

January 2023

Current's

Case Pointer

MONTHLY DIGEST
Supreme Court and Bombay High Court

**With Free Access to Full Text of Judgements on
Net and Mobile App**

Mode of Citation

Supreme Court: MDSC

Bombay High Court: MDBHC

CURRENT DIGITECH

Published and Printed by:

Amit Nanda

for CURRENT DIGITECH

Ground Floor, Karanjia Building, 651 J.S.S Road,

Marine Lines (E), Mumbai - 400 002

Tel.: (022) 22012143 * 22018485

E-mail: jainabook@gmail.com

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Annual Subscription : Rs. 2,400

Registered Post Charges : Rs. 240 (Optional)

Web Store : www.currentpublications.com

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Case Pointer
MONTHLY DIGEST - SUPREME COURT

2023(1)MDSC1

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before M R Shah; Hima Kohli]

Criminal Appeal No. 1981 of 2022 **dated 17/11/2022**

Amy Mehta vs. State of Karnataka & Anr

APPEAL AGAINST BAIL

Indian Penal Code, 1860 Sec. 376, Sec. 354, Sec. 328, Sec. 120B - Code of Criminal Procedure, 1973 Sec. 161, Sec. 439 - Appeal against bail - Bail granted by High Court to accused - Allegations was that the accused had mixed some substance in the drinks that made her lose consciousness and thereafter, he committed the offence on intoxicating her and subjected her to the sexual act - High Court stated that there is no need of further custodial trial - High Court has failed to appreciate the allegations in the FIR that immediately on the occurrence, when the prosecutrix/victim regained consciousness, she first went to the hospital and thereafter, tried to lodge the FIR but no complaint was taken - In a case like this, the High Court has not properly appreciated the fact that there could have been some delay (though in the present case, it may not be said that there was any inordinate delay in lodging the FIR) as sometime could have been consumed for the victim/prosecutrix to get out of the shock. Even the said aspect is required to be considered at the time of the trial - High Court has not at all considered the seriousness of the allegations and the gravity of the offences alleged against the accused - Chargesheet has already been filed - So, whatever material has been collected during the investigation was required to be considered by the High Court while considering the application under Section 439 of Cr.P.C. - Held, even the observation that there is no need of further custodial trial is also not relevant aspect while considering the bail application under Section 439 of Cr.P.C. - The same may have some relevance while considering the application for anticipatory bail - Impugned order is quashed and set aside - Appeal is allowed

[Paras 2 and 3]

Law Point: Whatever material has been collected during the investigation was required to be considered by the High Court while considering the application under Section 439 of Cr.P.C.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC22111830092**

2023(1)MDSC2

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

[Before Uday Umesh Lalit; S Ravindra Bhat; Pamidighantam Sri Narasimha]

Criminal Appeal; S L P (Crl) (Special Leave Petition (Criminal)); W P (Crl) (Writ Petition (Criminal)) No. 946 of 2019, 947 of 2019; 1030 of 2019, 1031 of 2019, 1046 of 2019, 1047 of 2019, 1269 of 2019, 1270 of 2019, 1804 of 2019, 1805 of 2019, 1980 of 2019, 1981 of 2019, 1279 of 2019, 1280 of 2019; 10742 of 2019; 57 of 2022 **dated 04/11/2022**

Ashok Kumar Singh Chandel; Ashutosh Singh @ Dabbu; Raghuvir Singh; Pradeep Singh & Anr; Bhan Singh; Sahab Singh; Naseem; Rajeev Kumar Shukla vs. State of U P , Etc; Ashok Singh Chandel & Ors

INCONSISTENCY IN EVIDENCE

Indian Penal Code, 1860 Sec. 149, Sec. 379, Sec. 148, Sec. 404, Sec. 34, Sec. 147, Sec. 302, Sec. 307, Sec. 395-Code of Criminal Procedure, 1973 Sec. 161, Sec. 82, Sec. 23, Sec. 239, Sec. 293, Sec. 313, Sec. 83-Arms Act, 1959 Sec. 30, Sec. 27, Sec. 25-Where there is direct evidence of witnesses which can be relied upon, the absence of motive cannot be a ground to reject the case - Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness - No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement - Evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence - There is no illegality in the way the prosecution has obtained the ballistic report under Section 293 - The consistent ocular testimony corroborated by the opinion of the ballistic expert- The High Court was justified in exercising its appellate jurisdiction in reversing the order of acquittal as there were certain glaring mistakes, and distorted conclusions in the decision of the Trial Court.

[Paras 13, 16, 171, 176]

Law Point- The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. The High Court was duty-bound to reverse the decision as there existed very substantial and compelling reasons to do so, failing which it would have caused a grave miscarriage of justice.

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2023(1)MDSC3**IN THE SUPREME COURT OF INDIA**

[Before Uday Umesh Lalit; S Ravindra Bhat; Pamidighantam Sri Narasimha]

Miscellaneous Application; Civil Appeal No 1849 of 2022; 21762 of 2017 **dated 03/11/2022**
Assistant Commissioner of Income Tax (Exemptions) vs. Ahmedabad Urban Development Authority

REFERENCE TO JUDGMENT

Income Tax Act, 1961 Sec. 2-The reference to application of the law declared by this court's judgment, has to be understood in the context, which is that they apply for the assessment years in question, which were before this court and were decided; wherever the appeals were decided against the revenue, they are to be treated as final. However, the reference to future application has to be understood in this context, which is that for the assessment years which this court was not called upon to decide, the concerned authorities will apply the law declared in the judgment, having regard to the facts of each such assessment year.

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2023(1)MDSC4

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before Uday Umesh Lalit; S Ravindra Bhat; Pamidighantam Sri Narasimha]

Criminal Appeal No. 1892 of 2022 **dated 04/11/2022**

B A Umesh vs. Union of India & Ors

PUNISHMENT NOT AUTHORISED BY LAW

Prisons Act, 1894 Sec. 29 - Indian Penal Code, 1860 - Sections 302, 376 and 392 - Death sentence - Mercy petition rejected by Hon'ble President of India - One lady was found raped and murdered in her home - Held, solitary confinement as one of the grounds on the basis of which death sentence can be commuted - Keeping a prisoner in solitary confinement is contrary to the ruling and would amount to inflicting "additional and separate" punishment not authorised by law - Death sentence imposed on the petitioner commuted to life imprisonment - Appeal is allowed

[Paras 21 to 27]

Law Point: Solitary confinement as one of the grounds on the basis of which death sentence can be commuted

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2023(1)MDSC5

IN THE SUPREME COURT OF INDIA

[Before Sanjay Kishan Kaul; Abhay S Oka; Vikram Nath]

Civil Appeal No 8972 of 2014, 8973 of 2014 **dated 10/11/2022**

Bank of Rajasthan Ltd vs. VCK Shares & Stock Broking Services Ltd

POWER OF CIVIL COURT

Code of Civil Procedure, 1908 Sec. 9, Sec. 151, Or. 7R. 10-Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Sec. 19, Sec. 2, Sec. 17, Sec. 31, Sec. 18, Sec. 25-There is

no specific power to transfer a suit to the DRT- A plaint can be returned only under the provisions of Order VII Rule 10 of the Code for the reasons specified therein. The absence of any legislative power cannot give a power by implication to the Civil Court. It would not be appropriate to read such power to transfer a suit to a DRT under Section 151 of the Code when the DRT is a creature of a statute and that statute does not provide for such eventuality - Since there is no such power with the Civil Court, there is no question of transfer of the suit whether by consent or otherwise.

[Paras 1, 58]

Law Point- Section 151 of the Code cannot be utilized as a residuary power to achieve the transfer, which is really a consequence of return of the plaint when the grounds under Order VII Rule 10 of the Code are not satisfied.

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2023(1)MDSC6**IN THE SUPREME COURT OF INDIA**

[From NCDRC]

[Before B R Gavai; B V Nagarathna]

Civil Appeal No 8298 of 2022 **dated 10/11/2022***Bawa Paulins Pvt Ltd vs. Ups Freight Services (India) Pvt Ltd and Another***DEFICIENCY IN SERVICES**

Consumer Protection Act, 1986 Sec. 2 - Deficiency in rendering services - Quantum of compensation that the appellant is entitled to receive from the respondents - National Commission vide impugned order has reduced the amount of compensation as against the amount granted by the State Commission to be paid to the appellant - National Commission in the impugned order has held that it is an admitted position that a mistake was committed by the respondent No.1 while issuing the FCR to the appellant - The State Commission has based its decision on the said reasoning - Held, When it is admitted that a mistake was committed by the respondent No.1, it is not correct to say that the said mistake was not noticed by the appellant while forwarding the documents to its bank and that the appellant should have been more vigilant - It would be incorrect to now say that the appellant should have exercised due diligence in that regard - The National Commission has categorically held that there was deficiency in rendering services by the respondent No.1, therefore, the National Commission ought not have reduced the compensation payable to the appellant - National Commission was not right in setting aside the judgment and order passed by the State Commission and therefore, the impugned judgment and order passed by the National Commission is set aside - Appeal is allowed

[Paras 35 to 40]

Law Point: When it is admitted that a mistake was committed by the respondent No.1, it is not correct to say that the said mistake was not noticed by the appellant while

forwarding the documents to its bank and that the appellant should have been more vigilant

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2023(1)MDSC7

IN THE SUPREME COURT OF INDIA

[From MADRAS HIGH COURT]

[Before Dinesh Maheshwari; Sudhanshu Dhulia]

Criminal Appeal No. 1972 of 2022 **dated 11/11/2022**

Bhuri Bai vs. State of Madhya Pradesh

CANCELLATION OF BAIL

Indian Penal Code, 1860 Sec. 304B, Sec. 34, Sec. 498A - Code of Criminal Procedure, 1973 Sec. 439 - Dowry Prohibition Act, 1961 Sec. 4, Sec. 3 - Power of cancellation of bail - Suo motu powers exercised by the High Court while cancellation the bail granted to the appellant by the First Additional Sessions Judge - Held, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under Section 439(2) CrPC - Power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail - Powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under Section 439(2) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case - Impugned order is set aside - Appeal is allowed

[Paras 16 to 20]

Law Point: Unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under Section 439(2) CrPC.

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2023(1)MDSC8

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before M R Shah; Krishna Murari]

Civil Appeal No. 8225 of 2009 **dated 04/11/2022**

Chowgule & Company Limited vs. Assistant Director General of Foreign Trade & Others

DENIAL OF ADDITIONAL LICENCE

Denial of the additional licence is absolutely in consonance with the Exim Policy 1990- 93 - There shall not be any benefit of additional licence, the appellant cannot be permitted to claim

the benefit of additional licence under the old Exim Policy, which was not in existences- The appellant cannot be allowed the benefit of additional licence on the ground that some others might have been granted such benefits de hors the scheme, which otherwise the appellant is not entitled to under the scheme -Appeal dismissed and is accordingly dismissed.

[Paras 4, 6, 8, 9]

Law Point- There cannot be any negative discrimination which may perpetuate the illegality

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2023(1)MDSC9**IN THE SUPREME COURT OF INDIA**

[From BOMBAY HIGH COURT]

[Before M R Shah; M M Sundresh]

Civil Appeal No 8258 of 2022, 8259 of 2022 **dated 24/11/2022***Commissioner of Income Tax vs. Mansukh Dyeing and Printing Mills***ASSET OF THE PARTNERSHIP**

Income Tax Act, 1961 Sec. 45-When the asset of the partnership is transferred to a retiring partner the partnership which is assessable to tax ceases to have a right or its right in the property stands extinguished in favour of the partner to whom it is transferred - When the asset is transferred to a partner, that falls within the expression otherwise and the rights of the other partners in that asset of the partnership is extinguished - The word "otherwise" takes into its sweep not only the cases of dissolution but also cases of subsisting partners of a partnership, transferring assets in favour of a retiring partner - The order passed by the Assessing Officer is hereby restored - Appeal allowed.

[Paras 8, 22, 24]

Law Point:- The transfer of the capital assets in the nature of capital gains and business profits which is chargeable to tax under section 45(4) of the I.T. Act.

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2023(1)MDSC10**IN THE SUPREME COURT OF INDIA**

[From DELHI HIGH COURT]

[Before M R Shah; M M Sundresh]

Civil Appeal No 8088 of 2022 **dated 09/11/2022***Delhi Development Authority vs. Asha Jain & Ors*

STALE AND TIME-BARRED CLAIMS

Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 Sec. 24 - In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court - Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

[Para No. 3]

Law Point- Section 24(2) of the 2013 Act does revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

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2023(1)MDSC11

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before M R Shah; M M Sundresh]

Civil Appeal No. 7962 of 2022 **dated 04/11/2022**

Delhi Development Authority vs. Damini Wadhwa & Ors

LAPSE OF ACQUISITION

Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 Sec. 24-Agreement to Sell by itself does not confer any right, title, or interest - Subsequent purchaser has no right to claim lapse of acquisition proceedings - No locus at all to file the writ petition before the High Court challenging the acquisition and/or praying for declaration on the basis of the Agreement to Sell

[Paras 3 and 7]

Law Point- There cannot be any lapse of acquisition under Section 24(2) of the Act, 2013 on the ground of possession could not be taken over by the authority and/or the compensation could not be deposited / tendered due to the pending litigations.

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2023(1)MDSC12

IN THE SUPREME COURT OF INDIA

[Before A S Bopanna; Pamidighantam Sri Narasimha]

Civil Appeal No 8572 of 2022, 8573 of 2022, 8574 of 2022, 8575 of 2022, 8576 of 2022, 8577 of 2022, 8578 of 2022, 8579 of 2022, 8580 of 2022, 8581 of 2022 **dated 18/11/2022***Food Corporation of India & Ors vs. Abhijit Paul***CONTRACTUAL DISPUTE**

Contract Act, 1872 Sec. 73 - Contractual dispute - True and correct intention of the parties to the present contract - Does contractors' liability for "charges", if any, include demurrages - Whether the demurrages imposed on the Corporation by the Railways can be, in turn, recovered by the Corporation from the contractors as "charges" recoverable under clause XII (a) of the contract - Demurrage is a charge - Held, demurrages cannot be recovered as a charge by the Corporation - Parties did not intend to include liability on account of demurrages as part and parcel of the expression "charges" - The liability of the contractors in the present contracts is clearly distinguishable from other contracts entered into by the FCI in 2010 and 2018, having a different scope and objective - Appeals filed by Corporation are dismissed

[Paras 26 to 33]

Law Point: Demurrages cannot be recovered as a charge by the Corporation

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2023(1)MDSC13**IN THE SUPREME COURT OF INDIA**

[From KERALA HIGH COURT]

[Before B R Gavai; Pamidighantam Sri Narasimha]

Criminal Appeal No. 1864 of 2010, 1865 of 2010 **dated 11/11/2022***Gireesan Nair & Ors Etc vs. State of Kerala***DELAY IN HOLDING THE TIP**

Indian Penal Code, 1860 Sec. 324, Sec. 149, Sec. 148, Sec. 143, Sec. 34, Sec. 111, Sec. 147, Sec. 109, Sec. 302, Sec. 307, Sec. 427, Sec. 326, Sec. 120B, Sec. 506-Explosive Substances Act, 1908 Sec. 5, Sec. 3-Prevention of Damage to Public Property Act, 1984 Sec. 3-It is for the prosecution to prove that a TIP was conducted in a fair manner and that all necessary measures and precautions were taken before conducting the TIP. Thus, the burden is not on the defence - The conduct of the TIP, coupled with the hovering presence of the police during the conduct of the TIP vitiated the entire process - Conviction not sustainable - In view of these lapses on the part of the prosecution, it is not necessary to consider various other grounds raised by the Appellants - Delay in holding the TIP coupled with other circumstances has cast a serious doubt on the credibility of the TIP witnesses - As the only evidence for convicting the appellants is the evidence of the eye-witnesses in the TIP, and when the TIP is vitiated, the conviction cannot be upheld

[Para 31, 44, 49, 56]

Law Point- The identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer in course of investigation and they fall within the ban of Section 162 of the Code.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC22111528870**

2023(1)MDSC14

[Before Uday Umesh Lalit; Dinesh Maheshwari; S Ravindra Bhat; Bela M Trivedi;
J B Pardiwala]

Writ Petition (Civil); T C (C) (Transferred Case (Civil)); W P (C) (Writ Petition (Civil)); S L P (C) (Special Leave Petition (Civil)) No 55 of 2019; 8 of 2021, 12 of 2021, 10 of 2021, 9 of 2021, 1245 of 2019, 2715 of 2019, 122 of 2020, 7 of 2021, 11 of 2021; 596 of 2019, 446 of 2019, 427 of 2019, 331 of 2019, 343 of 2019, 798 of 2019, 732 of 2019, 854 of 2019, 73 of 2019, 72 of 2019, 76 of 2019, 80 of 2019, 222 of 2019, 249 of 2019, 341 of 2019, 69 of 2019, 122 of 2019, 106 of 2019, 95 of 2019, 133 of 2019, 178 of 2019, 182 of 2019, 146 of 2019, 168 of 2019, 212 of 2019, 162 of 2019, 419 of 2019, 473 of 2020, 493 of 2019; 8699 of 2020 **dated 07/11/2022**

Janhit Abhiyan vs. Union of India

ECONOMICALLY WEAKER SECTIONS

PRECISE - SUMMARIZE A) Constitution of India, Art.15(4), Art.15(5), Art.16(4) - Larger bench - Pleas filed by 35 petitioners challenging Centre's decision - Referred to a 5-judge Constitution Bench pleas challenging Constitution (One Hundred and Third Amendment) Act, 2019 - Grant of 10% quota to Economically Weaker Sections (EWSs) in jobs and admissions in general category - Substantial question of law - "for purpose of deciding any case involving a substantial question of law as to interpretation of Constitution it is to be heard by a Bench of five Judges." - By virtue of Article 15(6) of Constitution, States are empowered to make a special provision for advancement of any economically weaker sections of citizens or that classes mentioned in clauses (4) and (5) and to make a special provision relating to their admission to educational institutions including private educational institutions, whether aided or unaided by State, or than minority educational institutions referred to in clause (1) of Article 30, in addition to existing reservations and subject to a maximum of ten per cent of total seats in each category - Similarly, Article 16(6) empowers State to make any provision for reservation of appointments or posts in favour of any economically weaker sections of citizens or that classes mentioned in clause (4), in addition to existing reservation and subject to a maximum of ten per cent of posts in each category.

It is case of petitioners Janhit Abhiyan, an NGO, that impugned amendments violate basic structure of Constitution mainly on ground that existing provisions of Constitution empower to provide affirmative action only in favour of socially backward classes - It is for first time that by impugned amendments in Constitution itself new clauses are incorporated enabling State to provide affirmative action by way of reservation to extent of 10% in educational institutions

and for appointment in services to economically weaker sections of society. Petitioners argued that economic criteria alone cannot be basis to determine backwardness as per 9-Judge Bench judgment of this Court in case of *Indira Sawhney v. Union of India* - It is also case of petitioners that exceeding ceiling cap of 50% is also in violation of very same judgment of this Court. quota will be over and above existing 50 per cent reservation to Scheduled Castes, Scheduled Tribes and Or Backward Classes (OBCs).

B) Constitution of India - Basic Structure of Constitution - Violation of - Reservation is an instrument of affirmative action by State so as to ensure all-inclusive march towards goals of an egalitarian society while counteracting inequalities; it is an instrument not only for inclusion of socially and educationally backward classes to the mainstream of society but, also for inclusion of any class or section so disadvantaged as to be answering description of a weaker section - Reservation structured singularly on economic criteria does not violate any essential feature of Constitution of India and does not cause any damage to basic structure of Constitution of India.

[Para 102(a)]

C) Constitution of India, Art.15(4), Art.15(5), Art.16(4) - Backward class - Exclusion of classes covered by Articles 15(4), 15(5) and 16(4) from getting benefit of reservation as economically weaker sections, being in nature of balancing requirements of nondiscrimination and compensatory discrimination, does not violate Equality Code and does not in any manner cause damage to basic structure of Constitution of India - Reservation for economically weaker sections of citizens up to ten per cent. in addition to existing reservations does not result in violation of any essential feature of Constitution of India and does not cause any damage to basic structure of Constitution of India on account of breach of ceiling limit of fifty per cent. because, that ceiling limit itself is not inflexible and in any case, applies only to reservations envisaged by Articles 15(4), 15(5) and 16(4) of Constitution of India.

[Para 102(b)]

D) Constitution (103rd) Amendment Act 2019 - Amendments - Determination of Validity - 103rd Constitutional Amendment which introduced 10% reservation for Economically Weaker Sections (EWS) in education and public employment - Constitution is amended by inserting new clauses in Articles 15 and 16 thereof, which empower State to make reservations by way of affirmative action to extent of 10% to economically weaker sections - Amendments contrary to constitutional scheme, and no segment of available seats/posts can be reserved, only on basis of economic criterion.

[Para 102(c)]

Taking into account submissions of petitioner, Court said that such questions do constitute substantial questions of law to be considered by a Bench of five Judges - It is clear from language of Article 145(3) of Constitution and Order XXXVIII Rule 1(1) of Supreme Court Rules, 2013, matters which involve substantial questions of law as to interpretation of constitutional provisions they are required to be heard a Bench of five Judges.

"Whether impugned Amendment Act violates basic structure of Constitution, by applying tests of 'width' and 'identity' with reference to equality provisions of Constitution, is a matter which constitutes substantial question of law within meaning of provisions as referred"

E) Constitution of India , Art.145(3) read with Supreme Court of Rules, 2013 , Order XXXVIII Rule 1(1) - Substantial questions of law - Constitution of - Submission of Union of India that though ordinarily 50% is rule but same will not prevent to amend Constitution itself in view of existing special circumstances to uplift members of society belonging to economically weaker sections - Court noticed that even such questions also constitute as substantial questions of law to be examined by a Bench of five Judges as per Article 145(3) of Constitution read with Order XXXVIII Rule 1(1) of Supreme Court of Rules, 2013.

Law Point - Amendment and Economically Weaker Sections Reservations were constitutionally valid. Arguments: 1. Reservations cannot be based solely on economic criteria, given the Supreme Court's judgment in Indra Sawhney v. Union of India (1992).

2. SCs/STs and OBCs cannot be excluded from economic reservations, as this would violate the fundamental right to equality.

3. The Amendment introduces reservations that exceed the 50% ceiling-limit on reservations, established by Indra Sawhney.

4. Imposing reservations on educational institutions that do not receive State aid violates the fundamental right to equality. Issues framed 1. If reservations can be granted solely on the basis of economic criteria?

2. If States can provide reservations in private educational institutions which do not receive government aid, as provided in the Amendment?

3. If EWS reservations are invalid for excluding Scheduled Castes, Scheduled Tribes, Other Backward Classes, and Socially and Economically Backward Classes from its scope?

Supreme Court has upheld validity of 103rd Constitutional Amendment which provides 10% reservation for the Economically Weaker Sections (EWS) in EDUCATION AND PUBLIC EMPLOYMENT across India.

Majority View: - The 103rd constitutional amendment cannot be said to breach the basic structure of the Constitution.

- The EWS quota does not violate equality and the basic structure of the constitution. Reservation in addition to existing reservation does not violate provisions of the Constitution.

- The reservation is an instrument of affirmative action by the state for the inclusion of backward classes.

- Basic structure can't be breached by enabling the state to make provisions for education.

- Reservation is instrumental not just for inclusion of socially and economically backward classes into the society but also to class so disadvantaged.

- Reservations for EWS does not violate basic structure on account of 50% ceiling limit fixed by Mandal Commission because ceiling limit is not inflexible.

- - 50% rule formed by the Supreme Court in the Indira Sawhney judgment in 1992 was "not inflexible". Further, it had applied only to SC/ST/SEBC/OBC communities and not the general category.

- The Scheduled Castes, Scheduled Tribes and the backward class for whom the special provisions have already been provided in Article 15(4), 15(5) and 16(4) form a separate category as distinguished from the general or unreserved category.

Minority View - Reservations were designed as a powerful tool to enable equal access. Introduction of economic criteria and excluding SC (Scheduled Castes), ST (Scheduled Tribe), OBC (Other Backward Classes), saying they had these pre-existing benefits is injustice.

- Reparative mechanism for EWS quota to have a level playing field and the exclusion of SC, ST, OBC discriminates against equality code and violates basic structure

. - Permitting breach of 50% ceiling limit would become "a gateway for further infractions and result in compartmentalization (division into sections).

Economically Weaker Section (EWS) Quota - The 10% EWS quota was introduced under the 103rd Constitution (Amendment) Act, 2019 by amending and inserted Article 15 (6) and Article 16 (6).

- It is for economic reservation in jobs and admissions in educational institutes for Economically Weaker Sections (EWS).

- It was enacted to promote the welfare of the poor not covered by the 50% reservation policy for Scheduled Castes (SCs), Scheduled Tribes (STs) and Socially and Educationally Backward Classes (SEBC).

- It enables both Centre and States to provide reservations to EWS of society.

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2023(1)MDSC15

IN THE SUPREME COURT OF INDIA

[From KERALA HIGH COURT]

[Before Ajay Rastogi; C T Ravikumar]

Civil Appeal No. 8457 of 2022, 8458 of 2022 **dated 15/11/2022**

Kerala State Electricity Board Ltd & Anr vs. Rubfila International Limited & Ors

ENHANCED POWER TARIFF

Code of Civil Procedure, 1908 Or. 47R. 1 - Exemption from enhanced power tariff - Sought parity with another industrial unit - Enhanced power tariff became effective from 1st January, 1992 - Government of Kerala came with the GO dated 6th February, 1992 to provide exemption from enhanced power tariff to new industrial units starting commercial production between 1st January, 1992 and 31st December, 1996 for a period of 5 years from the date the unit started commercial production - Held, so far as the Government Order dated 6th February, 1992 is concerned, the new industrial unit starting production between 1st January, 1992 and 31st December, 1996 was entitled to claim exemption from enhanced power tariff for a period of 5 years from the date it started commercial production - Date of commercial production in reference to the respondent (industrial unit) was 26th March, 1995 - After the order came to be passed on 22nd November, 2001, benefit in favour of M/s Patspin India Ltd. being withdrawn,

there remain no factual foundation on the basis of which the parity by the respondent (industrial unit) could have been claimed - Judgment passed by the Division Bench of the High Court is not legally sustainable and hence, set aside - Appeals are allowed

[Paras 14 to 23]

Law Point: New industrial unit starting production between 1st January, 1992 and 31st December, 1996 was entitled to claim exemption from enhanced power tariff for a period of 5 years from the date it started commercial production

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2023(1)MDSC16

IN THE SUPREME COURT OF INDIA

[From KERALA HIGH COURT]

[Before M R Shah; Krishna Murari]

Civil Appeal No. 7128 of 2022 **dated 17/11/2022**

Leelamma Mathew vs. Indian Overseas Bank & Ors

SUIT FOR RECOVERY OF DAMAGES

Transfer of Property Act, 1882 Sec. 54 - Limitation Act, 1963 Art. 113 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 14, Sec. 34 - Security Interest (Enforcement) Rules, 2002 Rule 8 - Suit for recovery of damages/ compensation with respect to 14.40 cents - Trial Court decreed the suit and directed the defendant - Bank to pay to the plaintiff a sum of Rs.58,10,000/- with future interest @ 12% pa from the date of suit till realization - High Court has allowed the said appeal preferred by respondent no.1 herein - Bank and has quashed and set aside the judgment and decree passed by the learned Trial Court - Held, Rule 8 of the 2002 Rules cast a duty on the authorized officer to take all precautions before putting the secured asset to sell - As per sub-rule 5 of Rule 8 before effecting sale of the immovable property (secured assets) the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor and fix the reserve price of the property and may sell the whole or any part of such immovable secured asset - Therefore, when the reserve price was fixed the same was for 54 cents - Therefore, it can be presumed that the Bank was aware that the actual area of the secured asset is less than 54 cents - As per Section 54 of the Transfer of Property Act the seller was bound to disclose any buyer any material defect in the property of which the buyer is not aware and which the buyer could not ordinarily discover - Under the circumstances also the submission on behalf of the Bank that the property was put to auction on "as is where is" and "as is what is" condition, thereafter the plaintiff shall not be entitled to compensation of the less area cannot be accepted - Impugned judgment is quashed and set aside - Appeal is allowed

[Paras 4 and 5]

Law Point: Seller was bound to disclose any buyer any material defect in the property of which the buyer is not aware and which the buyer could not ordinarily discover

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2023(1)MDSC17

IN THE SUPREME COURT OF INDIA
[From MADHYA PRADESH HIGH COURT]
[Before K M Joseph; Hrishikesh Roy]

Civil Appeal No. 8515 of 2022, 8516 of 2022 **dated 16/11/2022**

M P Power Management Company Limited, Jabalpur vs. Sky Power Southeast Solar India Private Limited & Others

TERMINATION OF A CONTRACT

Electricity Act, 2003 Sec. 32, Sec. 73, Sec. 61, Sec. 63, Sec. 62, Sec. 2, Sec. 39, Sec. 31 - Termination of Power Purchase Agreement - Power Purchase Agreement terminated by appellant - Order of appellant quashed and set aside by High Court - An inspection by the CEIG would necessarily have to be carried out in which the appellant would have to be involved to facilitate the exercise - Held, termination of a contract, undoubtedly, results in the intrusion into and deprivation of valuable rights, which are vouchsafed to the awardee of the contract - In the facts of this case, on being satisfied, the CEIG would necessarily have to grant the re-validation of the earlier Report - It would also involve an opportunity to the CEIG to look into the aspects which have been projected by the first respondent itself in its letter dated 16.09.2020 - The report would indeed indicate the state of affairs about all the facets - Even under the impugned Judgement, the first respondent would have to submit necessary applications - Impugned order confirmed - Appeals are dismissed.

[Paras 122 to 130]

Law Point: Termination of a contract results in the intrusion into and deprivation of valuable rights, which are vouchsafed to the awardee of the contract.

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2023(1)MDSC18

IN THE SUPREME COURT OF INDIA

[Before Uday Umesh Lalit; S Ravindra Bhat; Bela M Trivedi]

Miscellaneous Application; Special Leave Petition (C) (Special Leave Petition (Civil)); Conmt Pet (C) (Contempt Petition (Civil)) No 231 of 2019; 6933 of 2007, 15877 of 2020, 15878 of 2020; 540 of 2019, 541 of 2019, 542 of 2019, 543 of 2019, 544 of 2019, 545 of 2019, 546 of 2019, 547 of 2019, 553 of 2019, 554 of 2019, 555 of 2019, 556 of 2019, 557 of 2019, 558 of 2019, 559 of 2019, 560 of 2019, 561 of 2019, 562 of 2019, 563 of 2019, 564 of 2019, 685 of 2019, 686 of 2019, 687 of 2019, 548 of 2019, 549 of 2019, 550 of 2019, 551 of 2019, 552 of 2019 **dated 03/11/2022**

Mahanadi Coal Fields Ltd & Anr vs. Mathias Oram & Ors

COMPENSATION FOR THE LAND ACQUIRED

Constitution of India Art. 142 - Coal Bearing Areas (Acquisition and Development) Act, 1957 Sec. 4, Sec. 7, Sec. 9, Sec. 11, Sec. 13 - Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 Sec. 113, Sec. 103, Sec. 41, Sec. 105, Sec. 108, Sec. 42 - Compensation for the land acquired - Applicability of R & R Act, 2013 - Lands of tribal communities acquired for the purpose of coal mining - Held, facilities and amenities set out in the Third Schedule to the R&R Act, 2013 have to be necessarily provided to the displaced families involved in this case in the resettlement areas where they are located and where they ultimately move to - All members of SC/ST who are forced to move from their lands on account of the acquisition do so involuntarily - They are consequently entitled to the right to be treated as members of the SC/ST - All matters are disposed of

[Paras 62 to 68]

Law Point: Facilities and amenities set out in the Third Schedule to the R&R Act, 2013 have to be necessarily provided to the displaced families in the resettlement areas where they are located and where they ultimately move to

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2023(1)MDSC19

IN THE SUPREME COURT OF INDIA

[From TELANGANA HIGH COURT]

[Before B R Gavai; B V Nagarathna]

Civil Appeal No 8818 of 2022 **dated 23/11/2022**

Meenakshi Solar Power Pvt Ltd vs. Abhyudaya Green Economic Zones Pvt Ltd and Ors

APPOINTMENT OF ARBITRATOR

Arbitration and Conciliation Act, 1996 Sec. 9, Sec. 11 - Appointment of arbitrator - Novation of the share purchase agreement - Commercial Court was pleased to grant an ad-interim injunction restraining the respondents from alienating their shares - Appellant herein filed an application under Section 11(6) which came to be dismissed by the High Court - High Court was not right in dismissing the petition under Section 11(6) of the Act of 1996 filed by the appellant by giving a finding on novation of the Share Purchase Agreement between the parties as the said aspect would have a bearing on the merits of the controversy between the parties - Held, it must be left to the Arbitrator to decide on the said issue - Impugned judgment and order passed by the High Court is set-aside - Appeal is allowed

[Paras 15 to 19]

Law Point: Merits of the controversy between the parties must be left to Arbitrator to decide on the said issues.

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2023(1)MDSC20

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

[Before Ajay Rastogi; B V Nagarathna]

Civil Appeal No 104 of 2020 **dated 07/11/2022***Mohd Abdullah Azam Khan vs. Nawab Kazim Ali Khan***BURDEN TO PROVE DOCUMENTS**

Constitution of India Art. 173-Evidence Act, 1872 Sec. 145, Sec. 35-Representation of The People Act, 1951 Sec. 116A, Sec. 15, Sec. 36-Registration of Births and Deaths Act, 1969 Sec. 13-Uttar Pradesh Registration of the Birth and Death Rules, 2002 Rule 9-Burden to prove documents lie on plaintiff alone as onus is always on the person asserting a proposition or fact which is not self-evident - Where, however, evidence has been led by the contesting parties, abstract considerations of onus are out of place and truth or otherwise must always be adjudged on the evidence led by the parties - Great evidentiary value has to be attached to an application submitted to a government establishment or Offices - It is therefore not open to subsequently resile from the aforesaid clear admission and contend that he was unaware - In the absence of any explanation as to why the relevant birth list, forming the basis of the entry in the birth register, was not available to be produced before the Court, no evidentiary value can be attached to the birth register -Aadhar card is a means of identity and not a proof of date of birth.

[Paras 12, 18]

Law Point- A person cannot be permitted to occupy an office for which he is disqualified under the Constitution. The endeavour of the court therefore should be to see that a disqualified person should not hold the office but should not at the same time unseat a person qualified therefor.

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2023(1)MDSC21**IN THE SUPREME COURT OF INDIA**

[Before Uday Umesh Lalit; S Ravindra Bhat; Bela M Trivedi]

Review Petition (Crl) (Review Petition (Criminal)); Criminal Appeal No 286 of 2012, 287 of 2012; 98 of 2009, 99 of 2009 **dated 03/11/2022***Mohd Arif @ Ashfaq vs. State (NCT of Delhi)***REVIEW APPLICATIONS**

Indian Penal Code, 1860 Sec. 186, Sec. 201, Sec. 474, Sec. 34, Sec. 353, Sec. 420, Sec. 121, Sec. 302, Sec. 307, Sec. 468, Sec. 216, Sec. 471, Sec. 121A, Sec. 120B-Evidence Act, 1872 Sec. 65B Arms Act, 1959 Sec. 27, Sec. 25-Foreigners Act, 1946 Sec. 14-Explosive Substances Act, 1908 Sec. 5, Sec. 4 - Review applications cannot be entertained except on the ground of error apparent on the face of the record - Power given to this Court under Article 137 is wider and in an appropriate case can be exercised to mitigate a manifest injustice. By review

application an applicant cannot be allowed to reargue the appeal on the grounds which were urged at the time of the hearing of the criminal appeal - This Court shall exercise its jurisdiction to review only when a glaring omission or patent mistake has crept in the earlier decision due to judicial fallibility - There has to be an error apparent on the face of the record leading to miscarriage of justice to exercise the review jurisdiction under Article 137 read with Order 40 I Rule - There has to be a material error manifest on the face of the record with results in the miscarriage of justice.

Law Point- As per the Supreme Court Rules, review in the criminal proceedings is permissible only on the ground of error apparent on the face of the record.

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2023(1)MDSC22

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before Uday Umesh Lalit; Ajay Rastogi]

Civil Appeal; Contempt Petition (Civil); Special Leave Petition (Civil) No 8239 of 2022; 38 of 2021; 17009 of 2019 **dated 07/11/2022**

Municipal Corporation of Greater Mumbai & Ors vs. Property Owners Association & Ors

PROPERTY TAX

Constitution of India Art. 243X, Art. 14-Mumbai Municipal Corporation Act, 1888 Sec. 127, Sec. 140, Sec. 124, Sec. 61, Sec. 126, Sec. 139, Sec. 140A, Sec. 123, Sec. 125, Sec. 128, Sec. 154, Sec. 139A, Sec. 120 - Property tax can be levied on the basis of capital value of the land or building - The mode of assessment in every case must be directed towards finding out the annual letting value of land which is the basis of rating of land - For the purpose of determining capital value, only the present physical attributes and status of the land and building can be considered and not the future prospects of the land - The levy and computation of property tax not with any retrospective operation - Governing principle must be the actual use and not the intended use in future - Till the potential of the property was translated into a habitable building, the land must be treated and taxed only as land and not going by its buildable potential. It was further submitted that the process of fixing and/or changing the value, must be done in the same financial year.

[Para 36, 38, 39, 40]

Law Point- The capital value of the land and building must be based on situation "in presenti". Till the potential of the property was translated into a habitable building, the land must be treated and taxed only as land and not going by its buildable potential. It was further submitted that the process of fixing and/or changing the value, must be done in the same financial year.

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2023(1)MDSC23

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

[Before M R Shah; M M Sundresh]

Civil Appeal Nos. 8331 of 2022, 8332 of 2022, 8333 of 2022, 8334 of 2022, 8335 of 2022, 8336 of 2022, 8337 of 2022, 8338 of 2022, 8339 of 2022, 8340 of 2022, 8341 of 2022, 8342 of 2022, 8343 of 2022, 8344 of 2022, 8345 of 2022 **dated 17/11/2022**

New Okhla Industrial Development Authority vs. Rameshwar @ Ramesh Chandra Sharma

ENHANCEMENT OF COMPENSATION

Land Acquisition Act, 1894 Sec. 4 - Land acquisition - Enhancement of Compensation - Determination of - High Court has enhanced the amount of compensation for the lands acquired to Rs.149 per sq.yard - Held, to saddle with the liability to pay statutory benefits and interest for the delayed period upon the beneficiary/acquiring body would be a financial burden upon the public body and it may increase the project cost which shall be against the public interests - While condoning the delay and enhancing the amount of compensation at par with other land owners, the High Court ought not to have saddled the liability upon the appellant to pay statutory benefits and the interest payable under the Land Acquisition Act, 1894 for the delayed period - Impugned common judgment and order is modified - Appeals are partly allowed

[Para 5]

Law Point: To saddle with the liability to pay statutory benefits and interest for the delayed period upon the beneficiary/acquiring body would be a financial burden upon the public body and it may increase the project cost which shall be against the public interests.

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2023(1)MDSC24**IN THE SUPREME COURT OF INDIA**

[From MADRAS HIGH COURT]

[Before Uday Umesh Lalit; S Ravindra Bhat; Bela M Trivedi]

Criminal Appeal No 1926 of 2022 **dated 07/11/2022**

P Ponnusamy vs. State of Tamil Nadu

RIGHTS OF THE ACCUSED

Indian Penal Code, 1860 Sec. 341, Sec. 34, Sec. 109, Sec. 302, Sec. 120B-Code of Criminal Procedure, 1973 Sec. 391, Sec. 208, Sec. 173, Sec. 366, Sec. 91, Sec. 207-Draft Rules of Criminal Practice, 2021 Rule 4-The right of the accused to receive the said list of documents, material, etc. would only apply after the draft rules are adopted - would lead to an anomalous situation where the right of the accused in one state, prejudicially differs from that afforded to

an accused, in another -At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC.

[Paras 12, 16]

Law Point- It is incumbent upon the trial court to supply the copies of these documents to the accused as that entitlement was a facet of just, fair and transparent investigation/trial and constituted an inalienable attribute of the process of a fair trial which Article 21 of the Constitution guarantees to every accused.

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2023(1)MDSC25

IN THE SUPREME COURT OF INDIA

[From ALLAHABAD HIGH COURT]

[Before Krishna Murari; Bela M Trivedi]

Criminal Appeal No. 1999 of 2022, 2000 of 2022, 2001 of 2022, 2002 of 2022, 2003 of 2022 **dated 17/11/2022**

Pawan Kumar Goel vs. State of U P & Another

SUMMONING ORDER

Code of Criminal Procedure, 1973 Sec. 200 - Negotiable Instruments Act, 1881 Sec. 141, Sec. 138, Sec. 142 - Summoning order - Appellant filed four criminal complaints on the allegations that the account payee cheque issued by the respondent no. 2 towards the outstanding bills when presented for clearance was dishonored on the ground that the cheque amount exceeds arrangement - Summoning order and proceedings issued by Trial court quashed by High Court - Necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process - Held, a liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself - So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141 - No error has been committed by the High Court in allowing the Writ Petition filed by the respondent no. 2 and quashing the impugned order and the proceedings - Appeals stand dismissed

[Paras 25 to 32]

Law Point: A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself

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2023(1)MDSC26

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before M R Shah; M M Sundresh]

Civil Appeal No. 8260 of 2022 **dated 17/11/2022**

Polyflex (India) Pvt Ltd vs. Commissioner of Income Tax & Another

DEDUCTION UNDER 80-IB OF IT ACT

Income Tax Act, 1961 Sec. 80IB-Assesse is manufacturing polyurethane foam which falls under entry 25 of the Eleventh Schedule and therefore considering Section 80-IB(2)(iii), the assessee shall not be entitled to deduction under Section 80-IB of the IT Act - Merely because the assessee is using the chemicals and ultimately what is manufactured is polyurethane foam and the same is used by assembly operators after the process of moulding as car seats, it cannot be said that the end product manufactured by the assessee is car seats/automobile seats.

[Paras 4.2, 7, 8, 10]

Law Point- The moment a commercially distinct commodity, known in trade parlance by a different name and having a different use, comes into being, it ceases to be classifiable as the raw material/ingredient from which it is made.

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2023(1)MDSC27

IN THE SUPREME COURT OF INDIA

[From DELHI HIGH COURT]

[Before Uday Umesh Lalit; S Ravindra Bhat; Bela M Trivedi]

Criminal Appeal No. 611 of 2022, 612 of 2022, 613 of 2022, 614 of 2022, 615 of 2022
dated 07/11/2022

Rahul; Ravi Kumar; Vinod @ Chhotu vs. State of Delhi Ministry of Home Affairs & Anr; State of Nct of Delhi

MATERIAL WITNESSES

Indian Penal Code, 1860 Sec. 363, Sec. 201, Sec. 34, Sec. 302, Sec. 365, Sec. 377, Sec. 367, Sec. 376-Code of Criminal Procedure, 1973 Sec. 357, Sec. 313-Evidence Act, 1872 Sec. 65B, Sec. 165, Sec. 27, Sec. 8, Sec. 25-Material witnesses examined by the prosecution having not been either cross-examined or adequately examined -In order to sustain conviction, the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused only and none else - Trial court also having acted as a passive umpire - Courts to exercise their powers under Section 165 of the Indian Evidence Act for eliciting the truth in the cases before them, howsoever heinous or otherwise they may be - Conviction and sentence are set aside.

[Paras 31, 33 and 35]

Law Point- If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC2211937609**

2023(1)MDSC28

IN THE SUPREME COURT OF INDIA

[From KERALA HIGH COURT]

[Before S Abdul Nazeer; V Ramasubramanian]

Civil Appeal No 8261 of 2022, 8262 of 2022 **dated 09/11/2022**

Ravi Namboothiri vs. K A Baiju & Ors

SUBSTANTIVE OFFENCES

Indian Penal Code, 1860 Sec. 149, Sec. 143, Sec. 283, Sec. 447-Representation of The People Act, 1951 Sec. 100-States Reorganisation Act, 1956 Sec. 5-Tamil Nadu Panchayats Act, 1994 Sec. 259, Sec. 260-Kerala Police Act, 1960 Sec. 52, Sec. 38-Kerala Panchayat Raj Act, 1994 Sec. 102-Kerala Panchayat Raj (Conduct of Election) Rules, 1995 Rule 6-Appeal against Judgment and order setting aside his election as Councilor - Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative - Offences under Kerala Police Act are not substantive offences - These Acts themselves empower the police to issue necessary directions for the maintenance of law and order and the violation of any of those directions is made a punishable - Neither Section 52(1A) read with Rule 6 and Form 2A nor Section 102(1)(ca) of the Act can be stretched to such an extent that the failure of the appellant to disclose his conviction for an offence under the Kerala Police Act for holding a dharna in front of the Panchayat office, is taken as a ground for declaring an election void.

[Paras 2, 45, 46 and 94]

Law Point:All State enactments such as Kerala Police Act, Madras Police Act etc., are aimed at better regulation of the police force and they do not create substantive offences.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC22111039789**

2023(1)MDSC29

IN THE SUPREME COURT OF INDIA

[Before S Abdul Nazeer; J K Maheshwari]

Civil Appeal Nos. 8727 of 2022, 8728 of 2022, 8729 of 2022, 8730 of 2022, 8731 of 2022,
8732 of 2022, 8733 of 2022, 8734 of 2022 **dated 22/11/2022***Revenue Divisional Officer & Anr; Ismail Bhai & Others; Fakhruddin Ali vs. Ismail Bhai and Others; Revenue Divisional Officer (Land Acquisition Officer) Etc***CLAIM FOR COMPENSATION**

Land Acquisition Act, 1894 Sec. 4, Sec. 6, Sec. 23, Sec. 18 - Claim for compensation in land acquisition case - Deduction of development charge and the area of the land used for development - Land in the present case was acquired 40 years back in the year 1981 and the compensation was decided by LAO after litigating in courts only @ Rs. 6 per sq. yard - The land acquired is now in the heart of city of Hyderabad where the cost of the land has been increased more than 100 times - The development of the city has already taken place - Held, land owners, whose land has been utilized 40 years back, now cannot be compelled to pay the development charge for the development which has already taken place, only for a parcel of land to which they have not given compensation up to decades - Therefore, the plea taken by the Revenue Department sans merit - Appeals filed by the land owners are allowed

[Paras 10 to 14]

Law Point: Land owners, whose land has been utilized 40 years back, now cannot be compelled to pay the development charge for the development which has already taken place

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC22112439899**

2023(1)MDSC30**IN THE SUPREME COURT OF INDIA**

[From MADRAS HIGH COURT]

[Before Uday Umesh Lalit; Bela M Trivedi]

Criminal Appeal No 160 of 2017, 410 of 2017 **dated 03/11/2022***S Kaleeswaran; John Anthonisamy @ John vs. State***CIRCUMSTANTIAL EVIDENCE**

Indian Penal Code, 1860 Sec 149, Sec 201, Sec 147, Sec 396, Sec 302, Sec 364, Sec 120B Code Of Criminal Procedure, 1973 Sec 313-The failure of the accused, in a case based on circumstantial evidence which included "last seen together theory", to explain under Section 313 Cr.PC as to under what circumstances the victim suffered death, would also not be a ground to arrive at an irresistible conclusion that the accused were involved in the commission of the alleged crime- Though identification of the deceased through superimposition is an acceptable piece of opinion evidence, however the courts generally do not rely upon opinion

evidence as the sole incriminating circumstances, given its fallibility, and the superimposition technique cannot be regarded as infallible

[Paras 12, 13]

Law Point- The circumstances of last seen together, even if proved cannot clinchingly fasten the guilt of the accused

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC2211542635**

2023(1)MDSC31

IN THE SUPREME COURT OF INDIA

[From ANDHRA PRADESH HIGH COURT]

[Before M R Shah; Krishna Murari]

Civil Appeal No 6821 of 2022, 6823 of 2022, 6824 of 2022, 6825 of 2022 **dated 09/11/2022**
S Shankaraiah Thr Gpa Holder & Ors vs. Land Acquisition Officer and Revenue Divisional Officer Peddapali Karimnagar Dist & Ors

MARKET VALUE OF THE LAND

Land Acquisition Act, 1894 Sec. 4, Sec. 6, Sec. 18-The nature of deposits existing on the surface or the sub-soil of a land would play an important role and if there are any deposits of rare minerals or precious stones, that would add to the market value of the land - The purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges.

[Paras 29]

Law Point- The purpose for which acquisition is made is also a relevant factor for determining the market value."

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC22111039871**

2023(1)MDSC32

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before Surya Kant; J B Pardiwala]

Civil Appeal No. 8510 of 2022 **dated 16/11/2022**

Sidram vs. Divisional Manager, United India Insurance Co Ltd and Anr

DETERMINING QUANTUM OF COMPENSATION

Motor Vehicles Act, 1988 Sec. 168 - Workmens Compensation Act, 1923 - Nature of injuries - Extent of disability - Compensation - Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon victim - Attendant trauma of victim's having to live in a world

entirely different from one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in judge's mind, whenever tasked to adjudge compensation claims - Severe limitations inflicted due to such injuries undermine dignity (which is now recognized as an intrinsic component of right to life under Article 21) of individual, thus depriving person of essence of right to a wholesome life which she or he had lived - Victim is thrust into world of disabled, itself most discomfiting and unsettling - If courts nit-pick and award niggardly amounts oblivious of circumstances, there is resultant affront to injured victim - Insurance company to pay appellant-claimant difference in compensation awarded herein as against amount - Rate of interest at enhanced amount is to be same i.e., 6% per annum - Appeal allowed

[Paras 113,114]

Law point - Determining quantum of compensation payable to victims of accident, who are disabled either permanently or temporarily.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC22111830965**

2023(1)MDSC33**IN THE SUPREME COURT OF INDIA**

[Before Surya Kant; M M Sundresh]

Civil Appeal No. 6964 of 2015, 6965 of 2015, 6966 of 2015, 6967 of 2015, 6968 of 2015 **dated 14/11/2022**

Singapore Airlines Ltd; Klm Royal Dutch Airlines; British Airways PLC vs. Commissioner of Income Tax (TDS) Delhi

TDS ON SUPPLEMENTARY COMMISSION

Income Tax Act, 1961 Sec. 201, Sec. 273B, Sec. 271C, Sec. 133A, Sec. 194H - Contract Act, 1872 Sec. 215, Sec. 216, Sec. 182 - Interpretation of Section 194H of the Income Tax Act, 1961 - Provision requires deduction of tax at source ("TDS") at 10% plus surcharge from payments falling under the definition of "Commission" or "Brokerage" under the Section - Held, any of the agents have not yet paid taxes on the Supplementary Commission, the Revenue will be at liberty to proceed in accordance with law under the IT Act for recover of shortfall in TDS from the airlines - Appeal is allowed

[Paras 60 to 66]

Law Point: Any of the agents have not yet paid taxes on the Supplementary Commission, the Revenue will be at liberty to proceed in accordance with law under the IT Act for recover of shortfall in TDS from the airlines.

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2023(1)MDSC34

IN THE SUPREME COURT OF INDIA

[From JAMMU AND KASHMIR HIGH COURT]

[Before Ajay Rastogi; J B Pardiwala]

Criminal Appeal No. 1928 of 2022 **dated 16/11/2022**

State of Jammu & Kashmir vs. Shubam Sangra

CONSTITUTIONAL PROTECTION

Code of Criminal Procedure, 1973 Sec. 161, Sec. 164A - Juvenile Justice (Care and Protection of Children) Act, 2000 Sec. 7A - Juvenile Justice (Care and Protection of Children) Rules, 2007 Rule 12 - Juvenile Justice (Care and Protection of Children) Act, 2015 Sec. 94 - Jammu and Kashmir State Ranbir Penal Code, 1989 Sec. 376, Sec. 363, Sec. 201, Sec. 302, Sec. 120B, Sec. 343 - Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 Sec. 48, Sec. 8 - Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Rules, 2014 Rule 74 - Kathua rape case - The Kathua rape case involved the abduction, gang rape and murder of an eight year-old Muslim girl by name 'X' by six Hindu men and the respondent (claiming to be a juvenile) in January, 2018 - Deceased had been raped multiple times by different men and that she had been strangled to death as well as hit on the head by a heavy stone - Trial court holding the respondent accused to be a juvenile on the date of the commission of the alleged offence - Six of the seven accused stood convicted and one accused was acquitted - Held, medical expert's estimate of age may not be a statutory substitute for proof and is only an opinion but such opinion of an expert should not be brushed aside or ignored when the Court itself is in doubt in regard to the age of a citizen claiming constitutional protection - Documents evidencing date of birth does not inspire any confidence and there is no other option but to fall back on the report of the Special Medical Board in the interest of justice - Appeal is allowed

[Paras 71 to 79]

Law Point: medical expert's estimate of age may not be a statutory substitute for proof and is only an opinion but such opinion of an expert should not be brushed aside or ignored when the Court itself is in doubt in regard to the age of a citizen claiming constitutional protection

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2023(1)MDSC35

IN THE SUPREME COURT OF INDIA

[From JHARKHAND HIGH COURT]

[Before Uday Umesh Lalit; S Ravindra Bhat; Sudhanshu Dhulia]

Civil Appeal No. 8233 of 2022, 8234 of 2022 **dated 07/11/2022**

State of Jharkhand vs. Shiv Shankar Sharma & Ors

GENERALIZED AVERMENTS

Constitution of India Art. 192-Indian Penal Code, 1860 Sec. 201, Sec. 302, Sec. 169-Prevention of Corruption Act, 1988 Sec. 13, Sec. 7A-Representation of The People Act, 1950 Sec. 9-Jharkhand High Court (Public Interest Litigation) Rules, 2010 Rule 4B, Rule 5, Rule 4, Rule 4A-Writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised - Court cannot become a forum to investigate the alleged acts of misdeeds against high constitutional authorities based on of a person who has not been able to fully satisfy his credentials and has come to the Court generalized averments which are nothing but mere allegations and half - baked truth that too at the hands with unclean hands.

[Paras 8, 15,16,17]

Law Point- It is not advisable for the writ courts to interfere with criminal investigations in the absence of specific standards for the same."

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2023(1)MDSC36**IN THE SUPREME COURT OF INDIA**

[From BOMBAY HIGH COURT]

[Before Aniruddha Bose; Vikram Nath]

Civil Appeal No 8293 of 2022 **dated 10/11/2022**

Suresh G Ramnani vs. Aurelia Ana De Piedade Miranda @ Ariya Alvares (Dead Thr Lrs) & Ors

REVIEW APPLICATION

Code of Civil Procedure, 1908 Sec. 96, Or. 47R. 5, Sec. 100 - Suit for declaration and permanent injunction - Trial Court decreed the suit - Held, once an application was preferred by any of the parties that a review may be heard by the Judge who had decided the matter and had passed the order from which the review arose, the matter ought to have been placed before the Chief Justice on the administrative side rather than order being passed on the judicial side - The proviso to Rule 3(1) of Chapter XXX of the Rules confers this power on the Chief Justice to assign a particular matter to a single Judge for hearing of the review application where the single Judge concerned was not available for the time being by reason of being on leave or otherwise as aforesaid i.e. where he had ceased to sit at a particular Bench - The Chief Justice, being the master of roster and being conferred with specific powers of assigning review petitions in given circumstances under the Rules, the learned single Judge ought not to have dealt with the application, but should have referred the matter to be placed before the Chief Justice - Appeal is allowed

[Paras 12 to 15]

Law Point: The Chief Justice, being the master of roster and being conferred with specific powers of assigning review petitions

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2023(1)MDSC37

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before B R Gavai; B V Nagarathna]

Civil Appeal No 8598 of 2022, 8599 of 2022 **dated 18/11/2022**

*T J Parameshwarappa @ Parameshwarappa @ J T Parameshwarappa @ Talalkena Gowdra
Parameshwarappa vs. Branch Manager, New India Assurance Co Ltd & Ors*

PECUNIARY DAMAGES

A) Motor Vehicles Act, 1988 - Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act) 1995 - Pecuniary damages - Assessment of future loss of earnings due to permanent disability -No compensation was awarded towards loss of marriage prospects and loss of future prospects - Judgment and award passed by High Court is modified by enhancing award of compensation to appellant - Interest at rate of 6% per annum from date of filing of claim petition till realization - Nationalized bank for a period of five years - Appellant shall be entitled to draw periodical interest on said deposit - Balance amount shall be paid to appellant - Appeal allowed.

B) Motor Vehicles Act, 1988 - Provision of Motor Vehicles Act, 1988 makes it clear that award must be just, which means that compensation should, to extent possible, fully and adequately restore claimant to position prior to accident. object of awarding damages is to make good loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. court or Tribunal shall have to assess damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to nature of disability and its consequences, is inevitable. A person is not only to be compensated for physical injury, but also for loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for injuries, and his inability to earn as much as he used to earn or could have earned

[Para 16]

Law Point - Wherein general principles relating to compensation in injury cases; assessment of loss of future earnings on account of permanent disability; assessment of compensation in injury cases, have been discussed at length.

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2023(1)MDSC38

IN THE SUPREME COURT OF INDIA

[Before Surya Kant; M M Sundresh]

Civil Appeal No 8249 of 2022 **dated 09/11/2022**

Texco Marketing Pvt Ltd vs. Tata Aig General Insurance Company Ltd & Ors

EXCLUSION CLAUSE

Code of Civil Procedure, 1908 Sec. 96 - Contract Act, 1872 Sec. 19, Sec. 10, Sec. 17, Sec. 2, Sec. 18 - Consumer Protection Act, 1986 Sec. 14, Sec. 21, Sec. 3 - Consumer Protection Regulations, 2005 Reg 26 - Consumer Protection Act, 2019 Sec. 49, Sec. 2, Sec. 59, Sec. 58, Sec. 47 - Repudiation of fire claim - Shop of appellant insured by respondent no. 1 - Shop met with a fire accident for which the appellant raised a claim - Claim made was repudiated by respondent No. 1, taking umbrage under the exclusion clause - State Commission rejected the contention of respondent No. 1 on the premise that there was no adequate disclosure, the mandatory provisions have not been followed, as such the insurer was deficient in service and indulged in unfair trade practice - National Commission, despite a finding to the effect that respondent No. 1 was not in compliance of the mandate of the law and inspection was indeed done prior to the execution of the contract, and even thereafter - Exclusion clause is an unfair term, going against the very object of the contract, making it otherwise un-executable from its inception - Held, a party is entitled for the relief which the law provides - No case for awarding amount under that head has been made out as the respondents merely took a legal stand - Appeal is partly allowed

[Paras 32 to 40]

Law Point: A party is entitled for the relief which the law provides.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **SC22111040030**

Case Pointer
MONTHLY DIGEST - BOMBAY HIGH COURT

2023(1)MDBHC1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Mangesh S Patil; Sandeep V Marne]

Writ Petition No 2352 of 2018 **dated 14/10/2022**

Abdul Rauf Mohammed Khaja vs. State of Maharashtra; Divisional Commissioner Office, Aurangabad; District Collector, Nanded

TURNING HOSTILE

Indian Penal Code, 1860 - Section 191 - Code of Criminal Procedure, 1973 - Section 164 - Misconduct - Turning Hostile - Held - Act of turning hostile ipso facto would not amount to misconduct - Petition allowed.

[Paras 11 to 16]

Law Point - Act of turning hostile ipso facto would not amount to misconduct.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22101934377**

2023(1)MDBHC2

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Mangesh S Patil; Sandeep V Marne]

Writ Petition No 7790 of 2019, 10388 of 2019 **dated 07/10/2022**

Abhijit Madhavrao Patil; Roshani D/o Milind Kochure; Shital Mangesh Gurav; Manisha Amit Gade; Sumit Gokul Nannavare; Mahendra Vinayak Dhalape vs. State of Maharashtra; State Council of Educational Research and Training; Commissioner of Education (Primary / Secondary); Director of Education (Primary / Secondary)

RIGHT TO EDUCATION

Constitution of India Art. 226, Art. 14 - Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 Rule 6 - Right of Children to Free and Compulsory Education Act, 2009 Sec. 23 - Right to education - Appointment on the post of Shikshan Sevak - Qualification for - Experts opinion - Validity of - State Government is entitled to prescribe higher qualifications than the minimum qualifications prescribed by NCTE and also to prescribe qualifications suited to teach particular subjects - Qualifications necessary for appointment of teachers to teach

combined subject of Maths Science is something which can be decided by State Government alone by acting on opinion of experts in the field and this Court will not be in a position to interfere in the same - State government itself is in the process of amending the provisions of Act of 1977, which may bring a change in the qualifications prescribed for teachers teaching various subjects. Such amendments are being effected on the basis of recommendations and opinions of the experts in the subject - Prescription of qualifications for appointment on post is in exclusive domain of the experts and Courts would be loath to interfere in the same -Solicitation of opinions of experts and proposing amendments based thereon is in fact indicative of fact that State Government is trying to iron out creases, if any, in the qualifications prescribed for subject teachers - This is yet another ground why this Court should not interfere in the matter of correctness of qualifications prescribed for appointment to a post - No case is made out for interference by this Court - Petitions dismissed

[Para 33]

Law Point - Order will however not preclude the State Government from amending the provisions of Act of 1977 or any administrative instructions relating to prescription of qualifications for appointment of teachers based on opinion of experts

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22101132697**

2023(1)MDBHC3**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

[From AURANGABAD BENCH]

[Before Sandeep V Marne]

Writ Petition No 6269 of 2022 **dated 05/12/2022**

Ajitkumar S/o Motilal Kasliwal vs. Central Bank of India; Appellate Authority, Deputy General Manager, Central Bank of India

DISMISSAL FROM SERVICE

Dismissal from service - Petitioner was working with respondent bank - He was found guilty of raising high and fake medical bill - Petitioner also get those bills reimbursed - Enquiry officer found him guilty - Labour Court confirmed order of enquiry officer - Challenged - Held - No error found in impugned order - Petition dismissed.

[Paras 10 to 19]

For Full Judgement visit currentpublications.com or download 'Current Publications' 2Mobile App. Use Code: **BHC2212732867**

2023(1)MDBHC4

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Gadkari; Milind N Jadhav]

Criminal Appeal No. 179 of 2014 **dated 15/11/2022**

Amol Ambadas Bankar; Amol Bhagwan Shende vs. State of Maharashtra

APPEAL AGAINST CONVICTION

Indian Penal Code, 1860 - Sections 201, 34, 302, 364 and 120-B - Code of Criminal Procedure, 1973 - Section 161 - Appeal against conviction - Wife of victim had extra marital affair with accused - With purpose to eliminate victim, appellant with other accused persons, killed accused - Held - Motive is proved - Dead body was recovered at instance of appellant - Weapon of murder is also recovered at instance of accused - Last seen theory is also proved - No error in impugned order - Appeal dismissed.

[Paras 6 to 15]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22111736763**

2023(1)MDBHC5

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Gadkari; Milind N Jadhav]

Criminal Appeal No. 959 of 2015 **dated 14/11/2022**

Anil Raju Kiratkudwe vs. State of Maharashtra

OCULAR EVIDENCE

Indian Penal Code, 1860 - Sections 34 and 302 - Code of Criminal Procedure, 1973 - Sections 235 and 169 - Bombay Police Act, 1951 - Sections 135 and 37 - Appeal against conviction - Conviction was based on basis of ocular evidence of eye witnesses - Defence was taken that eye witnesses were interested witnesses - Held - Ocular evidence is supported by medical evidence - Presence of appellant is proved at place of incident - Except minor discrepancies, the evidence of eye-witnesses were not shaken - No error found in impugned order - Appeal dismissed.

[Para 8]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22111528777**

2023(1)MDBHC6

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Mangesh S Patil; Sandeep V Marne]

Writ Petition No 9785 of 2017 **dated 14/10/2022**

Ashok Wamanrao Bankar; Sharda W/o Ashok Bankar; Kaustubh S/o Ashok Bankar vs. Union of India; Allahabad Bank; General Manager, Allahaba Bank; Deputy General Manager, Allahabad Bank; Chief Manager & Disciplinary Authority, Allahabad Bank; Branch Manager, Allahabad Bank

SUPERANNUATION

Allahabad Bank (Employees) Pension Regulations, 1995 Rule 22 - Superannuation - Entitlement of benefits - An employee inflicted with punishment of removal from service is entitled to superannuation benefits - Respondent - Bank is directed to pay all superannuation benefits in the form of Pension, Provident Fund, Commutation of Pension and leave encashment to petitioner -Petition allowed

[Para 8]

Law Point - Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time".

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22101934565**

2023(1)MDBHC7

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandeep V Marne]

Writ Petition No 8496 of 2019 **dated 20/10/2022**

Bajaj Auto Limited vs. State of Maharashtra; Joint Director of Industries For Development Commissioner (Industries); M/s S M Solar Products Ltd; Micro, Small & Medium Enterprises

JURISDICTION OF THE FACILITATION COUNCIL

Arbitration and Conciliation Act, 1996 Sec. 34 - Micro, Small and Medium Enterprises Development Act, 2006 Sec. 22, Sec. 19, Sec. 16, Sec. 32, Sec. 15, Sec. 20, Sec. 23, Sec. 17, Sec. 18, Sec. 25, Sec. 24 - Jurisdiction of Facilitation Council - Maintainability of writ petition - Dispute regarding outstanding payment in respect of parts supplied by the respondent No. 3 to Petitioner during the years 2001-2002 - A claim dismissed by

Award holding that respondent No. 3 had already received an amount of Rs. 1,50,000/- towards full and final settlement from Petitioner - Held, though this Court would not exercise its jurisdiction under Article 226 of the Constitution of India against any or every order passed by an arbitral tribunal, when the order or award passed by the statutory arbitral tribunal is a nullity, such writ petitions can be entertained - Unless the supplier is registered under the provisions of the Act, he cannot invoke jurisdiction of the Facilitation Council - The supplier can register himself only after coming into effect of the MSMED Act and, therefore, goods supplied and services rendered prior to coming into effect of the MSMED Act would not be covered by the provisions of the MSMED Act - Award passed by the Facilitation Council is without jurisdiction and therefore, a nullity - The present petition is therefore maintainable - Impugned award is set aside - Writ petition is allowed.

[Paras 21 to 26]

Law Point: Unless the supplier is registered under the provisions of the Act, he cannot invoke jurisdiction of the Facilitation Council

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC2211441086**

2023(1)MDBHC8

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep K Shinde]

Writ Petition No 11329 of 2022 **dated 10/11/2022**

Bank of Baroda vs. Gujarat Cables and Enamelled Products Pvt Ltd

INADVERTENCE OR OVERSIGHT

Constitution of India Art. 227-Code of Civil Procedure, 1908 Or. 11R. 10, Or. 11R. 7- Commercial Courts' Act, 2015 - Sheer "inadvertence" or "oversight"-would not furnish ground to grant leave to produce documents on record- same were not filed along with the Written Statement -would not furnish or constitute reasonable- granting leave under Rule 10 of Order 11 of CPC as applicable to the Commercial Suits.- documents were in possession, control and custody of the defendant/bank- Leave not granted - Petition dismissed

[[Para 14.15, 17, 18]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22111432294**

B-6

Case Pointer
Monthly Digest - Bombay High Court

2023(1)MDBHC9

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Arun R Pedneker]

Appeal From Order No 35 of 2022 **dated 09/11/2022**

Barku Pundlik Patil vs. Subhash Govindrao Pagare and Others

POWER OF APPELLATE COURT

Code of Civil Procedure, 1908 - Order XLI, Rule 23-A; Order XLI, Rule 23 - Remand of case - For trial afresh - Power of appellate Court - Held - Just because the trial Court has erred in appreciating evidence, the Appellate Court cannot remand the case for re-consideration, when it can itself enter into findings of fact by appreciation of evidence - Appeal allowed.

[Paras 10 to 13]

Law Point - Just because the trial Court has erred in appreciating evidence, the Appellate Court cannot remand the case for re-consideration, when it can itself enter into findings of fact by appreciation of evidence.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22111132581**

2023(1)MDBHC10

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandeep V Marne]

Writ Petition No. 6581 of 2022 **dated 15/11/2022**

Bhanudas @ Suryabhan S/o Ramchandra Shinde vs. State of Maharashtra; Divisional Joint Registrar, Co-operative Societies, Nashik; District Registrar (Money Lending) and District Sub Registrar, Co-operative Society, (Sanstha), Ahmednagar; Deputy Reg

ABUSE OF PROCESS OF LAW

A] Constitution of India Art. 227, Art.226-Code of Civil Procedure, 1908 Sec. 10, Sec. 11-Transfer of Property Act, 1882 Sec. 54-Maharashtra Money-Lending (Regulation) Act, 2014 Sec. 18, Sec. 9-Whether an authority exercising powers under the provisions of the Maharashtra Money Lending (Regulation) Act can pass an order contrary to a decree passed by a Civil Court- orders passed by the District Registrar - order passed by the Civil Court would prevail over the findings recorded by the authorities exercising powers- quashed and set aside -petitioner has considered the transaction as

a sale deed, respondent assumes same as mortgage by conditional sale - seeking re-conveyance and declaration that transaction was in nature of mortgage by conditional sale- entitlement for re-conveyance of sale-deed- money-lending activities- mortgage by conditional sale -not absolute sale- abuse of process of law

[Para 14, 15, 18]

B] Constitution of India Art. 227, Art.226-Code of Civil Procedure, 1908 Sec. 10, Sec. 11-Transfer of Property Act, 1882 Sec. 54-Maharashtra Money-Lending (Regulation) Act, 2014 Sec. 18, Sec. 9-Judicial review under Article 226- intrinsic feature of basic structure- not a hard-and-fast rule- Court would be justified in entertaining writ petition under Article 226 of Constitution of India - Petition allowed

[Para 74]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22111736709**

2023(1)MDBHC11

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before M S Jawalkar]

First Appeal No 252 of 2020 **dated 22/11/2022**

Bhujanga S/o Sarangdhar Sarkate; Uttam S/o Sarangdhar Sarkate vs. State of Maharashtra; Special Land Acquisition Officer; V I D C Minor Irrigation Project

ENHANCED COMPENSATION

Land Acquisition Act, 1894 Sec. 6, Sec. 4-Enhanced compensation on the basis of market value of land- entitled -allowed-evidence- required to be considered- contention of acquiring body that compensation cannot be enhanced in absence of new evidence, such claim cannot be considered- Acquiring body- after remand, not filed any documentary or oral evidence - Appeal allowed

[Para 10,11,13]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22112531707**

2023(1)MDBHC12

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before R I Chagla]

Interim Application (L); Suit; Interim Application No 1014 of 2022; 114 of 2022, 313 of 2022; 307 of 2020 **dated 10/11/2022**

Chanda Kochhar; Icici Bank Ltd vs. ICICI Bank Ltd; Chanda Kochhar

TERMINATION FOR CAUSE

Banking Regulation Act, 1949 - Sections 35-B and 10-B - Early retirement - Revocation thereof - Issue whether Bank having accepted plaintiff's request for early retirement could subsequently treat her services with Bank as "termination for cause" with effect from the date of the acceptance of her early retirement - Held - Acceptance of early retirement by Bank was on account of its not having complete knowledge of the facts, including non disclosure by plaintiff of various facts which were only learnt of upon receipt of the Enquiry report, in my prima facie view, Bank was justified in revoking acceptance of early retirement - Order accordingly.

[Paras 85 to 97]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22111432723**

2023(1)MDBHC13**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

[From AURANGABAD BENCH]

[Before S G Dige]

First Appeal No. 2358 of 2018 **dated 07/10/2022**

Chanda W/o Bhagwan Jagtap; Prashant S/o Bhagwa Jagtap; Pritee D/o Bhagwan Gajtap; Prem S/o Bhagwan Jagtap; Mandabai Jagtap vs. Kishor Bhagwan Tejli; Divisional Manager, Bajaj Aillianz General Insurance Co

DISHONOUR OF CHEQUE

Negotiable Instrument Act, S.138 - Dishonour of cheque - Void ab initio - Nothing elicited in cross examination of this witness - Dishonoured cheque is at Postal acknowledgment receipts - From evidence of this witness it reveals that policy is cancelled whereas accident is occurred after - Almost after 10 months of intimation given to the respondent owner of vehicle about cancellation of policy, accident is occurred - Hence, it cannot be said that offending vehicle was insured with insurance company at time of accident - If contract of insurance has been cancelled and all concerned have been intimated thereabout, Insurance company would not be liable to satisfy claim - Appeal dismissed

[Para 7,8]

Law Point - If premium is paid through cheque, the policy is void ab initio in case of dishonor of cheque.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22101446916**

2023(1)MDBHC14

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Gadkari; Prakash D Naik]

Criminal Writ Petition No. 1901 of 2022 **dated 21/11/2022**

Chandrakant Alias Chandar Basu Chavan vs. Commissioner of Police & Ors

DETENTION ORDER

Constitution of India Art. 22, Art. 226, Art. 21-Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers Drug-Offenders, Dangerous Persons Video Pirates, Sand Smugglers and Persons Engaged In Black-Marketing of Essential Commodities Act, 1981 Sec. 3-Detention Order- detention of the detenu- unreasonable and unexplained delay in considering the representation right of a person, who is preventively detained to make a representation and have it considered by the authority expeditiously as possible -representation -not decided -fatal -set-aside - Petition allowed

[Para 6,8,9]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22112439610**

2023(1)MDBHC15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Gadkari; Milind N Jadhav]

Criminal Writ Petition No 2651 of 2022 **dated 18/11/2022**

Devendra Ramlal Bidlan vs. Commissioner of Police, Pune City; State of Maharashtra; Superintendent, Nagpur Central Prison

PREVENTIVE DETENTION

Constitution of India Article 22 (5) -- Preventive Detention-- The right of a person, who is preventively detained to make a representation and have it considered by the authority concerned as expeditiously as possible is a constitutional right under Article 22(5). That any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu.

[Para 8]

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981-- Order of Preventive Detention was under challenge-- petitioner was already arrested and bail was granted by Add. Session Court-- State authorities caused Gross delay in

forwarding and considering the representation filed by the petitioner on the order of Preventive Detention. Order of Detention is illegal.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22112232074**

2023(1)MDBHC16

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Mangesh S Patil; Sandeep V Marne]

Writ Petition No 11456 of 2019 **dated 06/10/2022**

Devisingh S/o Sandusingh Rajput vs. State of Maharashtra; Marathwada Development Corporation Ltd

AGE OF SUPERANNUATION

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 Rule 4, Rule 8 - Dismissal of order - Penalty - Age of superannuation - Suspension from service - Petitioner is entitled to payment of subsistence allowance from date of initial dismissal - Petitioner's entitlement to receive subsistence allowance from date of initial dismissal to date of attaining age of superannuation - For determining this issue, provisions of Rule 4 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 - Sub Rule 4 of Rule 4 deals with a situation where order of dismissal is set aside by court and enquiry is remanded - Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of, or by, a decision of a court of law, and disciplinary authority, on a consideration of circumstances of case, decides to hold a further inquiry against him on allegation on which penalty of dismissal, removal or compulsory retirement was originally imposed - Government servant shall be deemed to have been placed under suspension by appointing authority from date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders - Thus, under provisions of sub-rule 4 of Rule 4, upon dismissal order being set aside by a Court and disciplinary authority deciding to hold further enquiry, employee is deemed to have been placed under suspension from date of original order of dismissal and continues to remain under suspension - Deemed suspension with effect from 21.10.2002 by operation of sub-rule 4 of Rule 4 - Petition partly allowed

[Paras 15, 16, 17]

Law Point - Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

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2023(1)MDBHC17

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Gadkari; Milind N Jadhav]

Criminal Appeal No 676 of 2021 **dated 18/11/2022**

Dr Anand Teltumbde vs. National Investigation Agency; State of Maharashtra

BAIL

Indian Penal Code, 1860 - Sections 124-A, 201, 34, 153, 153-A, 121, 117, 505, 121-A, 120-B and 115 - Code of Criminal Procedure, 1973 - Sections 164 and 439 - Unlawful Activities (Prevention) Act, 1967 - Sections 39, 13, 16, 15, 20, 40, 18-B, 17, 43-D, 38 and 18 - National Investigation Agency Act, 2008 - Section 21 - Bail - It was case of NIA that appellant was indulge in terrorist act - It was alleged that he was active member of banned organization - His bail application was rejected - Held - On basis of document on record, no prima facie case is found against appellant - Appellant has no criminal history - Appellant is in jail from two and half year - Appeal allowed.

[Paras 20 to 30]

For Full Judgement visit currentpublications.com or download 'Current Publications'
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2023(1)MDBHC18

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Sunil B Shukre; G A Sanap]

Writ Petition No. 2590 of 2000 **dated 21/11/2022**

Dr Prashant S/o Vinayak Thakare vs. Honourable Chancellor, Amravati University (His Excellency, Governor of Maharashtra); Amravati University; Varsha P Wadegaonkar; State of Maharashtra; University Grants

WRIT OF CERTIORARI

Maharashtra Universities Act, 1994 Sec. 76-writ of certiorari to quash and set aside order- terminated from service-as a Lecturer-order cannot be sustained-selection and appointment was set aside earlier - writ petition is allowed in terms of prayer -fulfills the necessary conditions with regard to acquisition of the necessary qualification in terms of the GR- benefits of this GR cannot be denied- petitioner cannot be denied the relief - Petition allowed

[Para 8,11, 15]

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2023(1)MDBHC19

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Abhay Ahuja]

First Appeal; Cross Objection No. 318 of 2017; 30 of 2021 **dated 10/10/2022**

Executive Engineer, Lower Wardha Project vs. Manik Shamrao Chore; State of Maharashtra; Special Land Acquisition Officer

ENHANCEMENT OF COMPENSATION

Land Acquisition Act, 1894 Sec. 4, Sec. 54, Sec. 18 - Appeal filed u/S. 54 of Land Acquisition Act, 1894 - Enhancement of compensation - Reference Court that there was no evidence about inadequate compensation with respect to forest and trees and there was no enhancement in that regard - Cross Objector has limited his claim to denial of enhanced compensation - Parity between similarly situated persons covered by same notification - Under Section 4(1) of said Act, as in case at hand, but also in respect of land acquired in same village Acquired land deserve similar treatment and cannot be discriminated - No interference is called for - Granted for land from same village as acquired under same notification - Therefore, same rate is liable to be maintained herein as well as regards compensation for or fruit bearing trees, - No scope to reduce compensation granted for same in absence of any supporting evidence - Appeal disposed of

[Paras 17,18]

Law Point - Grant of enhancement shall not be entitled for interest for period of delay

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2023(1)MDBHC20

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandeep K Shinde]

Writ Petition No 12468 of 2022 **dated 09/11/2022**

Karan Vishnu Khandelwal vs. Honourable Chairman / Secretary Vaikunth (Andheri) Cooperative Housing Society Ltd; Rajendra M Khandelwal; Deputy Registrar, Cooperative Societies

QUASHING OF ORDER

Maharashtra Co-Operative Societies Act, 1960 Sec. 23, Sec. 30, Sec. 154B- Maharashtra Co-Operative Societies (Amendment) Act, 2019 Sec. 154B-Order- Divisional Joint Registrar Cooperative Societies - quashed and set aside- nomination duly acknowledged by society - society shall admit nominee as a provisional Member after death of a Member till legal heir or heirs or a person who is entitled to flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member- petitioner -nominee -society is empowered to transfer share, right, title and interest of the deceased member in the society - provisional member of society - Petition allowed

[Para 6,7,8]

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2023(1)MDBHC21

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before N J Jamadar]

Summons For Judgment; Interim Application (L); Comm Summary Suit (L) No 28 of 2022; 21991 of 2022; 21987 of 2022 **dated 10/11/2022**

Kaulchand H Jogani vs. Shree Vardhan Investment & Ors

INTERIM RELIEF

Code of Civil Procedure, 1908 Or. 38R. 5-Maharashtra Money-Lending (Regulation) Act, 2014 Sec. 13, Sec. 2-Commercial Courts Act, 2015 Sec. 12A-Interim relief- without there being any justification whatsoever for the same- commercial division - summary suit for recovery - along with further interest - leave to defend the suit on condition- alternatively other side can apply for an ex-parte decree- agreement between the parties and disrupt the earlier course- balance confirmation - acknowledgement- fresh cause of action, with an implied promise to pay- Onus is on the defendant who raises money-lending as a defence to show that the transaction is forbidden - One or few instances of lending money, on interest, may not satisfy the description of lending money as a business. -Leave granted, Summons disposed

[Para 29, 43, 44]

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B-14

Case Pointer
Monthly Digest - Bombay High Court

2023(1)MDBHC22

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before N J Jamadar]

Summons For Judgment; Commercial Summary Suit; Interim Application No 12 of 2021, 14 of 2021; 205 of 2020, 211 of 2020; 251 of 2022, 261 of 2022

dated 09/11/2022

Kavita G Rajani; Gautam G Rajani vs. Samir N Bhojwani

UNCONDITIONAL LEAVE

Negotiable Instruments Act, 1881 Sec. 80-Commercial Division Summary Suits- grant of unconditional leave to the defendant to defend suit in respect of interest component only- Court would be justified in passing decree for indisputable principal amounts- summons for judgment- plaintiff is entitled at any time to abandon or give-up a part of claim- defence of existence of a verbal agreement-not fair-without making any record thereof -It would be legitimate to examine as to whether the defendant had the opportunity- mere fact that money was advanced by the plaintiff to the defendant in tranches, by itself, is not sufficient to draw an inference of a "running account" - Leave granted, Summons disposed

[Para 21,29,31,32]

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2023(1)MDBHC23

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandeep V Marne]

Writ Petition No. 11351 of 2022 **dated 22/11/2022**

Laxman Dattatray Jadhav; Bhagwan Bhimrao Khawale; Tukaram Laxman Gavhane; Sayyad Allauddin Sayyad Rajesab; Sayyad Miskin Sayyad Husen vs. Taluka Co-operative Election Officer and Assistant Registrar Co-operative Societies; Sinchan Karmachari Sahkari Patsanstha Ltd; Sunil Dnyaneshwar Kakade

NOMINAL MEMBERS

Maharashtra Co-Operative Societies Act, 1960 Sec. 27, Sec. 11, Sec. 154, Sec. 24, Sec. 144-whether an employee can continue as member of Salary Earners' Credit Co-operative Society and whether his name can be continued in voters list after his retirement from service -defeat the very objective behind establishment of the Society -nominal members of the society- retired employee does not earn any salary -does not

enjoy the privilege of voting- cannot remain an active member -Section 24 (2)-
nominal members are not entitled to vote -Petition-Dismissed

[Para 19,20,21]

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2023(1)MDBHC24

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before A S Chandurkar; Urmila Joshi-Phalke]

Misc Civil Application (Miscellaneous Civil Application); Family Court Appeal No
607 of 2022; 175 of 2014 **dated 06/10/2022**

Leeni W/o Chandrakant Sardar vs. Chandrakant S/o Haridas Sardar

DISSOLUTION OF MARRIAGE

Hindu Marriage Act, 1955 Sec. 13 - Dissolution of marriage - Dissolving the marriage
between the applicant and non-applicant under Section 13(1) (i-a) of Hindu Marriage
Act, 1955 - Within spectrum of per incurriam and thus not a binding precedent -
Special leave to appeal is dismissed - On permissibility of seeking leave to amend so
as to claim an additional relief in alternative in the same proceedings - Such exercise
would transgress review jurisdiction in absence of any error apparent on face of record
- Exercise review jurisdiction - Application dismissed

[Paras 4,6]

**Law Point - While we may have reservation on reasoning given in impugned
judgment, not inclined to issue notice as the petitioner has liberty to file a fresh
petition for divorce. Issuing notice may, in fact, cause delay in adjudication.**

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2023(1)MDBHC25

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Abhay Ahuja]

First Appeal No 521 of 2022 **dated 21/10/2022**

*Madhav S/o Vitthal Chattekar vs. Mohammad Ali S/o Mubarik; M/s Mehrab Logistics
and Aviation Limited (Gstin); Oriental Insurance Company Limited*

MAINTAINABILITY OF APPEAL

Motor Vehicles Act, 1988 Sec. 166, Sec. 140, Sec. 173 - Maintainability of appeal - Award passed under Section 140 of the M. V. Act is also an award that is appellable under Section 173(1) of the M. V. Act - However, the sub-section (1) as observed above is subject to sub-section (2) which provides for a minimum amount involved in the dispute of One lakh rupees subject to which an appeal may be preferred - Provisions of Section 173 are quite clear - Unless the amount involved in dispute is at least One lakh rupees, no appeal is maintainable under this provision of the M. V. Act - Appeal is not maintainable and deserves to be dismissed on this ground alone - Award passed under Section 140 has been passed on basis of prima facie findings of Tribunal

[Paras 17, 19]

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2023(1)MDBHC26**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

[From NAGPUR BENCH]

[Before M S Jawalkar]

Second Appeal No. 7 of 2006 **dated 21/11/2022***Manish S/o Nandlal Adatiya vs. Chitra W/o Manish Adatiy***FALSE COMPLAINT AGAINST HUSBAND**

Indian Penal Code, 1860 Sec. 498A- cruelty- marriage between the Appellant and the Respondent - irretrievably broken- Prosecution miserably failed to prove that the Accused - Husband has committed any offence punishable under Section 498A -- False Complaint against husband - no case made out for any demand of dowry or cruelty- acquitted - Appeal allowed

[Para 6,7,8]

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC22112439814**

2023(1)MDBHC27**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

[Before A S Gadkari; Milind N Jadhav]

Criminal Appeal No 573 of 2015 **dated 07/10/2022***Manisha @Janglabai Ganesh Chavan vs. State of Maharashtra*

APPEAL AGAINST CONVICTION

Indian Penal Code, 1860 Sec. 302 - Code of Criminal Procedure, 1973 Sec. 161, Sec. 235, Sec. 313, Sec. 174 - Appeal against conviction - Life imprisonment - Offence of murder - Examination of witness - Validity of - Circumstantial evidence - Even when she was called upon to explain all circumstances pointing towards her guilt in her statement recorded under Section 313(1)(b) of Cr.P.C., she denied prosecution case in toto - This conduct of Appellant clearly appears to be unnatural of a biological mother - Appellant and no other person is author of crime and prosecution has proved its case beyond all reasonable doubts that Appellant has committed murder of her own daughter by throwing her alive in well - No reason to interfere - Appeal dismissed.

[Paras 14,15]

Law Point - Onus is on the prosecution to prove that the chain of circumstances is complete and the infirmity of lacunae in prosecution cannot be cured by false defence or plea.

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2023(1)MDBHC28

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before S V Gangapurwala; R N Laddha]

Petition No 2122 of 2022 dated **01/12/2022**

Megha Puri vs. University of Mumbai; Department of Applied Psychology, University of Mumbai

ADMISSION

Petition - Admission denied by university - Held - The petitioner had paid tuition fees to the department - She was called upon to join academic classes - The respondent university had passed a resolution and directed the Head of the Department of Applied Psychology to conduct an online Aptitude Test of the petitioner - It also reveals from the record that the respondent university was ready to accommodate the petitioner provided she will undergo the 45 days bridge programme and appear at the Aptitude Test - An online Aptitude Test of the petitioner was conducted - The petitioner had cleared the Aptitude Test - The decision of the respondent university to cancel the admission of the petitioner is mid-way through the academic year - The petitioner was not at fault - impugned communication set aside.

[Para 19]

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2023(1)MDBHC29

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Arbitration Application No 4 of 2016 **dated 02/12/2022***Mehra & Company vs. State of Maharashtra***VALID ARBITRATION AGREEMENT**

Arbitration and Conciliation Act, 1996 --section 11 sub section 6-- Appointment of Arbitrator- 1996, Contention as Court has to refer the matter for arbitration by default and leave the issue of arbitrability or non-arbitrability to the arbitrator. Held - The parties have not alleged for resolution of the disputes by arbitration. The clauses of agreement merely provide for departmental remedies to the contractor for faster resolution of disputes. The same cannot be treated as a valid and arbitration agreement between the parties. There is no arbitration agreement between the parties. Application rejected.

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2023(1)MDBHC30

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Rohit B Deo; Anil L Pansare]

Writ Petition No. 3489 of 2020, 2121 of 2021 **dated 17/11/2022**

Milindkumar S/o Sitaramji Jibhakate; Ujwal S/o Dnyandeo Gulhane; Nitin S/o Pravinchand Doshi; Dr Prathibha W/o Surendra Sawadh; Madhav S/o Mahadev Deshmukh; Kanchan D/o Vasant Rao Warkar; Dr Sanjay S/o vs. State of Maharashtra; Joint Director of Technical Education Government Polytechnic; Principal, Secretary, All India Council For Technical Education; Chairman (Regional), All India Council For Technica

DIFFERENCE OF SALARY

All India Council For Technical Education Act, 1987 Sec. 2, Sec. 23, Sec. 10, Sec. 3- All India Council For Technical Education (Grant of Approvals For Technical Institutions) Regulations, 2016 Reg 10-Maharashtra Public Universities Act, 2016 Sec. 12, Sec. 8, Sec. 2, Sec. 108, Sec. 79, Sec. 71-Teachers-arrears of difference of salary as per the recommendations of VI Central Pay Commission- as per VII CPC also- prayer to derecognize the College, on failure of compliance- teachers-entitled for the revised pay scales with other benefits- wrongfully deprived of their legitimate entitlement - revised pay scale will be applicable to the private unaided Colleges - report of the Grievance Committee is received -no action taken accordingly- grant of relief

including the relief of interest- regulations and the decision of the State Government would be applicable and revised pay scales will be applicable to the University affiliated technical institutes, viz. private unaided colleges - Petition allowed

[Para 32,33,42]

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2023(1)MDBHC31

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before M S Jawalkar]

First Appeal No. 68 of 2021 **dated 10/10/2022**

Mina W/o Punamchand Shahare vs. Union of India

ACCIDENT CLAIM

A) Railways Act, 1989 Sec. 124, Sec. 123 - Railway - Accident claim - When a person died in an accident by falling down from train, it is not possible for legal heirs to produce ticket or valid authority to travel in the train - Next question arise for determination is that whether incident is 'untoward incident' within meaning of Section 124(A) of Railway Act.

[Para 15]

B) Motor Vehicles Act, 1988, Section 163A - Railways Act, 1989 Sec. 124, Sec. 123 - Untoward incident - Compensation Claim - Plea of negligence of victim cannot be allowed in claim based on 'no fault theory' under Section 163A of Motor Vehicles Act, 1988 - Death or injury in course of boarding or deboarding a train will be an 'untoward incident' entitling a victim to compensation and will not fall under proviso to Section 124A merely on plea of negligence of victim as a contributing factor.

[Para 15]

C) Railways Act, 1989 Sec. 124, Sec. 123 - Plea of negligence - Proof - Cannot be said to be negligence on part of deceased when it is strict liability of railway - No evidence laid by railway to establish that there was any negligence on part of deceased - Claimant is legally entitled to claim for compensation - It has to be inferred that deceased was a bonafide passenger and he fell down from running train was an untoward incident -Appeal allowed.

[Para 16]

Law Point - It is well settled that if words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for benefit of person for whom Act was made should be

preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation.

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2023(1)MDBHC32

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before S G Dige]

First Appeal No 569 of 2022 **dated 18/10/2022**

Mohini Mohanrao Salunke; Mohit Mohanrao Salunke; Asawali Mohanrao Salunke vs. Ramdas Hanumant Jadhav; Vinayak Vithalrao Deshmukh; Sudhir Parshavanth Durugkar; National Insurance Company Ltd

CONTRIBUTORY NEGLIGENCE

Central Motor Vehicles Rules, 1989 Rule 109 - Contributory negligence - Compensation - Offending tempo, so liability of contributory accident cannot be fastened on deceased by holding that, he should have seen the stationed tempo under the headlight of motorcycle - When there is specific rule in respect of taking precautions by stationary vehicle, if such precautions are not taken by the driver/owner of stationary vehicle then liability cannot be shifted on motorcycle rider - Tribunal - that, there was 50% contributory negligence of deceased in said accident - Driver of offending tempo is sole responsible for accident - Tribunal has considered salary income of deceased at Rs. 31,563/- while calculating the compensation - Tribunal has deducted 20% income tax - No reasons given by Tribunal for said deduction - Yearly salary income of deceased was below Rs.5,00,000/- then deduction of income tax should be 10%, for income tax - Appellant is entitle for 30% future prospects as age of deceased was 46 years and he was in government service- Appellants are entitle for funeral and transportation expenses at Rs. 15,000/- - Appeal allowed.

[Para 12]

Law Point - Appellant is entitle for 30% future prospects as age of deceased was 46 years and he was in government service.

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2023(1)MDBHC33
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
[From AURANGABAD BENCH]
[Before S G Dige]

First Appeal No 692 of 2004 **dated 21/09/2022**

New India Assurance Company Ltd vs. Thakubai W/o Khandu Solat; Tata Engineering & Locomotive Company Limited

INSURANCE POLICY

Motor Vehicles Act, 1988 Sec. 43 - Appeal - Insurance policy - Compensation - Whether Insurance Company is liable to pay compensation when vehicle was covered under transit policy - Provides for issuance of temporary registration - A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable - Policy issued to said vehicle was transit policy and body of vehicle was only chassis and not a whole body - When there was only a chassis vehicle no carrying passenger in it, is not permitted, hence, liability of deceased cannot be fastened on appellant - Respondent, driver of said truck and owner of said TATA chassis, hence, liability of paying compensation is on respondent no. 1 and respondent no. 2 - Tribunal has erroneously held that appellant is liable for paying compensation as insurance policy was taken from appellant - It was not applicable to or person except driver of offending vehicle - Appellant is exonerated from paying compensation - Respondent nos. 1 and 2, jointly and severally, are liable to pay compensation as ordered by Tribunal - Appeal allowed

Law Point - Where a motor vehicle so registered is a chassis to which a body has not been attached and same is detained in a workshop beyond said period of one month for being fitted (with a body or any unforeseen circumstances beyond control of owner), period may, on payment of such fees, if any, as may be prescribed, be extended by such period of periods as registering authority or or prescribed authority, as case may be, may allow.'

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2023(1)MDBHC34
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
[From AURANGABAD BENCH]
[Before Ravindra V Ghuge; Arun R Pedneker]

Writ Petition No 9192 of 2022 **dated 07/10/2022**

Omkar S/o Dnyaneshwr Chavan vs. State of Maharashtra; Maharashtra State Board of Secondary and Higher Secondary Education; Principal, Mahatma Basweshwar Junior College

MANDATORY PROVISION

Constitution of India, Art.226 - Examination - Petitioner's candidature cannot be withdrawn once examination is over - Petitioner has not pointed out any such mandatory provision, whereby candidature cannot be withdrawn after appearing for examinations and thus no directions can be given in this regard - Rather, as per prescribed norms, there can be no third attempt for improvement in examination - Specific stand of the Maharashtra State Board that only two improvisation attempts are permissible and petitioner having exhausted same - Respondent Board to issue mark-sheet of third improvement examination which was an impermissible attempt - Only because petitioner was illegally allotted an admit card, would not legitimise 3rd attempt - Petition dismissed

[Para 18]

Law Point - Once appellant was allowed to appear at LL.B. Part II examination held in May 1973, his candidature could not be withdrawn for any reason whatsoever, in view of mandatory provisions of Clause 2 (b) of Kurukshetra University Calendar Vol. I, Ordinance X under which the candidature could be withdrawn before candidate took examination.

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2023(1)MDBHC35**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

[From AURANGABAD BENCH]

[Before Dipankar Datta; Vibha Kankanwadi]

Writ Petition No 7584 of 2021 **dated 18/11/2022**

Padama W/o Shivchandra Mundada; Subodh S/o Shivchandra Mundada; Girish S/o Shivchandra Mundada vs. State of Maharashtra; Director of Town Planning; Deputy Director of Town Planning, Nashik Division; Chief Ofcer, Municipal Council, Chalisgaon

WRIT PETITION

Land Acquisition Act, 1894 Sec. 6-Maharashtra Regional and Town Planning Act, 1966 Sec. 127, Sec. 126, Sec. 23, Sec. 38, Sec. 31-writ petition- Were the petitioners deprived of their property in accordance with law- negative- reservation in terms of section 127- planning authority is not entitled to again reserve the same land in the revised development plan- reservation shall lapse- Lapsing of reservations- by reason having no steps as aforesaid are commenced for its acquisition - Petition allowed

[Para 19,23,24]

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2023(1)MDBHC36

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandipkumar C More]

Appeal From Order; Civil Application No. 94 of 2015, 95 of 2015; 14264 of 2015,
14265 of 2015 **dated 07/10/2022**

Pandurang Sitaram Choudhari (Borse); Vitthal Sitaram Choudhari (Borse); Saroj Vitthal Borse; Anil Vitthal Borse; Dinesh Vitthal Borse; Sangita Rajaram Choudhari; Sunita Vitthal Borse vs. Sunil Pralhad Choudhari; Jitendra Pralhad Choudhari; Pratibha Jitendra Choudhari; Prashant Jitendra Choudhari; Payal Jitendra Choudhari; Pralhad Sitaram Choudhari; Motibai Prakash Patil; Madhuri Rajen

JOINT FAMILY PROPERTY

A) Code of Civil Procedure, 1908 Sec. 10 - Joint family property - Remand of case by Appellate Court - Remand in other cases - Findings of court - Preliminary issue - No remand can be made if trial Court has decided suit by considering entire evidence on record and when appellate Court, is able to re-assess evidence to ascertain whether findings given by trial Court are sustainable or not - It is also obligatory on part of appellate Court to reverse finding of trial Court while making order of remand - No denial of opportunity - Especially when seized of both appeals, could have decided same on merits by reassessing evidence on record - Remand order passed by learned lower Court appears fully erroneous since it would definitely delay matter for indefinite period - Illegal and needs to be set aside -Appeal dismissed

[Para 14]

B) Code of Civil Procedure, 1908,O.20,R.3;O.41;R.31 - Exercise of power - Remand of case by Appellate Court - It is well settled that inherent powers can be availed of ex debito justitiae only in absence of express provisions in Code - It is only in exceptional cases where court may now exercise power of remand de hors Rules 23 and 23-A. - To wit, superior court, if it finds that judgment under appeal has not disposed of case satisfactorily in manner required by Order 20 Rule 3 or Order 41 Rule 31 CPC and hence it is no judgment in eye of law, it may set aside same and send matter back for rewriting the judgment so as to protect valuable rights of parties - An appellate court should be circumspect in ordering a remand when case is not covered either by Rule 23 or Rule 23-A or Rule 25 CPC. - An unwarranted order of remand gives litigation an undeserved lease of life and, therefore, must be avoided.

[Para 15]

Law Point - Order 41 Rule 23A, which has been inserted in the Code by Act No. 104 of 1976, empowers the Appellate Court to remand the suit to the trial Court, when the suit is disposed of otherwise than on a preliminary point and the decree is reversed in appeal and retrial is considered necessary.

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2023(1)MDBHC37

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Dhiraj Singh Thakur; Valmiki Sa Menezes]

Writ Petition (L) No 30580 of 2022 **dated 02/12/2022**

Parul Bharat Shah vs. National Faceless Assessment Centre; Income Tax Officer; Principal Commissioner of Income Tax, Mumbai; Central Board of Direct Taxes, New Delhi; Union of India

ASSESSMENT AND SHOW CAUSE NOTICE

Constitution of India - Article 226 - Income Tax Act, 1961 - Sections 144-B, 156, 270, 143, 274, 142, 56, 144 and 270-A - Petition challenging assessment order and show cause notice - Alleged that petitioner had not been given an adequate opportunity for filing her reply - Held - In terms of the provisions of Section 144-B of the Act, the Petitioner was directed to file her reply by 10.2.2022 and thereafter to make request for a personal hearing through a video conferencing - The Petitioner has in fact sought an extension of the date by which the reply was to be filed till 25.2.2022, but received no response to her request - On 19.2.2022 the Petitioner attempted to upload her reply and found that the e-portal was closed - Though on the same day, she specifically requests for an opportunity of hearing in the matter by video conferencing though the Grievance Resolution Portal of the Centre - The Respondents appear to have ignored the request for hearing by video conferencing and have after a period of almost seven months, passed the assessment order on 2.9.2022. - Respondent has not afforded to the Petitioner a fair hearing in the matter - Impugned order set aside.

[Paras 7 and 8]

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2023(1)MDBHC38

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Dhiraj Singh Thakur; Abhay Ahuja]

Income Tax Appeal No of 2018; 640 of 2018 **dated 02/12/2022**

Pr Commissioner of Income Tax-5 vs. Trigent Software Limited

CAPITAL EXPENDITURE

Income Tax Act, 1961 - Sections 147, 260-A and 143 - Appeal - ITAT allowed the capital expenditure in connection with the development of new products as revenue expenditure - Held - If the expenditure was incurred for starting a new business which was not carried out by the assessee earlier, then such expenditure would be held to be of a capital nature and it would be irrelevant as to whether the project really materialised or not - However, if the expenditure incurred was in respect of the same business, which was already carried on by the assessee, even if it was for the expansion of the business, i.e., to start a new unit and there was unity of control and a common fund, then such an expense was to be treated as business expenditure - It can be seen that the appellant is admittedly in the business of development of software solution and management, and therefore, its endeavour to develop a new software was nothing but an endeavour in its existing line of business of developing software solutions - The product which was sought to be developed, never came into existence and the same was abandoned - No new asset came into existence which would be of an enduring benefit to the assessee, and therefore, in these circumstances, the expenditure could only be said to be revenue in nature - Appeal dismissed.

[Paras 12 and 13]

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2023(1)MDBHC39

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandeep V Marne]

Writ Petition No 11348 of 2021 **dated 14/10/2022**

Pravin Indarchand Jain vs. State of Maharashtra; Divisional Joint Registrar, Co-operative Societies; District Deputy Registrar, Co-operative Societies; Shantilal Tarachand Bothra; Rerkha Shantilal Bothra; Sharmila Sudhir Jain;

ADMINISTRATIVE AND JUDICIAL ORDER

Maharashtra Co-Operative Societies Act, 1960 Sec. 78A, Sec. 73CA - Maharashtra Co-Operative Societies Rules, 1961 Rule 58 - Administrative and judicial order - Examination of - Show cause of notice - Necessary to examine other grounds of challenge raised by invoking the provisions of Section 58 of Rule of 1961 or treating respondent as non-defaulter for being mere co-borrower, or whether a guarantor can be termed as a defaulter- Order passed by the DDR was patently illegal - Petition dismissed

[Para 19]

Law Point - It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it.

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2023(1)MDBHC40

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Sandeep V Marne]

Writ Petition No. 10504 of 2022 **dated 11/10/2022**

Pundalik S/o Tulshiram Sapkale vs. State of Maharashtra; Ld District Collector, Jalgaon; Chief Executive Officer, Jalgaon; Extension Officer (Gram Panchayat), Jalgaon; Block Development Officer, Jalgaon; Rupali W/o Ananda Sapkale; Triv

PRINCIPLES OF NATURAL JUSTICE

Bombay Village Panchayats Act, 1958 Sec. 3, Sec. 7, Sec. 60, Sec. 36 - Bombay Village Panchayats (Meetings) Rules, 1959 Rule 4 - Village panchayat - Election of - Disqualification - Failure of petitioner - Principles of Natural justice -Provisions of sub-section (11) of Section 7 of Act of 1959 to contend that it was possible for petitioner to conduct monthly meeting by taking aid of officials mentioned in that provision - Proviso to Section 36 of Act of 1959 uses expression 'without sufficient cause' - Meeting could not be held was a 'sufficient cause' within the meaning of Section 36, thereby saving the petitioner from disqualification - Findings recorded by Collector in his order are perverse - Not taken into consideration relevant material on record - Deserves to be set aside - Petition partly allowed

[Paras 9,10]

Law Point - Meeting could not be held was a 'sufficient cause' within the meaning of Section 36, thereby saving from disqualification.

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2023(1)MDBHC41

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Gadkari; Milind N Jadhav]

Criminal Appeal; Interim Application No 809 of 2015; 1431 of 2021
dated 20/10/2022

Radhe Zulidas Mandal vs. State of Maharashtra

LAST SEEN THEORY

Indian Penal Code, 1860 Sec. 392, Sec. 34, Sec. 302, Sec. 397-Evidence Act, 1872 Sec. 114, Sec. 27-Appeal against conviction for offences punishable under Section 302 read with Section 34 of "IPC") and Section 392 IPC - No ocular witness to the incident and prosecution has only relied on the last seen together theory and recovery evidence of articles - It is well settled position in law that prosecution while relying upon the confessional statement given by the accused leading to the discovery of articles under Section 27 of the Evidence Act, has to prove through cogent evidence that the statement was made voluntarily and lead to the discovery of the relevant articles - Even with the aid of presumption under Section 114 of the Indian Evidence Act, the offence of murder cannot be proved against Appellant unless there is evidence to show that the murder happened at the same time i.e. while committing the robbery - Prosecution has failed to prove its case beyond all reasonable doubts to prove the crime of murder and robbery - Criminal Appeal is allowed.

Law Point:- When prosecution relies on circumstantial evidence, all links in the chain of circumstances must be complete and proved through cogent evidence.

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2023(1)MDBHC42

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Gadkari; Milind N Jadhav]

Criminal Appeal No. 342 of 2015 **dated 14/11/2022**

Rajendra @ Raju Kanadi vs. State of Maharashtra

CONVICTION

Indian Penal Code, 1860 - Section 302 - Appeal - Conviction - Held - In view of the discussion and findings, it is clear that PW-8 is the sole eye-witness as he saw the Appellant inflicting two blows with the knife on Manish's neck and buttock and later on his chest outside his room - His testimony is duly corroborated by the evidence of PW-2 and the medical evidence - There is complete failure on the part of Appellant to explain the circumstances leading to the death of deceased as the presence of Appellant with the weapon on the spot of incident stands clearly proven - Prosecution has thus proved beyond all reasonable doubts - Appeal dismissed.

[Paras 15 and 16]

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2023(1)MDBHC43

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Gadkari; Milind N Jadhav]

Criminal Appeal No 234 of 2017 **dated 17/10/2022***Raju Kondiram More vs. State of Maharashtra***DYING DECLARATION**

Indian Penal Code, 1860 - Sections 302 and 307 - Code of Criminal Procedure, 1973 - Section 313 - Evidence Act, 1872 - Sections 32 and 106 - Appeal - Conviction - Held - Dying declaration can be recorded by any person - PW-6 in his substantive evidence has stated the entire chain of circumstances of recording the dying declaration - Deposition of PW-5, the medical officer who endorsed the dying declaration corroborates and supports the deposition of PW-6 - Their evidence therefore needs to be accepted as it bears the endorsement of deceased's left thumb impression - That apart the prosecution has fortified its case by relying on the two oral dying declarations given by Jana to PW-1 and PW-5 - Failure on the part of Appellant to explain the circumstances leading to the death of his wife Jana, clearly point a finger towards the Appellant of having committed the murder of Jana - Appeal dismissed.

[Paras 16 to 18]

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2023(1)MDBHC44**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

[From NAGPUR BENCH]

[Before Sandeep K Shinde, Vrushali V Joshi **dated 24/11/2022***Ramesh S/o Hirachand Nandurkar vs. State of Maharashtra; Divisional Commissioner, Amravati; Zilla Parishad, Amravati; Education Officer (Primary), Amravati***BENEFIT OF INCREMENT**

Petition - Petitioner was conferred with one increment as an incentive for his good performance - Where after, upon making 6th Pay Commission Recommendations, applicable, the benefit of increment was discontinued - State justified the discontinuation, by relying on the Government Resolution - held - the said Government Resolution ipso facto does not suggest withdrawal of the benefit conferred on the District Awardee Teacher - That Government Resolution does not have retrospective effect nor could have given any retrospective effect and withdrawn

benefit conferred on Awardees - Petition allowed - Benefit of increment conferred on the petitioner stands restored.

[Para 3]

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2023(1)MDBHC45

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Shrikant D Kulkarni]

Criminal Appeal No 443 of 2009, 444 of 2009 **dated 17/10/2022**

Sanjay Ishwarlal Varude; Ishwar Bhimrao Bhamare vs. State of Maharashtra

APPEAL AGAINST CONVICTION

Indian Penal Code, 1860 - Section 109 - Code of Criminal Procedure, 1973 - Sections 437-A and 374 - Prevention of Corruption Act, 1988 - Sections 13, 20 and 7 - Appeal - Conviction - Held - PW-2 Chunilal has fully corroborated the testimony of PW-1 - The prosecution has succeeded in proving his case by taking help above said two witnesses that accused No. 1 Sanjay has demanded the bribe of Rs. 300/- to PW-1 - There is no evidence that accused No. 2 Ishwar was knowing about the earlier communication between PW-1 Narendra and accused No.1 Sanjay regarding demand of bribe of Rs. 300/- so as to allow him to ply the mini door rickshaw by way of Hapta - Conviction of accused No. 1 upheld with modification in quantum of sentence.

[Paras 17, 18, 20 and 23]

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2023(1)MDBHC46

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before R D Dhanuka; Kamal Khata]

Writ Petition No 8756 of 2018, 8757 of 2018, 8758 of 2018, 9000 of 2018
dated 18/11/2022

Santu Sukhdeo Jaibhave; Balu Sukhdeo Jaibhave; Pundlik Sukhdeo Jaibhave; Ramdas Sukhdeo Jaibhave; Tanaji Sukhdeo Jaibhave; Dnyaneshwar Sukhdeo Jaibhave; Samadhan Sukhdeo Jaibhave; Laxmibai Sukhdeo Jai vs. Nashik Municipal Corporation; Commissioner, Nashik Municipal Corporation; Assistant Director, Town

Planning Department Nashik Municipal Corporation; Collector, Nashik; State of Maharashtra

RESERVATION OF LAND

Constitution of India Art. 226-Maharashtra Regional and Town Planning Act, 1966 Sec. 127, Sec. 49, Sec. 28, Sec. 126, Sec. 26, Sec. 38, Sec. 29, Sec. 31-declaration about the reservation of agricultural land - lapsing of the reservation - statutory right accrued to the owners cannot be taken away by an attempt to impose fresh reservation-no steps as contemplated under Section 126(1)(c) read with Section 127 were taken before the expiry of the statutory period -reservation of the writ land has lapsed - Petition allowed

[Para 34 ,37,38]

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2023(1)MDBHC47

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Vibha Kankanwadi; Rajesh S Patil]

Criminal Appeal No 329 of 2015 **dated 24/11/2022**

Shaikh Mazhar S/o Shaikh Haidar vs. State of Maharashtra

APPRECIATION OF EVIDENCE

Indian Penal Code, 1860 Sec. 302, Sec. 498A-Code of Criminal Procedure, 1973 Sec. 313- Evidence Act, 1872 Sec. 27-appellant - acquitted-conviction set aside-no proper appreciation of evidence- offence not proved beyond reasonable doubt- discovery not inspiring confidence- natural conduct on the part of any accused to leave muddled and not to carry it- discovery-doubtful- prosecution was supposed to rule out the possibility of accidental death - witnesses- not believable- even if the accused failed to bring it on record that it was a suicidal death, yet the prosecution is not relieved of ruling out the possibility of accidental death as well as suicidal death if it intend to prove that it was homicidal -ground of cruelty and demand of money - there is no concrete evidence - Appeal allowed

[Para 7,8,9]

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2023(1)MDBHC48

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Mangesh S Patil; Sandeep V Marne]

Writ Petition No 13549 of 2017 **dated 14/10/2022**

Shakuntalabai W/o Gopichand Dhaktode; Anita W/o Sakharam Sathe; Kishor S/o Gopichand Dhaktode; Vandana W/o Kishor Dhaktode; Arjun S/o Kishor Dhaktode; Ajay S/o Kishor Dhaktode; Kavita Vikas Ghorpade; vs. State of Maharashtra; District Collector, Jalna; Sub Divisional Magistrate, Jalna; Tahsildar, Jalna; District Superintendent of Police, Jalna; Police Inspector, Taluka Police Station, Jalna; Matsyodar

ALTERNATE REMEDY

Hyderabad Land Revenue Act, 1317F Sec. 58 - Resumption of land allotted - Opportunity of hearing - Rejoinder - Plea of alternate remedy - Question of legality of same would depend upon the ultimate order that may be passed in resumption proceedings by the respondent authorities - Seized of proceedings for resumption of lands - To continue said proceedings and pass final order therein after granting full and complete opportunity to petitioners of being heard - Non-deposit of costs by the petitioners in the Treasury and decide proceedings strictly on merits - Order set aside - Petition allowed.

[Para 21]

Law Point - It is trite that non-exercise of writ jurisdiction in the light of availability of alternate remedy is a self imposed restriction by the High Courts.

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2023(1)MDBHC49

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Arun R Pedneker]

Writ Petition No 11402 of 2022 **dated 24/11/2022**

Shamrao Narhari Pavale vs. State of Maharashtra; Director of Marketing, Maharashtra State; State Cooperative Election Commission; District Cooperative Election Authority / District Deputy Registrar; Taluka Cooperative Election

ALTERNATE REMEDY

Constitution of India Art. 226-Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 Rule 6-Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 Rule 7, Rule 72A, Rule 6, Rule 7, Rule 4-Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 Sec. 13-Writ Petition- petitioner -challenging legality and validity - supplementary final voters list of the traders constituency- challenges -addition of 108 voters-dismissed- their can never be addition to a provisional voters list- difficult to set aside the order of respondent no.4 - District Cooperative Election Authority- by invoking jurisdiction under Article 226- alternate remedy is not a bar to interfere in writ jurisdiction under Article 226 -Petition dismissed

[Para 15,16,17]

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2023(1)MDBHC50**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

[From NAGPUR BENCH]

[Before A S Chandurkar; Urmila Joshi-Phalke]

Writ Petition No 5030 of 2011 **dated 21/10/2022**

Sharad S/o Bhaskar Manekar vs. Union of India; Director General of Central Reserve Police Force, New Delhi; Inspector General of Police, New Delhi

ORDER PASSED BY DISCIPLINARY AUTHORITY

Constitution of India Art. 226-Indian Penal Code, 1860 Sec. 376-Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec. 3-Central Reserve Police Force Act, 1949 Sec. 11-Writ petition, the petitioner challenging the order of DGP by which appeal of the petitioner was dismissed by denying any interference in order passed by the Disciplinary Authority in enquiry proceedings - Writ Court does not re-appreciate evidence unless it can be shown that findings are perverse. The evaluation of evidence is to be left to the fact finding committee - In exercise of judicial review this Court does not act as an Appellate Forum over findings of disciplinary which the finding of misconduct has been arrived at in the course while exercising writ jurisdiction.

Law Point - The exercise of judicial review is restricted to determine whether the rules of natural justice have been complied with - Writ petition is dismissed

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