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Contents

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From the Editor's Desk

Importance of Alternative Dispute Resolution (ADR) modes, especially the mediation cannot be highlighted enough. Much has been said and written about ADR processes. Landmark judgment, M/s Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co., 2010 (4) CCC 756 SC, has cleared the air about import of and the field occupied by each of the ADR modes. Suitability of every mode depends upon the nature of the litigation, as clarified in M/s Afcons. Mediation process has caught the attention of legal community the world over. It stands recognised as an important tool in resolving disputes in many jurisdictions. Some of the important cities have now got international acclaim and have become hub of mediation. Mediation is fast catching up with arbitration in the international legal circles in the matter of resolving commercial disputes, especially involving multinational companies.

In India, unlike arbitration and conciliation, there is still a statutory gap regarding mediation processes. Section 89 of the Civil Procedure Code recognises mediation as one of the ADR tools, however there is no procedural framework provided. It is though understandable that arbitration and conciliation, other ADR tools, are governed by a specific statutory framework i.e. the Arbitration and Conciliation Act. In commercial disputes, it is mandatory to try mediation before launching the litigation in the designated court in terms of the Commercial Courts Act. Rules have been framed by various High Courts, laying down guidelines for proceeding with mediation. Committees have been put in place in High Courts to monitor the growth of mediation as an institution. Many efforts have been made in some High Court jurisdictions to expand the horizon of mediation. Frequent training programmes are helping to improve the skills of the mediators and quality of mediation system. Most important it is to build trust and confidence in mediation system among the legal fraternity so that message is sent as to efficacy of mediation process in resolving disputes.

Lawyers can play very important role in identifying the disputes that can be settled through mediation and to encourage the parties involved to adopt mediation process to resolve their disputes. More and more disputes being resolved through the mediation process is sure to raise the confidence of litigants in mediation system. Discussions are on to provide a statutory framework for mediation like arbitration and conciliation and to institutionalise the mediation system. It is expected that statutory framework shall give a fillip to mediation as an effective tool for dispute resolution. This in turn shall lessen the burden on regular courts already working in stressed conditions.

LEGAL JOTTINGS

"The Indian Constitution has given a special role to the constitutional courts of this country. The Supreme Court is a protector of the fundamental rights of the citizens, as also is endowed with a duty to keep the other pillars of the democracy i.e. the Executive and the Legislature, within the constitutional bounds. If an attack is made to shake the confidence that the public at large has in the institution of judiciary, such an attack has to be dealt with firmly.

Supreme Court in SUO MOTU CONTEMPT PETITION (CRL.) NO.1 OF 2020
IN RE: PRASHANT BHUSHAN & ANR., decided on August 14, 2020

CRIMINAL

Supreme Court Judgments

Criminal Appeal No. 555 of 2020
Parvinder Kansal v. The State of NCT of Delhi & Anr.
Decided on: August 28, 2020

Hon'ble Supreme Court in this case held that an appeal against inadequacy of punishment cannot be maintained by the victim in terms of Section 372 of Cr.P.C. The Court observed as under: -

"A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.P.C. gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.P.C. but similarly no appeal can be maintained by victim under Section 372, Cr.PC on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in the case of National Commission for Women v. State of Delhi & Anr. (2010) 12 SCC 599 has rightly relied on the same and dismissed the appeal, as not maintainable."

Criminal Appeal No.200 of 2020
Union Of India v. Ashok Kumar Sharma & Ors.
Decided on: August 28, 2020

Hon'ble Supreme Court in this case considered; whether in respect of offences falling under chapter IV of the Act, an FIR can be registered under Section 154 of the Cr.P.C. and the case investigated or whether Section 32 of the Act supplants the procedure for investigation of offences under Cr.P.C. and the taking of cognizance of an offence under Section 190 of the Cr.P.C. and whether the Inspector under the Act, can arrest a person in connection with an offence under Chapter IV of the Act.

The Court held as under:

"150. Thus, we may cull out our conclusions/directions as follows:

I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the Cr.P.C. the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.

II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act, i.e., if he has committed any cognizable offence under

any other law.

III. Having regard to the scheme of the Cr.P.C. and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the Cr.P.C. in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the Cr.P.C.

IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu (supra) and to follow the provisions of Cr.P.C.

V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.

VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the Cr.P.C. but also immediately report the arrests to their superior Officers."

Criminal Appeal No. 1551 of 2010
Mohd. Anwar v. The State (NCT Of Delhi)
Decided on: August 19, 2020

The present criminal appeal is at the instance of Mohd. Anwar who impugnes the judgment dated 22.02.2010, of the High Court of Delhi whereby his appeal against the judgment dated 27/29.04.2004 of the Additional Sessions Judge, Karkardooma, convicting and sentencing him under Section 394 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959, was turned down.

The Supreme Court held that in order to successfully claim the defense of mental unsoundness under Section 84 of IPC, the accused must show by preponderance of probabilities that he / she suffered from a serious enough mental disease or infirmity which would affect the individual's ability to distinguish right from wrong. Further, it must be established that the accused was afflicted by such disability particularly at the time of the crime and that but for such impairment, the crime would not have been committed. The Court was hearing a matter where three accused were held to be guilty of robbery with attempt to cause grievous hurt by the trial Court. One of the accused contented that he was merely 15 years old at the time of occurrence and was undergoing treatment for a mental disorder at a government hospital. He supported his claim through a copy of an OPD card and the testimony of the appellant's mother who stated that he sometimes had to be kept chained at home to prevent harm to himself and others.

At the outset, the Supreme Court noticed that plea of unsoundness of mind under section 84 of Indian Penal Code or mitigating circumstances like juvenility of age, ordinarily ought to be raised during trial itself. Belated claims not only prevent proper production and appreciation of evidence, but they also undermine the genuineness of the defense's case.

The Court took note of the fact that no evidence in the form of a birth certificate, school record or mental test was brought forth; nor any expert examination has been sought by the appellant. Instead, the statement recorded under section 313 Cr.P.C. shows that the

appellant was above 18 years around at the time of incident, which is far departure from the claimed age of 15 years. Further, his conduct of running away from the spot of crime, evidence an elevated level of mental intellect. When the Court tried to get the appellant mentally examined, it was brought to its notice that the appellant who had been granted bail by Court earlier is untraceable. The court, hence, concluded that the plea of mental illness is nothing but a made up story and is far from genuine.

Criminal Appeal No. 520 of 2020
Preet Pal Singh v. State of U.P
Decided on: August 14, 2020

Appellant being the father of deceased-daughter (who was the victim of offences under section 498A, 304B, 406, 411 & Section 3 & 4 of Dowry Prohibition Act) have challenged the order of bail in favor of accused- husband passed by the High Court of Allahabad by staying the execution of sentence exercising appellate jurisdiction in terms of section 389 Cr.P.C. i.e. during the pendency of conviction appeal preferred by the accused.

The contention of the appellant is that High court while staying execution of sentence and granting bail pending appeal must exercise the discretion judicially and not as a matter of course, the accused is require to make out a case that there is patent error or legal infirmity committed by trial court making conviction for grant of bail pending and asserted that high court passed a short, cryptic and non speaking order of bail. Setting aside the order of bail granted by High Court, Hon'ble Supreme Court referring to the judgment passed in Dataram Singh's Case, 2018 (3) SCC 22, held that even though a detailed examination of merits of the case may not be required in consideration of application for grant of bail but at the same time the exercise of discretion has to be based on well settled principles and in a judicial manner and not as a matter of course, further held that the principle for grant of bail at the pre-trial stage under section 439 Cr.P.C. and at post conviction stage is different and not similar. At pre-trial stage the fundamental principle of presumption of innocence and the rule 'bail not jail' can be employed however, at post conviction stage there is finding of guilt and the principle of presumption of innocence and the rule bail not jail is not attracted. Rather there should be strong and compelling reasons for bail at post conviction stage.

Gangadhar alias Gangaram v. State of Madhya Pradesh,
Criminal Appeal No. 504 of 2020
Decided on: August 05, 2020

Hon'ble the Supreme Court in this case held that the presumption of culpability against the accused under the Sections 35 and 54 of NDPS Act, 1985 as regards to proof of possession, are rebuttable. The prosecution is not discharged from its duty to prove the charges beyond reasonable doubt. The appellant in this case was convicted u/s 8C read with s. 20 (b)(ii)(c) of the Act and sentenced to 10 years RI for possession of 48.2 kilograms of Ganja (cannabis). He was held to be the owner of the premises from where the contraband was recovered. The defence of the appellant as to the transfer of ownership of the house to co-accused was not considered and only voter list was relied upon by the trial court. Moreover, the appellant himself was one of the informants who led the police to the house. The said co-accused was later acquitted. The police did not record the statement of village Chowkidar, neither did it examine the village records. The Apex Court held that the reverse burden of proof cannot result in conviction merely on basis of preponderance of probability. Section 35(2) of the Act makes it clear that the charge needs to be established beyond reasonable doubt. It was also observed that where provision is made for such grave and stringent sentence, the Court has to ensure heightened scrutiny of the evidence for establishment of foundational facts by the prosecution.

Therefore, to undo the miscarriage of justice, the Supreme Court held that even though while exercising jurisdiction under Article 136 of the Constitution, it does not interfere with concurrent findings of facts delving into appreciation of evidence. But in cases like the present one, which concerns the liberty of the individual, if the Court is satisfied that the

prosecution had failed to establish a prima facie case, the evidence led was wholly insufficient and there has been gross mis-appreciation of evidence by the courts below bordering on perversity, the Supreme Court shall not be inhibited in protecting the liberty of the individual.

The Conviction was set aside and the appellant was acquitted.

Criminal Appeal No.543 of 2020
Karthick and Others v. The State represented by Inspector of Police, Kancheepuram District, Tamil Nadu.
Decided on: August 26, 2020

The Appellants, who are the original accused, were convicted by the Trial Court for offences under sections 147, 323, 325, 323 read with 149 and 325 read with 149 IPC and were sentenced to one year simple imprisonment and a fine of Rs. 30,000 was imposed, out of which Rs.10,000 was payable as compensation to grievously injured P.W.3. The High Court of Madras confirmed the order of conviction. The accused approached the Supreme Court against the order of the High Court.

The Hon'ble Supreme Court found no ground to interfere with the conviction order. It dealt with the question of sentence only. Given the fact that the accused persons were aged between 21 and 23 years, injuries inflicted on the victim were minor and the incident had happened all of a sudden on plucking of blackberries and there was no intention to cause injuries, the Hon'ble Supreme Court reduced the sentence to the period already undergone (six months) and the compensation awarded to the P.W.3 who sustained grievous injuries was further enhanced by Rs. 25,000/-

Criminal Appeal No. 2255 of 2010
Prem Chand v. State of Haryana
Decided on: July 30, 2020

In this Criminal Appeal, order of the Hon'ble High Court of Punjab and Haryana, reversing the order of acquittal into conviction was challenged. The appellant was convicted under prevention of Food adulteration act, 1954 for selling Adulterated Haldi Powder and selling it without license.

Hon'ble Supreme Court observed that delay of 18 days in finalizing the report by public analyst from the date of receipt of sample and no evidence that during that period the samples were not tempered, further more, in the report it was not mentioned that sample was insect infested or unfit for human consumption. Prosecution has failed to prove the requirement of section 2(1a) (F) of the act. (Case law, Delhi administration v. Sat Sarup Sharma 1994 Supp (3) SCC 324 relied upon).

The Supreme Court held that the order of conviction is not sustainable and set aside and upheld the order of acquittal by the Trial Court.

J&K High Court Judgments

CRM (M) No. 178/2020
Nasreen Shama v. CBI, ACB, Jammu
Decided on: August 26, 2020

The instant petition was filed under section 482 Cr.P.C. for quashment of charge sheet pending before the court of Special Judge Anti-Corruption (CBI cases) Jammu, as also for setting aside order dated 17.06.2020 passed by the said court.

The Hon'ble Court held that there can be two FIRs if the offence charged is different and distinct. In this case the Court observed that the two conspiracies petitioner is charged with, are in substances and truth distinct and different. The comparison of both FIRs, both charge sheets as also the charges framed by the trial court manifestly demonstrate that the conspiracy - the subject matter of second FIR could not said to be identical with the conspiracy of first FIR. The two conspiracies cover different fields of different dimensions with different ramifications and cannot by any sense of imagination be equated with each other.

Thus registration of two FIRs, conducting and completion of investigation therein, consequential filing of two charge sheets before the trial court and framing of charges by the trial court separately against the petitioner cannot be said to have caused any prejudice to the petitioner. The Hon'ble Court relied on the Judgment of Hon'ble Apex Court in Anju Chaudhary v. State of Uttar Pradesh and Anr. reported in (2013) 6 SCC 384 and dismissed the

instant petition.

Hence, the pending complaint proceedings quashed.

CRA No. 9900002/2012
Som Dutt and another v. State of J&K
Decided on: August 25, 2020

The brief facts are that on 29.05.2006 at 16:00 hours, a written complaint was lodged by the complainant and FIR bearing No. 27/2006 for commission of offence 435 RPC was registered by Police Station, Kalakote against the four accused including the appellants. After the investigation of the case, the challan for commission of offences under sections 435 and 427 RPC was produced against the appellants only and the involvement of others accused was not found in the commission of aforesaid offences. The learned Sessions Judge, Rajouri (hereinafter 'The Trial Court') in the case titled "State vs. Som Dutt and another" arising out of FIR bearing No. 27/2006 of Police Station, Kalakote convicted the appellants under section 435 RPC and sentenced them for a simple imprisonment of six months and also a fine of Rs. 1000/- has been imposed on each of the appellant.

The Judgment dated 04.02.2012 passed by the trial court was challenged before the Hon'ble High Court (hereinafter 'The Court') whereby the appellants have been convicted under section 435 RPC.

The occurrence was stated to have taken place on 25-05-2006 but the FIR was lodged four days after the occurrence. The explanation given by the PW-1 was contrary to record and the delay of four days in lodging FIR remained unexplained. The Court, relying upon State of A.P. v. M. Madhusudhan Rao (2008) 15 SCC 582, observed that the law is well settled that FIR must be lodged with promptitude and delay if properly explained is not fatal to the prosecution case but when the delay remains unexplained then there may be chances of an exaggerated account of the incident or a concocted story as a result of deliberations and consultations.

The Court noticed that the statements of PW-1 and the complainant are vague, devoid of necessary details and he goes on changing his stand continuously. Referring Gajula Surya Prakasarao v. State of A.P (2010) 1 SCC 88, The Court observed that when a witness changes his stand at different stages, no reliance can be placed upon his testimony as the same becomes doubtful and the Trial court failed to consider these vital aspects of the conduct of the complainant in changing his stand at different stages.

In view of Shanthamalleshappa v. State of Karnataka (2019) 2 SCC 679, the Court also noted that the PW-1 and the appellant No. 1 were having dispute with regard to the land comprising Survey No. 625 and 567 situated at village Sair Kalakote, the false implication of the appellants cannot be ruled out.

Therefore, the appeal was allowed and the Judgment passed by the Trial Court was set aside and the appellants were acquitted of the charge and their bail bonds stood discharged.

Crl.R. No. 50 of 2019
Union of India v. Mohd. Ashraf Khan
Decided on: August 21, 2020

Hon'ble High Court in this case held that the NDPS Act nowhere bars the temporary release of the vehicle seized under the Act during the enquiry or trial. Moreso, the seizure of the vehicle in heinous offence can hardly be a ground for its retention with the seizing authority and if the vehicle is allowed to remain in the custody of the seizing authority then in all probability the vehicle would become unroadworthy, in view of the fact that it may take quite a long time for conclusion of the trial. If after the trial, the trial court comes to the conclusion that the vehicle is required to be confiscated, then the court may proceed ahead as per mandate of section 63 of the NDPS Act.

CRM(M) No. 380/2019
Amina Begum & Ors. v. State of J&K & Ors.
Decided on: August 25, 2020

In this petition the petitioners sought the quashment of FIR registered with Police Station, Budhal for commission of offences under Sections 341, 323, 336, 147, 504 and 506 RPC by invoking section 482 of Criminal Procedure Code. The moot question involved in this petition pertained to the lodgment of two FIRs

with regard to the same incident. The Hon'ble High Court while deciding this petition referred to the judgment of Apex Court titled Surender Kaushik v. State of U.P., (2013) 5 SCC 148, referring to the relevant para as under:

"24. From the aforesaid decisions, it is quite luminous that the lodgement of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh v. Ved Prakash, (2004) 13 SCC 292: 2005 SCC (Cri) 211, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible."

The Hon'ble High court also cited the note of caution given by the apex court in Tilly Gifford v. Michael Floyd Eshwar, (2018) 11 SCC 205, while exercising it jurisdiction under section 482 of Cr.P.C.

Consequently, the petition was found devoid of any merit and the same was dismissed.

CRM(M) No. 156/2020
Mohd Naseem v. UT of J&K
Decided on: August 04, 2020

In this case, the Hon'ble High Court, upon application by father of victim u/s 482 Cr.P.C. set aside the bail granted to accused in case registered for offences u/s 376-D, 109 of IPC and S. 4 of POCSO Act, 2012.

The minor daughter of complainant was alleged to have been kidnapped by accused/ respondent no.2 and his associates on 11.03.2020 and was found unconscious in fields the next day near house of the accused. Thereafter, the petitioner got FIR registered and investigation was set into motion. The accused/ respondent no.2 and his associate had filed bail application, which was objected to by petitioner and dismissed. Another bail application was filed subsequently, notice of which was not given to him and bail granted by the trial court.

Relying on Apex Court's judgment in Puran v. Rambilas, 2001 (6) SCC 338 and Kalyan Chandra Sarkar v. Rajesh Rangan @ Pappu Yadav and another, (2004) 7 SCC 528, the Bench observed that although while granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken, but that does not mean that reasons for granting bail are not to be indicated in the bail order.

The observation of trial court noting 'no proof of recent sexual intercourse' was held to be based upon the medical report noting absence of spermatozoa in the vaginal swab test, which is in conflict with Hon'ble Apex Court judgment in Wahid Khan v. State of Madhya Pradesh, (2010) 2 SCC 9.

The Court held that in light of the nature of offences, the ferocity of the crime, the statement of the victim recorded under section 164 Cr.PC, the apprehension of the threat to the victim at the hands of the accused and absconding co-accused, and the provision of section 437 Cr.PC, there seems to be no reason for the trial court to have admitted the accused to bail in a crime which has a serious magnitude and it will be a sheer abuse of process of law.

The impugned order was set aside and as a corollary of which, accused was ordered to be taken into custody.

Criminal Appeal No. 13 of 2018
State through SHO P/S Pampore v. Bashir Ahmad Khanday
Decided on: July 27, 2020

The appeal has been preferred by the erstwhile State of J&K, now Union Territory of J&K against the judgment dated 16.05.2017, passed by the Court of learned Principal Sessions Judge, Pulwama, by virtue of which the respondent has been acquitted for commission of offences under Sections 302, 364, 109 RPC

and 7/25, 3/25 Arms Act under FIR No. 97/2000 of Police Station, Pampore.

It came in the evidence of some of the prosecution witnesses that at 7.00 p.m. the respondent came to the house of deceased and asked him to accompany him. The deceased accompanied the respondent but thereafter did not return.

Hon'ble High Court held that whole case of the prosecution is based upon the circumstantial evidence, as there is no direct evidence with regard to the murder of the deceased. So far as circumstantial evidence is concerned, the law is well settled that all the circumstances must result into the only inference towards the guilt of the accused and if more than one inference can be drawn then the accused must have the benefit of doubt. Now, it is to be seen whether the factum of last seen with the deceased is sufficient enough to connect the accused-respondent with the murder of the deceased. The Court was of the considered opinion that the mere fact that the deceased was last seen with the respondent cannot lead to an irresistible conclusion that it was the respondent who killed the deceased in the absence of any other evidence. Moreso, in a case of like the nature where there is no motive for killing the deceased, the respondent could not have been convicted solely on the basis of factum of last seen evidence. The Trial Court has taken a possible view in light of evidence led by prosecution.

In view of the above, the appeal is found meritless and is, accordingly, dismissed.

Ref (Crl) No. 03 of 2020
Union Territory of J&K v. Abdul Dadeer Dar
Decided on: July 29, 2020

This reference was made by Special Judge (Designated Court) under the National Investigation Agency Act (NIA Act) after opining that the Special Judge under the NIA Act has no jurisdiction to hear revision against the order of the Magistrate granting bail.

In this case, investigation was commenced in offences under Section 13 ULA (P) Act and Sections 148, 149, 336 and 353 RPC. During the course of investigation the accused was enlarged on bail by the Magistrate. Order of the Magistrate granting bail was challenged by way of revision before the Court of Session. Subsequently, notification was issued by the Government constituting Special Court in terms of NIA Act for trial of Scheduled offences, including offences under ULA (P) Act. Thereafter, the Court of Sessions forwarded the revision petition to the Designated Court.

The High Court accepting the opinion and recommendation of the Special Judge, held as under:

"14) In fact, a Special Court is a Court of first instance in respect of all proceedings pertaining to offences under ULA(P) Act which is a Scheduled enactment. The appeal against the orders of a Special Court lies before the High Court in terms of Section 21 of the NIA Act. The revisional and appellate jurisdiction in respect of orders and findings recorded by an ordinary Judicial Magistrate cannot be exercised by a Court specially constituted under Section 22 of the NIA Act. The Special Court functions as a Sessions Court only for the purpose of trial of the specified offences by adopting the procedure prescribed under the Cr.P.C for Sessions trial cases. It does not possess any appellate or provisional powers.

15) Section 22(4) of the NIA Act makes it abundantly clear that once a Special Court is constituted, the trial of cases pertaining to the specified offences stands transferred to the said Court. It does not provide for transfer of any other proceedings.

16) The revisional powers in respect of an order passed by an ordinary Judicial Magistrate even in proceedings which pertain to offences under ULA(P) Act are exercisable by a Court of Session having jurisdiction over the said Magistrate. It is for the said Court of Session to test the legality and propriety of the findings of the orders recorded by a Magistrate under his jurisdiction even in the proceedings pertaining to the offences under ULA(P) Act. The question, whether an ordinary Magistrate has the jurisdiction to pass an order of bail in respect of an offence under the provisions of ULA(P) Act, is for the concerned Sessions Court to determine in exercise of its revisional jurisdiction.

"The Constitution is an effective tool of social transformation; removal of inequalities intends to wipe off tears from every eye. The social realities cannot be ignored and overlooked while the Constitution aims at the comprehensive removal of the disparities.

Arun Misra J. In *The State of Punjab and others v. Davinder Singh & Ors.*, decided on August 27, 2020

CIVIL

Supreme Court Judgments

Civil Appeal Nos. 2843-2844 of 2010
Nazir Mohamed v. J. Kamala And Ors.
Decided on: August 27, 2020

Hon'ble Supreme Court in this case reiterated the following while considering the question of 'substantial question of law' to maintain the second appeal:

"25. A second appeal, or for that matter, any appeal is not a matter of right. The right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the Court cannot expand the scope of the appeal. It was not open to the Respondent -Plaintiff to re-agitate facts or to call upon the High Court to reanalyze or re-appreciate evidence in a Second Appeal.

26. Section 100 of the CPC, as amended, restricts the right of second appeal, to only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 of the CPC.

29. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd., where this Court held:-

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

30. In Hero Vinoth v. Seshammal, this Court referred to and relied upon Chunilal v. Mehta and Sons (supra) and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

31. The relevant paragraphs of the judgment of this Court in Hero Vinoth (supra) are set out hereinbelow:-

"21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying" question of law", means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution.

32. To be "substantial", a question of law must be debatable, not previously settled

by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

33. To be a question of law "involved in the case", there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.

34. Where no such question of law, nor even a mixed question of law and fact was urged before the Trial Court or the First Appellate Court, as in this case, a second appeal cannot be entertained, as held by this Court in Panchagopal Barua v. Vinesh Chandra Goswami.

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from Santosh Hazari v. Purushottam Tiwari."

Civil Appeal No.2710 of 2010
Narasamma & Ors. v. A Krishnappa (Dead) Through Lrs.
Decided on: August 26, 2020

The question for consideration before Hon'ble the Supreme Court in this case was whether simultaneously a plea can be taken of title and adverse possession, i.e., whether it would amount to taking contradictory pleas. The Supreme Court observed as under:

In Karnataka Board of Wakf case, it has been clearly set out that a plaintiff filing a title over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12 that "….the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced…."

In order to establish adverse possession an inquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial. In the facts of the present case, this fact has not at all been proved.

The possession has to be in public and to the knowledge of the true owner as adverse, and this is necessary as a plea of adverse possession seeks to defeat the rights of the true owner. Thus, the law would not be readily accepting of such a case unless a clear and cogent basis has been made out.

Relying on another judicial pronouncement in Ram Nagina Rai & Anr. v. Deo Kumar Rai (Deceased) by LRs & Anr., dealing with a similar factual matrix, i.e., where there is permissive possession given by the owner and the defendant claims that the same had become adverse, it was held that it has to be specifically pleaded and proved as to when possession becomes adverse in order for the real owner to lose title12 years hence from that time.

The legal position, thus, stands that advancing a plea of title and adverse possession simultaneously and from the same date can not sustain.

Civil Appeal No. 7074 of 2008
State of Madhya Pradesh & ors. v. Rakesh Sethi & anr.
Decided on: August 26, 2020

In the instant civil appeal, Hon'ble Supreme Court considered the impugned judgment of the High Court of Madhya Pradesh which held that Rule 55A of Motor

Vehicles Rules, 1994 framed by the State is beyond the scope of its powers under Motor Vehicles Act, 1988 and the Central Motor Vehicle Rules, 1989. The Hon'ble Supreme Court while allowing the appeal of State of Madhya Pradesh took different view and held that Rule 55A of Motor Vehicles Rules, 1994 is not in excess of powers conferred upon the State by the Central Rules. Rule 55A empowers the State to assign registration numbers to motor vehicles which is a distinct service for which State or their authorities are entitled to charge a fee. This rule is directly related to the performance of State's functions under section 41(6) of Motor Vehicle Act, 1988, for which it could legitimately claim a fee.

Further, it was held by the Hon'ble Supreme Court that Section 211 of the Motor Vehicle Act, 1988, empowered the State Government to levy a fee with respect to applications submitted for issuing a Certificate, license or registration. Hon'ble Supreme Court while setting aside the impugned judgment of Hon'ble High Court of State of Madhya Pradesh explained that State can levy fee or amount for such contingencies which are not covered by any specific power to levy fee or amount but which entails some activity on the part of the State.

Avitel Post Studioz Limited v. HSBC PI Holdings (Mauritius) Limited Civil Appeal no. 5145 of 2016 Decided on: August 19, 2020 In a dispute between HSBC and Avitel Post Studioz Ltd., the final Award was passed by the Arbitration Tribunal in Singapore. HSBC filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 in which the Bombay High Court directed Avitel to deposit any shortfall in their account with the Corporation Bank so as to maintain a balance of USD 60 million. This order was upheld by the Division Bench. This order was challenged by Avitel in the Apex court. The contentions of Avitel before the Apex Court were that if the transaction entered into between the parties involved serious criminal offences such as forgery and impersonation, then it is clear that under Indian law, such dispute would not be arbitrable. A complaint filed by HSBC against Avitel was also referred to. They referred to the judgment in the case of N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72, in which it was laid down that serious questions of fraud raised, would render such dispute inarbitrable. These submissions were countered by HSBC by referring to judgments in Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710 and A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386 in which it was explained "as referring only to such serious allegations of fraud as would vitiate the arbitration clause along with the agreement, and allegations of fraud which are not merely inter parties, but affect the public at large."

The main issue in this case was whether, in the section 9 proceeding under the 1996 Act, HSBC could be said to have a strong prima facie case in the enforcement proceedings under section 48 which are pending before the Bombay High Court? The Apex Court referred to the final award and held that there is no such fraud as would vitiate the arbitration clause in the SSA entered into between the parties as it is clear that this clause has to be read as an independent clause. Further, any finding that the contract itself is either null and void or voidable as a result of fraud or misrepresentation does not entail the invalidity of the arbitration clause which is extremely wide. It also held the impersonation, false representations made, and diversion of funds are all inter parties, having no "public flavour" so as to attract the "fraud exception".

The Apex Court while laying down the tests to determine "Fraud Exemption" to arbitrability of disputes observed that "It is

clear that "serious allegations of fraud" arise only if either of the two tests laid down are satisfied, and not otherwise. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentality of arbitrary, fraudulent, or malafide conduct, thus necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain." Thus, the court held that HSBC has made out a strong prima facie case necessitating that USD 60 million, being the principal amount awarded to them, is kept apart in the manner indicated by the learned Single Judge of the Bombay High Court.

Civil Appeal No. 9049-9053 of 2011
Union of India & Anr. v. M/s K.C. Sharma & Co. & Ors.
Decided on: August 14, 2020

The Supreme Court in this case reiterated that defense under Section 53A of the Transfer of the Property Act, 1882, is available to a person who has agreement of lease in his favour even though no lease has been executed and registered. Court further said that Section 53A of the Transfer of the Property Act, 1882, protects the possession of persons who have acted on a contract of sale but in whose favour no valid sale deed is executed or registered.

The Court was hearing appeals filed by appellants (Union of India) in the present case, who were aggrieved by the judgment and decree passed by the Delhi High Court. Delhi High Court had allowed the Regular First Appeals, preferred by the respondents while setting aside judgment and decree passed in 2006 by the Additional District Judge, Delhi.

Facts in brief were that there was acquisition of land by the Government which belonged to Gaon Sabha Luhar Heri, Delhi. Respondents (in the case at hand) had claimed compensation on the ground that the land was given to them on lease by Gaon Sabha and as it was not fit for cultivation, lease was granted to them to remove the "shora" and to make the land fit for cultivation.

Matter was referred to the Civil Court under Sections 30 and 31 of the Land Acquisition Act, 1894 for the apportionment of the amount of compensation and the Civil Court passed the judgment and decree in 1989 declaring the respondent-claimants entitled for compensation to the extent of 87% while remaining 13% were to be paid to the Panchayat/Gaon Sabha.

A suit was later on filed by the appellants initially before the Delhi High Court which was subsequently transferred to the Court of Additional District Judge. The said suit was filed seeking declaration that the judgment and decree of 1989 was obtained by respondents by fraud and in collusion with ex-Pradhan. The said suit was decreed by judgment and decree of 2006 and aggrieved by the same, respondents-defendants had preferred First Appeals before the High Court of Delhi which had allowed the appeals and had set aside the decree of 2006. Supreme Court eventually dismissed present appeals of appellants while upholding judgment of the Delhi High Court.

The Supreme Court while finding merit in the judgment of the Delhi High Court said that High Court was right in its stance as it is fairly well settled that fraud if alleged has to

be pleaded and proved. It observed:

"[...] when a judgment and decree passed earlier by the competent court is questioned, it is necessary to plead alleged fraud by necessary particulars and same has to be proved by [the] cogent evidence. There cannot be any inference contrary to record. As the evidence on record discloses that fraud, as pleaded, was not established, in absence of any necessary pleading giving particulars of fraud, we are of the view that no case is made out to interfere with the well reasoned judgment of the High Court."

The Court observed further that it is clear from the evidence that the respondents were put in possession and they continued in possession by cultivating the land and therefore the contentions of the appellants do not hold any ground.

Civil Appeal No. 2834 of 2020
B.B.M. Enterprises v. State of West Bengal & Anr.
Decided on: July 30, 2020

In the arbitration for a total claim of Rs. 2,08,59,989, the arbitrator passed an award for an amount of Rs 1,38,44,435, out of which 15% per annum interest pendente-lite was awarded on a sum of Rs. 1,17,77,080 plus Rs. 2,67,350/- as costs with no interest. It was further stated that if the awarded amount dehors costs not paid within four months, interest shall be payable at the rate of 18%.

The appellant filed an Execution Petition and the Executing Court despite order dated 11th February, 2010 found that in view of lapse of statutory period of 120 days of filing the appeal against the award, vide order dated 17-2-2010 directed RBI to pay the awarded amount after attachment of bank account of the Government. The RBI vide Communication dated 20-10-2010 stated that adequate funds were not in the Account of judgment debtor.

The High Court vide order dated 24-10-2010 in the Petition filed by the Government, set aside the order of the Executing Court dated 17-10-2010, on the ground that Government has made statement for deposit of 50% of the decreetal amount within two weeks and remanded the matter to the Executing Court.

Thereafter, the respondent Government of West Bengal filed a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 on 2-4-2010, thereby challenging the award. However, the said Petition was dismissed by the Learned District Judge on 22nd March, 2012 on the ground that since the Petition was filed after the statutory period of 120 days from the passing of the award, there is no reason to consider the Petition on merits of the award.

The order dated 22nd March, 2012, passed by Learned District Judge before the Hon'ble High Court and the Division Bench set aside the judgement of Learned District Judge and remanded the case for fresh hearing.

The learned District Judge vide order dated 22nd December, 2016 upheld the findings of the award passed by the Arbitrator and found no merit in the Petition, as filed under Section 34 of Arbitration and Conciliation Act. While passing the order dated 22nd December, 2016 held that from the material placed on record by the respondent including photocopies of the documents inasmuch as the factual finding by the Arbitrator neither the award suffer from patent perversity on account of interpretation of law nor based on wrong preposition of law. The Court cannot substitute its opinion or sit over the jurisdiction of the arbitrator on the finding of fact arrived at by the Arbitrator. The High Court vide order Ist March, 2019 set-aside the order on the ground that while deciding the petition under Section 34 of the Arbitration and Conciliation Act, it is expected that some

discussion on the merits of the objections on the award have to be in the order itself and the order of the trial judge is without reasons and remanded the matter back for fresh disposal.

The Hon'ble Supreme Court held that the order passed by the District Judge while disposing the Petition under Section 34 is well reasoned and called for no interference and order of the High Court dated 1st March 2019 for remanding the matter is set-aside and order of the District Judge dated 22nd December 2016 is upheld. However, the Supreme Court in the interest of justice reduced the interest pendentilite of 18% to 15% directing the respondents to make payment within three months.

Civil Appeal No. of 2018
Vineeta Sharma v. Rakesh Sharma & Ors.
Decided on: August 11, 2020

In this case Hon'ble the Supreme Court was confronted with a vexed question concerning the interpretation of section 6 of the Hindu Succession Act, 1956, as amended by Hindu Succession (Amendment) Act, 2005 has been referred to a larger Bench in view of the conflicting verdicts rendered in two Division Bench judgments of this Court in Prakash & Ors. v. Phulavati & Ors., (2016) 2 SCC 36 and Danamma @ Suman Surpur & Anr. v. Amar & Ors., (2018) 3 SCC 343. The Court after considering various aspects of law answered the reference as under:

"129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

130. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them

by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in Prakash v. Phulavati and Mangammal v. T.B. Raju & Ors. The opinion expressed in Danamma @ Suman Surpur & Anr. v. Amar is partly overruled to the extent it is contrary to this decision."

Civil Appeal No. 2904 of 2020
M/S Excel Careers & Ors. v. Frankfinn Aviation Services Private Limited
Decided on: August 05, 2020

In this Reference the Supreme Court observed that if plaint has been returned by the Court under Order 7 Rule 10 or Rule 10 A, the trial will start de-novo in the Court to which such plaint is returned for proper presentation. The legal issue involved was that if plaint has been returned by the Court under Order 7 Rule 10 or Rule 10 A, whether the trial will start de-novo in the Court to which such plaint is returned for proper presentation or will it resume the proceedings from the stage at which it was left when the order of return of plaint was made?

On the issue, this reference was sent to the Supreme Court noticing conflict between ratio of two judgments of the Supreme Court i.e. Joginder Tuli v. S.L. Bhatia, (1997) 1 SCC 502 and Oil and Natural Gas Corporation Ltd. v. Modern Construction & Co., (2014) 1 SCC 648 with respect to the interpretation of the Order 7 Rule 10 and Rule 10A. While the decision in Joginder Tuli's case was overruled, the Supreme Court relied entirely on the Modern Construction case and categorically held that the Joginder Tuli judgment was delivered on the basis of peculiar facts of that case and does not discuss law, hence it cannot be said to have precedential value whereas Modern Construction judgment is in line of well-established proposition of law and lays down the correct law in this regard.

In this way, Supreme Court while relying upon Modern Construction Judgment in answering the present reference held that in cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order VII Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence de-novo. It further held that in such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de -novo even if it stood concluded before the court having no competence to try the same.

Civil Appeal No. 5147 of 2016
Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties & Ors.
Decided on: August 19, 2020

In this appeal the Supreme Court held that Section 31 of the Specific Relief Act is not an action in rem but is an action in personam. The Court further held that the expression "any person" in Section 31(1) does not include a third party, but is restricted to a party to the written instrument or any person who can bind such party. The expression "any person" in this section includes a person seeking a derivative title from his seller. The Court also took notice of the fact that specific relief under Section 4 of the Specific Relief Act is granted only for enforcing individual civil

rights.

The Court also held that when a written instrument is adjudged void or voidable under Section 31, the Court may then order it to be delivered up to the plaintiff and cancelled, which makes it clear that the action under Section 31(1) is strictly an action inter parties or by persons who obtained derivative title from the parties, and is thus in personam.

The court also reiterated that the registration of a document does not confer any higher legal status on that document. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed under Section 31 of the Specific Relief Act but if a non-executant seeks annulment of a deed, he has to seek a declaration under Section 34.

The Court also held that if subject matter of an agreement between the parties involved fraud in the performance or is hit by Section 17 of the Contract Act,1872, it would amount to deceit which being a civil wrong is arbitrable. Since this suit is inter-parties with no 'public overtones' the fraud exception is not applicable to it as per Avitel Post Studioz Limited & Ors. v. HSBC PI Holding (Mauritius) Ltd., Civil Appeal No. 5145 of 2016.

Civil Appeal No. 7764 of 2014
Ravinder Kaur Grewal & Ors v. Manjit Kaur & Ors.
Decided on: July 31, 2020

The present appeal arose from the judgment and decree passed by the High Court of Punjab and Haryana, whereby the substantial question of law formulated was - "Whether the document Ex.P6 required registration as by way of the said document the interest in the immovable property was transferred in favour of the Plaintiff?"

In the present case, a declaration suit was filed by the predecessor of the appellant against his real brothers whereby he claimed that be declared as the exclusive owner in respect of certain immovable property on the basis of a family settlement whereunder his ownership and possession was accepted and acknowledged. A memorandum of family settlement was executed between the parties and after the execution of memorandum, defandants raised dispute and thus the plaintiff filed the suit for declaration praying for a decree that he be declared as the owner in possession of the said land.

However, the first appellate court declared the original plaintiff as owner of the suit land. Thereafter, the second appeal was filed, whereby the learned single Judge answered the substantial question of law as mentioned above in favour of the said respondents. The Hon'ble High Court set aside the conclusion recorded by the first appellate court and opined that the document which, for the first time, creates a right in favour of plaintiff in an immovable property in which he has no preexisting right would require registration, being the mandate of law and the judgment and decree passed by lower appellate court was set aside.

The appellants have questioned the correctness of the view taken by the High Court. However, in the present appeal, the Hon'ble Court opined that the core issue involved in this appeal is: whether the document Exhibit P-6 was required to be registered as interest in immovable property worth more than Rs.100/- was transferred in favour of the plaintiff?

The Hon'ble Court opined that the settled legal position is that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangements ought to be

governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. The Hon'ble Court while replying upon Kale & Ors. vs. Deputy Director of Consolidation & Ors, (1976) 3 SCC 119 referred that in the said reported decision, the Court had observed that:-

"In a family arrangement by which the property case no registration is necessary; however, it is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable."

The Hon'ble Court in the light of the decision held in Kale affirmed the decision reached by the first appellate court that the document Ex P6 is nothing but only a memorandum of family settlement. Hence, it was not required to be registered. Hence appeal allowed and judgment and decree passed by first appellate court is restored in favour of the plaintiff/appellants.

J&K High Court Judgments

RP No.18/2020
Mohammad Afzal Beigh & Ors. v. Kuldeep Kumar & Ors.
Decided on: August 27, 2020

This review petition was filed by the Insurance Company seeking review of the judgment passed by the Court in the above titled case by which the claimants were held to be entitled for compensation of ₹ 21,12,181/ along with an interest @6% per annum from the date of filing of claim petition till its realization

The Hon'ble Court observed that it has been clearly laid down by the Supreme Court in Sarla Verma's case that while calculating the income of the deceased, salary less by income tax should be the starting point. This aspect of the case has escaped the notice of the Court while calculating the compensation. The Hon'ble Court modified the order after noticing that there is an error apparent on the face of record and the same deserves to be corrected. Accordingly the compensation amount has been reduced to ₹ 20,16,880/ along with interest.

MA No 51 of 2018.
United India Insurance Company Limited v. Narinder Kaur and Ors.
Decided on: August 21, 2020.

The deceased who was a licensed driver working with the respondent No.4 was driving a registered truck carrying steel from Jammu, to reach Srinagar. He left for his journey on 7.04.2013, but after two days i., on 09.04.2013, when he reached Dig Dole, he fell ill, parked the vehicle on the road side and on being noticed was taken by some people to the Ramban District Hospital, where he was declared dead on arrival.

His claimant's, i.e. his wife and children allegedly approached the employer as well as the insurer but they turned a deaf ear to them who ultimately filed a claim under the ECA 1923 before the Tribunal (Asst. Labour Commissioner Jammu), who after hearing the parties and taking evidence on record, held

the claimant's entitled for compensation to the tune of Rs. 6,77,760/- along with the interest to the tune of Rs. 1,82,142/- at the rate of 7.5% per annum w.e.f 13.06.2014 till 15.01.2018, vide its judgment dated 15.01.2018.

The said judgment of the Tribunal was assailed in this appeal before the High Court filed by the Insurance Company and the employer, under Section 30 of the ECA 1923, while on the other hand cross objections also were filed by the respondents (claimants) under the same provision challenging the rate of interest granted by the Tribunalas 7.5% per annum which is less than the statutory rate of 12% per annum.

After hearing the parties and perusing the material on record, as well as the evidence recorded and appreciated by the Tribunal / Commissioner at length, the Hon'ble High Court framed the following substantial questions of law for determination in the appeal:

i) Whether in the absence of any evidence regarding stress and strain and in the absence of causal connection between the death and his employment, the Commissioner could have fixed the liability on the employer and asked Insurer to indemnify the employer?

ii) Whether the death of the deceased in light of the evidence on record can be said to have taken place due to the accident during the course of the employment?

iii) Whether cross objections by respondents are maintainable under Section 30 of ECA 1923?, and an allied question,

iv) Whether such cross objection, if it raises a substantial question of law could be treated as an appeal under the same provision, subject to the provisions of limitation?

v) Whether the Tribunal could award interest at a rate lesser than the minimum prescribed rate under the Act?

Issue i) : As regards the first issue the Honble High Court found no error in the judgment of the Tribunal/ Commissioner that deceased was in fact an employee of the appellant/ employer which was established with sufficient evidence and independent witnesses. The court also held that though the deceased may be suffering from an underlying medical condition yet the stress and strain caused due to the job as driver and that too at this hilly terrain had aggravated his condition and thus the causal connection was also established between the death and the employment. It was also held that accident includes both cause and effect.

Issue no ii) : The High Court held that since the issue no. i) stands proved therefore there is no doubt that the death occurred during the course of the employment , hence this issue is also settled.

Issue no iii): After hearing both the sides and perusing the statute the Court held that there is no provision of filing cross objections by the respondents under Section 30 of the ECA 1923. The only way cross objection in any appeal can be filed is by importing the provisions of Order 41, rule 22 of CPC. However ECA 1923 being a separate code in itself, its Rule 41, allows application of only certain provision of CPC for the proceedings before the Commissioner only and not in case of appeals. Therefore no cross objections could be filed by the respondents under Section 30 of the ECA 1923.

Issue no iv): However notwithstanding the denial of maintainability of cross objections under Section 30 of the ECA 1923, the Court held that in case such objections raise a substantial question of law for determination by the Court, then such cross objections could be treated as an appeal under Section 30 of the Act by the Court in the interests of justice. Since the appeal under Section 30 could be filed by any aggrieved party, therefore the respondents who were

aggrieved of the grant of interest at a lesser rate were also aggrieved and could have filed an appeal though they preferred that right by way of cross objections. And since the question whether the tribunal could award interest at a rate less than the minimum prescribed rate under the Act is a substantial question of law, hence in this eventuality the Court treated the cross objections of the respondents as an appeal and acted ex debito justitiae , condoning the delay, and went ahead to determine this question.

Issue no v): After treating the cross objections of respondents also as an appeal under Section 30 of the Act, the Court held that the Tribunal had erred in fixing the rate of interest at a rate less than the minimum statutory rate provided under Section 4-A (3) (a) of the Act. It was held that the minimum rate of interest provided is 12 % per annum and the tribunal in no case could award lesser than that. Moreover same has to be paid from the expiry of one month from the date of the accident.

Accordingly, the appeal was dismissed. The cross objections of the respondents were treated as an appeal and the Hon'ble High Court upheld the compensation awarded by the Tribunal/ Asst. Labour Commissioner to the tune Rs. 6,77,760/- but modified the interest rate to be paid at the rate of 12% per annum from the date of the accident i,e. 09.04.2013 till its realization, to be deposited before the Commissioner.

CR No.31/2014
Kartar Singh v. Raghubir Singh & Ors.
Decided on: August 18, 2020

The present revision petition was filed before the Hon'ble High Court under Section 115 of the Code of Civil Procedure against the order dated 08-09-2014 passed by the Trial Court in an application filed for the amendment of the pleadings by the plaintiff which was dismissed.

The Trial Court had dismissed the application citing the reasons that the plaintiff at the time of filing the suit for declaration and mandatory injunction did not pray for the possession and while pleading for the same at this stage of the suit the plaintiff has not been able to put on record any evidence which could show that the plaintiff was in possession of the property initially and was dispossessed subsequently of the same by the respondent.

The Hon'ble High Court while dealing with the issue held that in view of amendment to Section 115 of the Code of Civil Procedure effected in the year 2009, revision against an interlocutory order is not maintainable and thus in the interests of justice, the Hon'ble High Court by exercising the powers under supervisory jurisdiction under Article 227 of the Constitution, found that the trial court has exceeded its jurisdiction and decided an issue of fact in an application for amendment of plaint. Whether or not the party is in possession could not be decided in an interlocutory application.

In view of the above, the Hon'ble High Court set aside the order passed by the trial court and directed the trial court to allow the amendment of the plaint.

MA No.511/2014
Bajaj Allianz General Insurance Company Limited v. Ashok Singh & Ors.
Decided on: August 11, 2020

This appeal was filed by the Insurance Company against the award passed by the Motor Accident Claims Tribunal, where under the claimant has been held entitled to compensation of Rs.7,94,000/- along with pendente lite and future interest @ 7.5% per annum.

The Hon'ble Court observed that the Tribunal has correctly applied the multiplier of 17 but it has omitted to make addition to the monthly income by way of future

prospects, as provided for in National Insurance Company Limited v. Pranay Sethi and others, (2017) 16 SCC 680 and in a recent judgment of the Supreme Court delivered in the case of Kajal v. Jagdish Chand and others (Civil Appeal No.735 of 2020 decided on 05.02.2020). Accordingly, the Court held that a monthly income of the claimant deserves to be increased by 40%.

The appeal filed by insurer was dismissed and the appeal filed by the claimant is allowed and the award of the Tribunal is modified to the aforesaid extent.

CR No.48/2020
Deepak Kumar v. Mithun Khajuria & Ors.
Decided on: August 14, 2020

The Court was dealing with a petition in which the petitioner had invoked the supervisory jurisdiction of the Court vested by virtue of Article 227 of the Constitution for quashing and setting aside the order passed by the trial Court, whereby an application moved by one respondent seeking his impleadment as party defendant in the suit was allowed.

The Court after citing the law laid down in Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Pvt. Ltd. and others, (2010) 7 SCC 417 said that, Keeping in view the principles relating to impleadment of parties, held that respondent No.7 may not be a necessary party to the frame of the suit filed by the petitioner but nonetheless, he claiming to be in possession of the suit property as tenant thereof, is a proper party and not a mere interloper or inter-meddler. The trial court has found respondent No.7 as proper party and has, accordingly, exercised its discretion to implead him as party defendant in the suit. As rightly observed by the trial court, addition of respondent No.7 to the suit may not prejudice the petitioner but it would necessarily avoid multiplicity of litigation and help adjudication of the dispute in effective manner.

The Court finally held that the order impugned, viewed from any angle, does not result in serious miscarriage of justice. The power of superintendence of this Court under Article 227 is not available to interfere with the discretionary orders passed by the Civil Courts in the course of suit, unless such orders are found to be grossly irrational or perverse. The discretion vested in this Court under Article 227 of the Constitution is, thus, required to be exercised in rarest of the rare case. Legal position in this regard is well settled and is not required to be reiterated again.

MA No. 34/2010
New India Assurance Co. Ltd. v. Rajinder Prashad Uppal and others
Decided on: August 17, 2020

In this case the Court held that the driver of the offending vehicle was not necessarily required to possess licence having PSV endorsement when he had Light Motor Vehicle (LMV) license and, therefore, the plea of the insurer that the driver was not possessing valid licence would be inconsequential.

This was an appeal preferred against the award passed by the Motor Accident Claims Tribunal, Jammu whereby the Tribunal has held the insurer solely liable to pay compensation of Rs.1,70,000/- along with interest @ 7.5% per annum w.e.f. the date of filing of claim petition till its realization. The award of the tribunal was challenged mainly on the ground that the driver of the offending vehicle was not holding the valid driving licence. It was submitted that the driver was authorized only to ply light motor vehicle and that the PSV endorsement was not made on his license. It was further submitted that on the aforesaid count, there is breach of terms and

conditions of the insurance policy, and, therefore, the insurance company was not liable to satisfy the award.

With regard to the ground taken by the appellants the court said that the point raised is no longer res integra as the Supreme Court has already dealt with such a point in paragraph No.46 of its judgment in case of Mukund Dewangan v. Oriental Insurance Company Limited; 2017 (2) Law Herald (SC) 1441, and therefore the driver of the offending vehicle was not necessarily required to possess license having PSV endorsement and, therefore, the plea of the insurer that the driver was not possessing valid licence would be inconsequential.

WP (C) no.1291 of 2020
Lal Chand v. Union Territory of J&K and others.
Decided on: August 18, 2020.

In the instant case, writ petition under Article 226 of Constitution has been filed against the order of the Collector (Respondent no.3 herein), on a Suit of Respondent no.2 under Section 32 of the Land Revenue Act for correction of wrong entry made in the Record of Rights. The learned counsel for petitioner has vehemently stated that the suit filed by respondent no.2 before the Collector (respondent no.3) was accompanied by a vague condonation of delay application, which is nowhere available or provided under Limitation Act 1995. The suit cannot be entertained beyond limitation period and no application for condonation of delay is maintainable under law for extension of suit period and therefore, impugned order is liable to be quashed. Perusing the records of the instant case, Hon'ble High Court held the suit, filed by respondent no.2 before respondent no.3, was under and in terms of the provisions of the Land Revenue Act. It is pertinent to mention that if an order is made by Collector, an Appeal, as provided under Section 11 of the Land Revenue Act, shall lie to Divisional Commissioner and in the event order is made by Divisional Commissioner, an Appeal shall lie before Financial Commissioner. Furthermore not only this, Section 15 of the Land Revenue Act also provides for revising of the order. The aggrieved party therefore has alternative and efficacious remedy available under the Land Revenue Act. Resort to writ jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. It is appropriate to say that the jurisdiction of High court under Article 226 is wide and without any restrictions except territorial restrictions. But the exercise of jurisdiction is discretionary and it is not exercised merely because it is lawful to do so. It is subject to self imposed limitations. Ordinarily, the Court will not entertain a petition for a writ under Article 226, where petitioner has an alternative remedy, which provides an equally efficacious remedy. Again, the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. Yet, petitioner straightway knocked at doors of this Court with instant writ petition under Article 226 of the Constitution of India seeking quashment of Order of Collector.

Hon'ble Court held that an Appeal, as provided under Section 11 of the Land Revenue Act, can very well be filed by petitioner. The power of Appellate Court is very vast. As can be gathered from Order XLI Rule 33 of the Code of Civil Procedure. In Vanarsi v. Ramphal, AIR 2004 SC 1989, the Supreme Court construing the provisions of Order XLI Rule 33 also held that this provision confers powers of the widest amplitude on appellate court, so as to do

complete justice between the parties. The Supreme Court further held that such power was unfettered by considerations as to what was the subject matter of appeal or who had filed the appeal or whether the appeal was being dismissed, allowed or disposed of while modifying the judgments appealed against. It was also held that one of the objects in conferring such power was to avoid inconsistency, inequity and inequality in granting reliefs and the overriding consideration was achieving the ends of justice. On the other hand, in writ proceedings, as are present one, the High Court does not act as a court of appeal against the decision of a court or tribunal, to correct errors of fact and also does not by assuming jurisdiction under Article 226 of the Constitution of India, to trench upon an alternative remedy provided by statute for obtaining the relief.

Thus, Hon'ble High court in the instant case held the petitioner has alternative and efficacious remedy available to avail of and the authority, to whom petitioner may approach with appropriate motion, can very well take care of all that has been said and stated by petitioner in writ petition on hand or projected by him before the Collector more particularly with respect to the plea of condonation of delay.

Mac App 156 of 2019
United India Insurance Co. Ltd v. Sameena Kouser and Ors.
Decided on: August 17, 2020

Appeal was filed under Section 173 of MV Act, 1988 against award dated 10.07.2019 passed by the Tribunal, whereby the insurer has been directed to pay an amount of Rs.81,99,168/- along with pendent lite and future interest @ 7.5% per annum to respondent Nos. 1 to 5.

The appeal was preferred only on the ground of quantum by contending that the tribunal has awarded excess amount after incorrect calculations. Appellant prayed that the Tribunal failed to deduct income tax while calculating gross income, and did not deduct the amount which would have been received under SRO 43 (i.e. salary for 7 years, family pension and compassionate appointment to kin). The claimants contended that the award is on the lower side and the gross income of deceased has been calculated as Rs. 37,635/- instead of 41,569.

After perusal of records and hearing arguments, the Bench observed that while the Tribunal has not taken into consideration some allowances, which were payable to the deceased, but at the same time, the Tribunal has also not given allowances for income tax deductions. Therefore, the plea of the insurer that the Tribunal has not deducted any income tax from the income of the deceased is not available to it. The appeal was accordingly found devoid of merit and dismissed.

Cross Objection 4/2020: the claimant's plea for enhancement of compensation was partly allowed insofar as the sum awarded under the head "loss of consortium" was concerned. The Bench accepted the plea that the amount was not in tune with the decision in National Insurance Company Limited v. Pranay Sethi and others; AIR 2017 SC 5157 and Magma General Insurance Co. Ltd v. Nanu Ram alias Chuhru Ram, 2018 ACJ 2782. The amount was modified and enhanced to Rs.83,59,168/-.

MA No. 15/2018
Divisional Manager Bajaj Allianz General Insurance v. M/S Kohinoor Enterprises
Decided on: August 04, 2020

This appeal was preferred against the order dated 28.02.2018, passed by J&K State Consumer Disputes Redressal Commission whereby a sum of Rs.3.80 lacs along with

interest @ 10% was awarded as a compensation in favour of the respondent.

The Honb'le High Court held that the exclusion clause contained in the contract of insurance is required to be interpreted in a manner so as to harmonize it with the main purpose of the policy and the interpretation would not defeat the purpose of the policy. There cannot be such interpretation which instead of giving effect to the insurance contract under the policy, defeats it on apparent technicality.

The Hon'ble Court upheld the order of commission and dismissed the appeal.

MA No. 07/2016
Oriental Insurance Company Ltd. v. Surinder Kumar and others
Decided on: August 24, 2020

This appeal was filed by appellant (Oriental Insurance Company Ltd) against the award dated 07.11.2015 passed by the Motor Accident Claims Tribunal, Jammu whereby it has been held that claimant is entitled to a compensation of Rs.4,95,957/- along with pendente lite and future interest at the rate of 7.5% per annum.

The Hon'ble Court held that the Tribunal has committed an error in calculating the medical expenses, as the tribunal also took into consideration the advance payments which were otherwise reflected in and were part of final bill issued by the Hospital and granted by the Tribunal separately. The tribunal incorrectly awarded a sum of Rs.2,51,738/- under the head 'expenses on medicine', whereas the actual amount incurred was 1,47,519/-. The appeal is disposed of with above said modifications.
Court in the case of National Insurance Company Ltd v. Swaran Singh and others, (2004) 3 SCC 297, Court said that the Tribunal was justified in application of the principle of the "pay and recover" in the present case.

The Court observed as under:

"It is true and as is discernible on a glance of the impugned award that the insurer had succeeded in proving before the Tribunal that the driving licence possessed by the driver of the offending vehicle was fake, but it is nowhere come in the evidence or testimony of any of the witnesses of the insurer that owner of the offending vehicle had engaged the services of the driver even after being aware that the licence possessed by him was fake and invalid. Whether or not the licence, on the face of it, was fake or the same could have been detected only after an enquiry made from the licencing authority, which had issued it, is also not in the evidence on record."

The court also observed that the Tribunal has committed no illegality in increasing the income of the deceased by adding 50% by way of future prospects.

However, Court found the cross objections filed by the claimants seeking enhancement of the compensation as justified and modified award of the Tribunal to that extent saying that the Tribunal had erred in applying right multiplier while awarding compensation. The modified award of compensation released in favour of the claimants by the Court eventually stood at Rs. 18,22,172.

Webinar organized by the J&K Judicial Academy on the "Importance of Court and Case Management"

Continuation with the webinars, the J&K Judicial Academy in collaboration with the DAKSH foundation organized a webinar on one of the most pertinent topics i.e. the Court and Case Management. It was carried out in two sessions, viz, on the 7th and 8th of August 2020.

DAKSH is a non-profit organization working towards judicial reform and access to justice issues in India, which involves carrying out the interventions and empirical legal research in the courts with the objective of improving the justice delivery mechanism in the country.

The resource persons included Mr. Arunav Kaul, Advocate, Consultant (Research) at DAKSH, having extensive experience in the field from 2016 till date and Mr. Surya Prakash, Advocate.

Programme commenced with opening remarks from Hon'ble Mr Justice Rajesh Bindal, Chairman, High Court Committee for Judicial Academy. Justice Bindal highlighted the need for conducting research in the causes which impede the course of justice. Besides this, Justice Bindal laid stress on the need of skill development and knowledge enhancement of the judicial officers. Justice Bindal also discussed the broader issues which can be handled by the judicial officers effectively and in a better manner, by utilizing the available resources to optimum potential. During the sessions on two days, Justice Bindal made very useful interventions and guided the judicial officers to make all efforts for enhancing the institutional excellence.

The webinar highlighted the issues pertaining to the biggest challenge faced by Judiciary today at all rungs especially at the subordinate level, which is the pendency and arrears. According to the National Judicial Data Grid, (as on Jan 11, 2019) India has a total pendency of 2,95 crore cases in the three tiers of the Judiciary, out of which approximately 25% cases are more than 5 years old and 78,760 are more than 30 years old.

The main objective of the National Court Management System is to set measurable performance standards, a system for monitoring on quality, responsiveness and time lines, to enhance user friendliness, to set up a National System of Judicial Statistics (NSJS) for recording and maintaining the judicial statistics for future analysis and improvement, to name few. The resource person emphasized on the issue of Court timings to be managed by the Presiding officer and to ensure that it is effectively and punctually followed, by allotting the time for the cases as per their requirements and managing the cause list.

In Imtiyaz Ahmed v State of UP, (2017) 3 SCC 658, the Hon'ble Supreme Court took note of the huge pendency of cases and issued certain guidelines regarding the clearing of arrears, timely disposal, pre trial custody issues, trial date certainty, etc. and suggested the application of the "unit system" which allocates different units for disposal of different cases. Such Unit system should be then applied to assess the required judge strength.

Again in the case of Salem Bar Association v. Union of India (2006) 6 SCC 344, the Hon'ble Supreme Court laid down extensively various methods and ways that could be adopted by the courts for effective and speedy disposals, like division of civil suits and appeals into tracks and then fix the time periods for each procedural step to be taken therein. Like wise in case of the criminal trials the time factors need to be judicious followed so as to ensure minimal backlogs and pendency of cases.

The second part of the webinar focused on e-Courts and National Judicial Data Grid (NJDG), which was conceptualized on the basis of National Policy and Action Plan for the implementation of ICT in the Indian Judiciary - 2005 submitted by e-committee (Supreme Court of India). It may not be out of place to mention here that the importance of e-Courts could not be more emphasized than in the present times when the whole world is engulfed in a pandemic and the access to justice would have become the

biggest casualty had it not been for the functioning of the e-Courts across the country, which made it possible for the litigants as well as for the lawyers to knock the doors of the courts through the virtual mode.

Its vision is to enhance the transparency in the judicial system and to make things more user/ litigant/ system friendly, and to ensure easy access of justice to all, cutting across the physical barriers of time and place . The resource persons pointed out how its aim is for cases to flow digitally from the District Courts to the High Courts and High Courts to the Supreme Court in a seamless fashion, to digitize the entire judicial record in a phased manner, to work ahead for enabling the paperless functioning of the courts. However the same needs a lot of infrastructural inputs, besides efficient training of not just the judges but the judicial staff involved, who are at the very first level of dealing with the paper work. Delays at their levels also need a stringent check to ensure the efficiency of the case and the Court management.

Webinars on "Stress Management"

On 21st of August 2020, J&K Judicial Academy conducted a Webinar on "Stress it's impact and Management" which was guided by eminent Resource Person Dr Harish Shetty.

Dr Harish Shetty is a renowned clinical psychiatrist from Mumbai, who is a regular resource person of National Judicial Academy and various State Judicial Academies. He is working in the conflict areas and is on advisory panels of many Government Institutions. He talked about the sleeplessness, constant fatigue, high anxiety, weight gain etc. He responded to lot of questions, issues and concerns raised by the participating judicial officers. A wide range of issues were discussed and queries of the participants were ably and satisfactorily answered. He also addressed the specific queries raised by the judicial officers regarding the impact of stress and it's management. He also guided the officers how to balance the personal and professional life so that a person would remain in peace and happiness. He also addressed the specific job related stress issues of the judicial officers. It was a fruitful session and all the Judicial officers interacted freely and cleared their doubts.

Dr. Shetty laid emphasis on adopting various stress reduction techniques, especially 'Yoga'. He said that scientific analysis of 'Yoga' postures and meditation leads to better mental and physical health. It is necessary to train one's mind to remain in peace even when one is faced with adverse situation.

Dr. Shetty highlighted the parameters of mental health and also talked about discussing the mental health issues with the mental health professionals whenever it is noticed. Ignoring to consult the expert may lead to aggravating the mental health issues, thereby disturbed mental and physical health. He also talked about the role of family and society in overcoming mental health challenges.

Webinar on "Overview of NDPS Act with special emphasis on mens-rea and presumptions"

On 22nd of August 2020, J&K Judicial Academy organized webinar on "Overview of NDPS Act with special emphasis on mens-rea and presumptions". Programme was conducted by Mr. Pradeep Mehta, Joint Director (Retired), Faculty Member Chandigarh Judicial Academy. Mr. Mehta has very rich experience in imparting training to Judicial Officers and Public Prosecutors. He was invited by national level institutions to deliver lectures and address the stake-holders in justice delivery system at all levels.

This programme was first in the series of online sessions which are planned by the Academy to thoroughly discuss all the legal aspects covered by the NDPS Act. Further sessions shall be conducted in the near future covering all the important provisions of law.

In the first session of the programme, Mr. Mehta elaborately dealt with the scheme and setting of the NDPS Act, including the need to have this special legislation. He also discussed the interplay between other legislations already in place having some overlapping areas. He told the participants that the NDPS Act is only an additional legislation and saves the existing laws on the subject. Stricter provisions of other laws continue to apply, otherwise the NDPS Act has

over-riding effect. Mr. Mehta then discussed the special provisions pertaining to the mens-rea and presumptions that can be raised at the trial stage. Presumption relating to the possession of contrabands was discussed in the light of case law handed down by the Supreme Court. The nature of such presumptions and the impact was also discussed in detail. It was highlighted that the presumptions do not have the impact of shifting the burden of proof away from the prosecution. As a general rule of jurisprudence, the prosecution is required to prove the case beyond reasonable doubt.

Mr. Mehta discussed various landmark judgments of the Supreme Court on various fundamental aspects of the NDPS Act. In the forthcoming sessions many important technical and legal aspects of the Act shall be discussed.

Webinar on Nuances of Civil Procedure Code

In continuation of Induction Training Programme for Civil Judges (Jr. Division) 2020 batch, J&K Judicial Academy organised an online Programme on "Nuances of Civil Procedure Code". This programme was conducted in collaboration with Tamilnadu Judicial Academy. Sessions were guided by eminent Resource Person from Tamilnadu Judicial Academy Mr. Mehbub Ali, District & Sessions Judge. Mr Mehbub thoroughly guided the Trainee Judicial Officers on all the important aspects of the Civil procedure.

Earlier, the Trainee Officers had learnt the fundamentals of Civil Procedure at Chandigarh Judicial Academy, in the month of January 2020. Dr. Gopal Arora and Mr. Baljinder Singh Sra, District & Session Judges (Faculty Members at Chandigarh Judicial Academy) had guided the Trainee Officers.

Mr Mehbub in four sessions gave an overview of the Civil Procedure Code, and then discussed various important provisions of Civil Procedure Code. The resource person specifically discussed the aspects of section 9, 10, 11 in detail and also the other provisions of the code. He effectively discussed the provisions of law in the light of the judgments laid down by the Supreme Court and various High Courts on various issues. The queries of the officers were addressed by the resource person. Session with the Trainee Officers were fruitful in building upon what the officers had learned at Chandigarh. Almost all the important provisions of procedural law were discussed and important facets of civil procedure were highlighted. It made the Trainee Officers to have better understanding of the procedural law.

Two sessions were devoted exclusively on 'Execution of Decree'. Starting from the substantial provisions relating to execution of decree, the resource person elaborately dealt with the procedural aspects covered by Order XXI. He highlighted the importance of expeditious and effective disposal of execution applications in order to reap the fruits of decree. He said that it often happens that despite getting decree after a long drawn legal battle, it becomes still more difficult to get the decree executed. This may happen due to variety of reasons. Some of these reasons can be traced to the stage of trial of suit itself. There are many a times mistakes committed during trial, like lack of proper identification of the suit property, which make the job of decree holder very difficult. Then, there are many unscrupulous hurdles created by the judgment debtor to stall the execution of decree and to gain time or frustrate the decree itself.

In the perspective of execution of decree, Mr Mehbub discussed the provisions of law under which various objections are raised in the course of execution proceedings. He also guided the officers as to how to tackle with such objections without waste of any time. He gave a thorough insight into the legal position handed down by the Supreme Court and various High Courts regarding the nature of objections raised, obstructions caused and difficulties faced during the execution proceedings and how to deal with such things appropriately.

The Trainee Officers felt empowered to deal with civil cases and executions skillfully and expeditiously. They also learnt the tools and techniques requisite to ensure timely disposal of such cases.

Narcotic Drugs and Psychotropic Substances Act, 1985--Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Amendment Order, 2020

G.S.R. 536(E) of 2020, dated 26.08.2020, Ministry of Finance (Department of Revenue)

In exercise of the powers conferred by Section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue number G.S.R. 191(E), dated the 26th March, 2013, namely:-

1. (1) This order may be called the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Amendment Order, 2020.

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

2. In the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013, in the Schedule,-

(a) in Schedule A, after serial number 5 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

"6. 4-Anilino-N-phenethylpiperidine (ANPP)

7. N-Phenethyl-4-piperidone (NPP)";

(b) in Schedule B, after serial number 19 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

"20. 3,4-MDP-2-P methyl glycidate (PMK glycidate) (all stereoisomers)

21. 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) (all stereoisomers)

22. alpha-phenylacetoacetamide (APAA) (including its optical isomers)

23. methyl alpha-phenylacetoacetate (MAPA) (including its optical isomers)";

(c) in Schedule C, after serial number 19 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

"20. 3,4-MDP-2-P methyl glycidate (PMK glycidate) (all stereoisomers)

21. 3,4-MDP-2-P methyl glycidic acid (PMK glycidic acid) (all stereoisomers)

22. alpha-phenylacetoacetamide (APAA) (including its optical isomers)

23. methyl alpha-phenylacetoacetate (MAPA) (including its optical isomers)".

[F. No. N/11012/3/2010-NC-II-Part-1]

Rights of Persons with Disabilities Act, 2016--Rights of Persons with Disabilities (Amendment) Rules, 2020

G.S.R. 181(E) of 2020, dated 17.03.2020, Ministry of Social Justice and Empowerment (Department of Empowerment of Persons with Disabilities)

Whereas a draft of certain rules further to amend the Rights of Persons with Disabilities Rules, 2017 was published as required by sub-section (1) of section 100 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) in the Gazette of India, Extraordinary, Part-II, section 3, sub-section (i) vide number G.S.R. 839(E), dated the 13th November, 2019 inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of thirty days from the day on which the copies of the Official Gazette containing the said notification was made available to the public;

And whereas the copies of the Official Gazette in which the said notification was published were made available to the public on the 13th November, 2019;

And whereas the objections and suggestions received from the public were considered by the

Central Government;

Now, therefore, in exercise of powers conferred by sub-sections (1) and (2) of section 100 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the Central Government hereby makes the following rules further to amend the Rights of Persons with Disabilities Rules, 2017, namely:-

1. (1) These rules may be called the Rights of Persons with Disabilities (Amendment) Rules, 2020.

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

2. In the Rights of Persons with Disabilities Rules, 2017, in rule 31, for clauses (b) and (c), the following clauses shall be substituted, namely:-

"(b) he is having at least twenty years experience in a Group "A" level post in the Central Government or a State Government or a public sector undertaking or a semi Government or an autonomous body dealing with disability related matters or social sector or as senior level functionary in registered national and international voluntary organisations in the field of disability or social development:

Provided that out of the total of twenty years of experience, he should have at least three years of experience in the field of rehabilitation or empowerment of persons with disabilities; and

(c) he is less than fifty-six years of age as on the 1st January of the year of recruitment.".

[F. No. 22-26/2019-DD-III]

JUDICIAL OFFICER'S COLUMN

Guidelines of Hon'ble High Court in the matters of issuance of direction by the Magistrate in terms of Section 156(3) Cr.P.C.

There are various judgments of Hon'ble Supreme Court settling the true import of the provision of Cr.P.C. under Section 156(3). Position of law is now certain and unambiguous and the judgments handed down by the Supreme Court calls for attention of the Judicial Magistrates. However, some instances do come up before the superior courts where the correct understanding of law on the subject is found lacking. In a recent decision of Hon'ble High Court in a case titled 'Sami-ullah Naqashbandi v. Sadaf Niyaz Shah', CRM (M) No. 113/2020, decided on August 31, 2020, similar breach of the provision of law has been found. Judicial Academy has been directed by the Hon'ble Court to arrange training programme on these aspects for the Judicial Magistrates. It is, therefore, found appropriate to highlight here the observation of the Hon'ble Court, to discharge the onerous duty placed on the Academy.

There is hardly anything to add to the following clear and pertinent observations of the Hon'ble High Court:

"21. To reiterate for the guidance of all the Magistrates in the Union Territory of Jammu and Kashmir and Union Territory of Ladakh, it has become necessary to refer the Judgment reported in (2010) 4 Supreme Court Cases 185 titled Rameshbhai Pandurao Hedau Vs. State of Gujrat, which postulates that while the power to direct a police investigation under Section 156(3) is exercisable at the pre-cognizance stage, the power to direct an investigation or an enquiry under Section 202(1) is exercisable at the post-cognizance stage, when the Magistrate is in seisin of the case. 22. The settled legal position has been enunciated by the Hon'ble Supreme Court in several decisions and has observed that the Courts are ad idem on the question that the powers under Section 156(3) can be invoked by the Magistrate at a pre-cognizance stage, whereas powers under Section 202 of the Code are to be invoked after cognizance is

taken on a complaint, but before issuance of process. Such a view has 13 been expressed in Suresh Chand Jain case reported in (2001) 2 SCC 628: 2001 SCC (Cri) 377 as well as in Dharmeshbhai Vasudevbhai case, reported in (2009) 6 SCC 576: (2009) 3 SCC (Cri) 76 and in Devarapalli Lakshminarayana Reddy case, reported in (1976) 3 SCC 252: 1976 SCC (Cri) 380.

23. On examination of the trial Court records, what transpired is that the learned Magistrate has in very mechanical manner and as a result of non-application of mind, issued directions to the Senior Superintendent of Police, Srinagar, for investigation under Section 156(3) of the Code, ignoring the very spirit of the law, in terms whereof the Magistrates have been authorized/empowered to issue directions for investigation under Section 156(3) of the Code. Thus, the direction under Section 156 (3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightway direct investigation, such a direction is issued. In the present case, the Magistrate takes cognizance and postpones the issuance of process, as the Magistrate has yet to determine "existence of sufficient ground to proceed." Therefore, the Magistrate has abused the process of law by not adhering to the procedure.

24. I feel it necessary to refer the decision of the Hon'ble Supreme Court delivered in Dilawar Singh V. State of Delhi case, reported in (2007) 12 SCC 641: (2008) 3 SCC (Cri) 330, where the difference in the investigative procedure in Chapters XII and XV of the Code has been recognized and in that case the Hon'ble Supreme Court also appears to have taken the view that any Judicial Magistrate, before taking cognizance of an offence, can order investigation under Section 156(3) of the Code and in doing so, he is not required to examine the complainant since he was not taking cognizance of any offence therein for the purpose of enabling the police to start 14 investigation. Reference has been made to the decision of the Court in Suresh Chand Jain case reported in (2001) 2 SCC 628: 2001 SCC (Cri) 377. In other words, as indicated in the decisions referred to hereinabove, once a Magistrate takes cognizance of the offence, he is, thereafter, precluded from ordering an investigation under Section 156(3) of the Code."

It is an earnest hope that the spirit of law and the context of the guidelines of the Hon'ble Court shall be followed in the light of the case law referred in the judgment of the Hon'ble Court. For further guidance of the Judicial Magistrates on the subject, the Academy shall plan appropriate refresher training programme. The Academy has already prepared a compilation of case law in relation to the provision under Section 156(3) Cr.P.C., and shall up with a handbook for quick reference.

(Editor)

(Guest Column)

CONSTITUTIONAL MORALITY

Stress is integral to every profession. Equally, its management is part of the skills which are developed peculiar to each profession. One factor is common to all. Every game in life is played on a six inch ground. The space between the two ears. The mind. We all live in minds. It is the mind that manages the stress. It is the mind game that keeps you free from stress. It is the mind-set that makes all the difference. Martina Navratilova was once asked, —how do you

maintain your focus, physique and sharp game even at the age of 43. The ball does not know how old I am', was the reply. How well you manage your mind. How well you keep your mind free from garbage. So that your mind is focused. To achieve the best results. It is Judicial Culture. Judicial discipline. Judicial ethics and ethos. All these knit the Judicial Institution as a Global Institution. The beauty of this Institution is, its basic structure is universally the same. Different systems. Jurisdictions. Constitutions. The fundamentals of Fairness, Due Process, Principle of Natural Justice and Fair Trial remain the same. This, in fact, is the real strength of judges. If these fundamentals are followed, it would be the best balm for judicial stressed minds. A Saridon for judicial headache. There is judicial stress at all levels. The best of judicial minds face difficult situations. Take the case of Justice H.R. Khanna. He wrote his dissent in ADM Jabalpur (1976). Before the judgment was pronounced, Justice Khanna shared his concern with his sister that the dissent he has written will cost him the Chief Justice-ship of India. Obviously, the concern was, should he pronounce the dissent or not. His sister told him, follow what your judicial conscious guides you. True, this dissent resulted in his supersession. He did what his conscious allowed him to do. It did not matter that if he had joined with the majority, he would have been the Chief Justice of India. In such a stressful situation, if you follow the dictate of your conscious, you are free from any stress. The reason being that even the highest position of CJI could not stop him from doing what he thought to be right. Justice Khanna is known for his fearless mind. Take the case of Justice R.F. Nariman. Sharp mind. Immense knowledge. Phenomenal grasping power. Clarity and erudition. His judgments bear the testimony to all these qualities. In the Sabarimala Ayyappa Temple matter, women of all ages were allowed entry by the constitution bench of five judges. Later, this matter came for consideration before a seven judge bench. In this context, Justice Nariman wrote his and Justice D.Y. Chandrachud dissent reiterating the earlier majority decision. To the surprise of many, Justice Nariman on November 15, 2019 asked Solicitor General Tushar Mehta to inform the government to ensure the implementation of the Sabarimala judgment. When Mr. Mehta urged Justice Nariman to remove the impression that the judgment will not be implemented, he retorted; —that impression is embedded in my mind and it is irremovable. If fine minds like Justice Nariman could be disturbed in a situation like this, is this not a reflection of judicial stress caused by a given situation. This unfolds the fact that in the journey of the best of judges, they encounter stress. Is there an effective recipe to deal with such situations? It is the friction between the Bar and the Bench which causes judicial stress. The Members of the Bar are the officers of the court. Therefore, they certainly need to be treated accordingly. The judges need to realise that justice cannot be administered without the due assistance of the Bar. Having said that, the Bar also needs to realise that this is a two way traffic. The Bar must understand its role. Yes, they have to fight for their clients. They must do their best for them. They are paid for it. It ought to be clear to them that ultimately Truth must prevail. Justice must not become a casualty. Assuming, there is a judgment which is apparently against him. The duty of the advocate is not to bye-pass it. He must deal with that. Even if the opposite counsel is not aware of the same. This is most essential for doing justice. It is open to the advocate to distinguish the judgment or bring it within the premise of his case. This would be his real skill. This would be assisting the Court effectively. Let me share a true story. Mr. K.L. Misra as Advocate General of U.P. was to

appear against the socialist leader, Ram Manohar Lohia. Lohia was in jail. He had challenged his order. He had decided to argue in the High Court in person. He had no knowledge of law. Misra assisted him in jail with law and judgments in his favour. Misra was asked, was it proper on his part to assist the opposite party? Was it not breach of trust? His response was as Law officer, his duty was not win the case but to assist the court to arrive at just decision. Therefore, the version of both the sides should be known. This is essential for arriving at the Truth. This, in fact, is the true role. Once the judges are assured of 'due' assistance of the Bar, the judges would be free from judicial stress. They would be in a position to do 'complete' or 'wholesome' justice. Healthy and cooperative relationship between the Bar and the Bench is the only recipe for doing justice. Justice would be free from stress. How do we reduce judicial stress! The Advocates must know the judge. This should not be misunderstood. Knowing the judge means knowing the mind of the judge. It is with experience that the advocates come to know the mind of the judge. A good advocate is one who can understand judge's mind. Argue the case keeping in mind his requirements. This is a double edged tool. The advocate renders proper assistance. The judge is comfortable. He gets his due assistance. He is able to write his judgments smoothly. A judge must enjoy writing/dictating his judgments. It must give him satisfaction. It is these judges who excel in their performance. They feel good. They are more productive. Because they have no stress. Socrates gave four way test. Hear courteously. Consider soberly. Answer wisely. Decide impartially. This test has stood the test of times. It holds good even today. If this is followed, it would pave the wave for healthy and harmonious court environment. In tense environment, the lawyers cannot give their best. The lawyers want that they should be heard. It is, of course, the prerogative of the court to decide. The judge must conduct the court evenly and fairly to all. Treat all lawyers equally. Uniformly too. Even if the lawyer fails to be present, the lawyers must have the trust and confidence in court. The assurance that the court would decide on merit and would do justice is the strength of the Judicial Institution. This helps in de-stressing judicial stress. The pressure of work is an important factor. Therefore, court and case management are the skills which are to be learnt from the beginning. In the District Courts, we have a system of units. Every quarter, certain number of units are to be completed. It is mandatory. Resultantly, the court work is to be so managed that each judicial officer is able to complete the target. It is the skill of blending time and case management. Those who are not able to manage it, they remain under stress. The quantity and quality of work suffers. Proper handling would improve on both scores, Magna Carta (1215) proclaims: Justice is neither to be delayed nor denied. Each case goes through a long journey. After the case is argued, there should be no undue delay in pronouncing the judgment. Otherwise, it would be double jeopardy. In Kerala High Court, the 1st puisne judge reserved the judgment after hearing the arguments. It remained reserved for couple of years. A writ came to be filed seeking mandamus to pronounce the judgment. The judge still wanted at least 3 weeks time to write the judgment. He was told to take off the next day. Complete the judgment. The writ petition was not posted the next day for hearing. The judgment was pronounced a day later in the morning. In the afternoon, the writ petition was rendered in-fructuous. It was an embarrassing situation. Throughout his judicial journey, he wrote few or very few judgments. Still, he rose to be the judge of the summit court. Post retirement, he was rewarded with the membership of NHRC. Probably this is

attributable to destiny. However, one wonder's how stressful this journey must have been. Not writing judgments; A Judge is known through his judgments. If you wish to make your journey free from stress, write judgments on time. Keeping judgments pending is not only stressful. Even otherwise also, stories start floating. Under all circumstances, judgements must be pronounced on time. Article 51-A(h) of the Constitution requires every citizen to develop scientific temper and humanism. Both these duties are part of Judge's personality and outlook. A Judge should never be temperamental. Adjudicative minds are cool minds. Scientific minds can handle any situation. Aggression in court is the insignia of Judicial Stress. Sometimes, ugly situations arise. Inspite of the fact, the Judge may not be the contributory factor. It happened in the apex court, (March 13, 1968). A bench of three Judges including the CJI (Justice M. Hidayatullah). A civil appeal was heard. Arguments concluded. The Judgement was being dictated in open court. A man jumped up. Took out a flick-knife. Attacked Justice A.N. Grover on his head, incised his scalp. CJI grabbed the hand of the assailant. The man tried to stab Justice Grover in the neck. He was lucky and escaped. Assailant was apprehended. In fact, Justice Grover had two cuts and was bleeding. Immediately, Justice Grover was put in the car. CJI Hidayatullah himself drove him to Willington Hospital. Jumped couple of traffic lights. In less than half an hour, he was on the operation table. He was saved. One more fact, Justice Hidayatullah had been sworn as CJI on February 25, 1968. He received a post-card that he would be murdered before the end of the next month. Justice Hidayatullah become a Judge of the Supreme Court on December 1, 1958. Retired as CJI on December 16, 1970. Probably, the longest tenure. More than 12 years. The idea of sharing this episode is that even when you are holding the highest position, difficult situations come in your way. How do you face them? How you keep the balance of your mind? In order to ward off stress, positivity of mind is important. Imagine after such an happening, Justice Hidayatullah himself drove the car. He must be very confident of himself. Normally, one is under a shock after such an happening. This makes all the difference. One needs to learn a lot from this incident. Still another one from the life story of Justice Hidayatullah. While being the CJI, he had become the acting President of India from July 20 to August 24, 1969 (35 days). President Nixon arrived in India on July 31. In the car, the Presidents of two largest democracies were being driven to the Rashtrapati Bhawan. Nixon asked Hidayatullah: —Mr. President, do people always turn out like this to greet the Indian President or is this because of the President of the United States? Hidayatullah quietly replied: —Mr. President, I would not know, but I do suspect that many youngsters are here to see what a bullet-proof car looks like?He smiled and said: 'you have a point.' What an embarrassing situation for the temporary Indian President (after all, his regular position was CJI)! How smartly, it was handled! It was like handling a seasoned senior lawyer in court. This all is demonstrative of managing stress smoothly. Judges should be men and women of tough fibre. Not susceptible to pressure or stress. The conduct of the Judge within and out-side the court is the true-mirror of his or her mind. There is need to provide stress-free and intellectually stimulating atmosphere to Judicial fraternity. Minus this, the quality of Justice would suffer. This is the real assurance for the future of Judicial Institution.

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