonment for a term which shall not be less than 20 years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.

(b) after the entries relating to Section 376A, the following entries shall be inserted, namely:-

1	2	3	4	5	6
"376AB	"Persons committing an offence of rape on a woman under twelve years of age.	"Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine or with death.	Cognizable	Non-bailable	Court of Session.

(c) after the entries relating to Section 376D, the following entries shall be inserted, namely:-

1	2	3	4	5	6
"376DA	Gang rape on a woman under sixteen years of age.	"Rigorous imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session.
"376DB	Gang rape on a woman under twelve years of age.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or with death.	Cognizable	Non-bailable	Court of Session.

CHAPTER V
AMENDMENTS TO THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

24. In Section 42 of the Protection of Children from Sexual Offences Act, 2012, for the figures and letters "376A, 376C, 376D", the figures and letters "376A, 376AB, 376B, 376C, 376D, 376DA, 376DB", shall be substituted.

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Large backlog of cases in the courts is often an incentive to the litigants to misuse the court's system by indulging in unnecessary and fraudulent litigation, thereby delaying the entire trial process. The criminal justice system's procedure guarantees and elaborateness sometimes create openings for abusive, dilatory tactics and confers an unfair advantage on better healed litigants to cause delay to their advantage. Longer the trial, witnesses will become unavailable, memories will fade and evidence will be stale.

– K.S.P. Radhakrishnan, J.
Shahid Balwa v. Union of India
(2004) 2 SCC 687 (*para 31*)

THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURT (AMENDEMNT) ORDINANCE, 2018
NO. 3 OF 2018

New Delhi, the 3rd May, 2018

Promulgated by the President in the Sixty-ninth Year of the Republic of India.

An Ordinance to amend the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take, immediate action.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. Short title and commencement. – (1) This Ordinance may be called the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018.

(2) Save as otherwise provided, it shall come into force at once.

2. Amendment of long title. – In the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as the principal Act), in the long title, after the words "Commercial Courts", the words, "Commercial Appellate Courts" shall be inserted.

3. Amendment of Section 1. – In section 1 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(a) This Act may be called the Commercial Courts Act, 2015".

4. Amendment of Section 2. – In section 2 of the principal Act, in sub-section (1),-

(I) clause (a) shall be renumbered as clause (aa) thereof, and before clause (aa) as so renumbered, the following clause shall be inserted, namely.—

'(a) "Commercial Appellate Courts" means the Commercial Appellate Courts designated under section 3A;';

(II) in clause (i), for the words "which shall not be less than one crore rupees", the words "which shall not be less than three lakh rupees" shall be substituted.

5. Substitution of Chapter heading. – In the principal Act, in Chapter II, for the Chapter heading, the following Chapter heading shall be substituted, namely:—

"COMMERCIAL COURTS, COMMERCIAL APPELLATE COURTS, COMMERCIAL DIVISIONS AND COMMERCIAL APPELLATE DIVISIONS".

6. Amendment of section 3. – In section 3 of the principal Act:—

(a) in sub-section (1), for the proviso, the following provisos shall be substituted, namely:—

"Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High court, by notification, constitute, Commercial Courts at the District Judge level:

"Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction; the State Government, may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.";

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary";

(c) in sub-section (3),-

(I) for the words "State Government shall", the words "State Government may" shall be substituted;

(II) for the words "Commercial Court, from amongst the cadre of Higher Judicial Service in the State", the following words shall be substituted, namely:—

"Commercial Court either at the level of District Judge or a court below the level of a District Judge.".

7. Insertion of new section 3A. – After section 3 of the principal Act, the following section shall be inserted, namely:—

"3A. Designation of Commercial Appellate Courts. – Except the territories over which the High Courts have ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may, deem necessary, for the purposes of exercising the jurisdiction and powers conferred on those Courts under this Act.".

8. Amendment of section 4. – In section 4 of the principal Act, in sub-section (1), for the words "ordinary civil jurisdiction", the words "ordinary original civil jurisdiction" shall be substituted.

9. Omission of section 9. – Section 9 of the principal Act shall be omitted.

10. Amendment of section 12. – In section 12 of the principal Act, in sub-section (1) –

(i) in clause (c), after the words "Specified Value;", the word "and" shall be inserted;

(ii) in clause (d), the word "and", occurring at the end, shall be omitted;

(iii) clause (e) shall be omitted.

11. Insertion of new Chapter IIIA. – After Chapter III of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER IIIA

12A. Pre-Institution Mediation and Settlement. –

(1) A. suit, which does not contemplate any urgent Mediation and interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in. accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987, for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987, the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963.

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996.".

12. Amendment of section 13. – In section 13 of the principal Act, for sub-section (1), the following shall be substituted, namely:—

"(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically, enumerated under Order XLIII of the Code of Civil Procedure, 1908 as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996.".

13. Amendment of section 14. – In section 14 of the principal Act, for the words "Commercial Appellate Division", the words "Commercial Appellate Court and the Commercial Appellate Division" shall be substituted.

14. Amendment of section 15. – In section 5 of the principal Act, in sub-section (4), for the words, figures and letters "with Order XIV-A", the words, figures and letters "with Order XV-A" shall be substituted.

15. Amendment of section 17. – In section 17 of the principal Act, for the words "Commercial Courts" and "Commercial Court", wherever they occur, the words "Commercial Courts, Commercial Appellate Courts" shall be substituted.

16. Amendment of section 20. – In section 20 of the principal Act, for the words "Commercial Court", the words "Commercial Courts, Commercial Appellate Courts" shall be substituted.

17. Insertion of new section 21A. – After section 21 of the principal Act, the following section shall be inserted, namely:—

"21A. Power of Central Government to make laws. –

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) in particular, and without prejudice to the generality of the foregoing power, such rules may provide for or any of the following matters, namely:-

(a) mariner and procedure of pre-institution mediation under sub-section (1) of section 12A;

(b) any other matter which is required to be, or may be, prescribed or in respect of which provision is to be made by rules made by the Central Government.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.".

18. Amendment of Schedule. – In the Schedule to the principal Act, –

(i) in Paragraph 4, in sub-paragraph (D), in item (iv), –

(a) in the opening portion, the words "after the first proviso," shall be omitted;

(b) for the words "Provided further that", the words "Provided that" shall be substituted:

(ii) in paragraph 11, for the words "Commercial Court" the words "Commercial Court, Commercial Appellate Court" shall be substituted:

(iii) after paragraph 11, the following shall be inserted and shall be deemed to have been inserted with effect from 23rd October, 2015, namely:-

"12. After Appendix H, the following Appendix shall be inserted, namely:-

'APPENDIX I

STATEMENT OF TRU'I'H

(Under First Schedule, Order VI- Rule l5-A and Order XI- Rule 3)

I ..... the deponent do hereby solemnly affirm and declare as under:

1. I ..... am the party in the above suit and competent to swear this affidavit.
2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.

3. I say that the statements made in ..... paragraphs are true to my knowledge and statements made in ..... paragraphs are based on information received which I believe to be correct and statements made in ..... paragraphs are based on legal advice.
4. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.
5. I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody.
6. I say that the above-mentioned pleading comprises of a total of ....pages, each of which has been duly signed by me.
7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.
8. I say that I am aware that for any false statement or concealment I shall be liable for action taken against me under the law for the time being in force.

Place:

Date:

DEPONENT

VERIFICATION

I....., do hereby declare that the statements made above are true to my knowledge.

Verified at [place] on this [date]

DEPONENT".'.

19. Application of Ordinance to cases filed on or after its commencement:

Save as otherwise provided, the provisions of this Ordinance shall apply only to cases relating to commercial disputes filed on or after the date of commencement of this Ordinance.

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मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्य प्रदेश राज्य न्यायिक अकादमी

मध्यप्रदेश उच्च न्यायालय, जबलपुर - 482 007