A KETAN V. PAREKH

v.

SPECIAL DIRECTOR, DIRECTORATE OF ENFORCEMENT AND ANOTHER.

(Civil Appeal No. 10301 of 2011)

B NOVEMBER 29, 2011

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

C *LIMITATION ACT, 1963: s.14 – Delay in filing appeal – Condonation of – Imposition of penalty on the appellants for contravening provisions of FEMA – Appellate tribunal directed appellants to pay 50% of penalty as pre-condition of hearing appeal – Writ petition filed before Delhi High Court, dismissed* D *as non-maintainable – Appeal filed before Bombay High Court u/s.35 of FEMA against the order of the appellate tribunal after delay of 1056 days – Bombay High court declining condonation of delay in filing appeal – Plea of appellant that Bombay High Court while computing period of* E *limitation erred in not taking cognizance of s.14 and in not excluding the entire period during which writ petition remained pending before Delhi High Court – Tenability of – Held: Not tenable – Existence of good faith is a sine qua non for invoking s.14 of the Act – Appellants filed writ petition before* F *wrong forum and came to the forum having jurisdiction to entertain the appeal after delay of 1056 days and sought condonation of delay – Delay was rightly held not condonable since there was no averment in the applications seeking condonation that they had been prosecuting remedy before* G *a wrong forum, i.e. the Delhi High Court with due diligence and in good faith – Not only this, the prayer made in the applications was for condonation of 1056 days' delay and not for exclusion of the time spent in prosecuting the writ petitions before the Delhi High Court – This showed that the appellants*

were seeking to invoke s.5 which cannot be pressed into service in view of the language of s.35 of the FEMA – Moreover, appellants were well conversant with various statutory provisions including FEMA because several civil and criminal cases were pending against them and they had engaged a group of eminent Advocates to present their cause before the Delhi and the Bombay High Courts – There was total absence of good faith, which is sine qua non for invoking s.14 of the Act – Foreign Exchange Management Act, 1999 – Delay – Condonation of.

Foreign Exchange Management Act, 1999: s.19 – Pre-deposit of penalty – Dispensation of – Allegation of contravention of provisions of the Act – Appellate Tribunal directed appellants to deposit 50% of the amount of penalty as a pre-condition of hearing the appeal – On appeal, held: The appellants miserably failed to make out a case, which could justify an order by the Appellate Tribunal to relieve them of the statutory obligation to deposit the amount of penalty – The appellants had the exclusive knowledge of their financial condition/status and it was their duty to candidly disclose all their assets, movable and immovable including those in respect of which orders of attachment may have been passed by the judicial and quasi judicial forums – However, instead of coming clean, they tried to paint a gloomy picture about their financial position, which the Appellate Tribunal rightly refused to accept – Appellants deliberately concealed the facts relating to their financial condition – Therefore, the Appellate Tribunal did not commit any error by refusing to entertain their prayer for total exemption.

The Special Director of Enforcement, Mumbai passed an order imposing penalty on the appellants on the ground of contravention of the provisions of the Foreign Exchange Management Act, 1999. The appellants challenged the said order by filing appeals under Section 19 of the Act. They also filed applications under Rule 10

A of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 read with Section 19 (1) of the Act for dispensing with the requirement of deposit of the amount of penalty. The Appellate Tribunal passed order dated 2.8.2007 and directed the appellants B to deposit 50% of the amount of penalty as a pre-condition of hearing the appeal. The appellants filed writ petitions in Delhi High Court which was dismissed on the ground of non-maintainability. The appellants filed appeals under Section 35 of the Act before the Bombay C High Court. They also filed applications for condonation of 1056 days' delay. The Bombay High Court dismissed the applications for condonation of delay on the ground that it did not have the power to entertain an appeal filed beyond 120 days and even though in terms of the liberty D given by the Delhi High Court, the appellants could have filed appeals within 30 days, but they failed to do so and, therefore, delay in filing the appeals could not be condoned.

In the instant appeal, it was contended for the E appellants that while dismissing the applications for condonation of delay, the High Court did not take cognizance of Section 14 of the Limitation Act, 1963; that in terms of Section 14, entire period during which the writ petitions filed by the appellants remained pending before F the Delhi High Court was liable to be excluded while computing the period of limitation and if that was done, the appeals filed under Section 35 would have not been barred by time.

G Dismissing the appeals, the Court

HELD: 1. Section 14 of the Limitation Act cannot be relied upon for exclusion of the period during which the writ petitions filed by the appellants remained pending before the Delhi High Court. In the applications filed by

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them before the Bombay High Court, the appellants had sought condonation of 1056 days' delay by stating that after receiving copy of the order passed by the Appellate Tribunal, they had filed writ petitions before the Delhi High Court, which were disposed of on 26.7.2010 and, thereafter, they filed appeals before the Bombay High Court under Section 35 of the Act. A careful reading of the averments in applications for condonation of delay showed that there was not even a whisper in the applications filed by the appellants that they had been prosecuting remedy before a wrong forum, i.e. the Delhi High Court with due diligence and in good faith. Not only this, the prayer made in the applications was for condonation of 1056 days' delay and not for exclusion of the time spent in prosecuting the writ petitions before the Delhi High Court. This showed that the appellants were seeking to invoke Section 5 of the Limitation Act which cannot be pressed into service in view of the language of Section 35 of the Act and interpretation of similar provisions by this Court. There is another reason why the benefit of Section 14 of the Limitation Act cannot be extended to the appellants. All of them were well conversant with various statutory provisions including FEMA. One of them was declared a notified person under Section 3(2) of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 and several civil and criminal cases were pending against them. The very fact that they had engaged a group of eminent Advocates to present their cause before the Delhi and the Bombay High Courts showed that they had the assistance of legal experts and this seemed to the reason why they invoked the jurisdiction of the Delhi High Court and not of the Bombay High Court despite the fact that they were residents of Bombay and had been contesting other matters including the proceedings pending before the Special Court at Bombay. It also appears that the appellants were sure that keeping in view their past

A B C D E F G H

A conduct, the Bombay High Court may not interfere with the order of the Appellate Tribunal. Therefore, they took a chance before the Delhi High Court and succeeded in persuading Single Judge of the Court to entertain their prayer for stay of further proceedings before the Appellate
B Tribunal. The promptness with which the counsel appearing for appellant made a statement before the Delhi High Court on 7.11.2007 that the writ petition may be converted into an appeal and considered on merits is a clear indication of the appellant's unwillingness to avail
C remedy before the Bombay High Court which had the exclusive jurisdiction to entertain an appeal under Section 35 of the Act. It is not possible to believe that as on 7.11.2007, the appellants and their Advocates were not aware of the judgment of this Court whereby dismissal
D of the writ petition by the Delhi High Court the ground of lack of territorial jurisdiction was confirmed and it was observed that the parties cannot be allowed to indulge in forum shopping. After having made a prayer that the writ petitions filed by them be treated as appeals under
E Section 35, two of the appellants filed applications for recall of that order. No doubt, the Single Judge accepted their prayer and the Division Bench confirmed the order of the Single Judge but the manner in which the appellants prosecuted the writ petitions before the Delhi
F High Court leaves no room for doubt that they had done so with the sole object of delaying compliance of the direction given by the Appellate Tribunal and, by no stretch of imagination, it can be said that they were bona fide prosecuting remedy before a wrong forum. Rather, there was total absence of good faith, which is *sine qua*
G *non* for invoking Section 14 of the Limitation Act. [Paras 21, 22, 23] [1236-C-E; 1238-D-H; 1239-A-H; 1240-A]

Union of India v. Popular Construction Co. (2001) 8 SCC 470: 2001 (3) Suppl. SCR 619: 2001 (3) Suppl. SCR 619;
H *Singh Enterprises v. CCE* (2008) 3 SCC 70: 2007 (13) SCR

952; *Commissioner of Customs, Central Excise v. Punjab Fibres Ltd.* **(2008) 3 SCC 73: 2008 (2) SCR 861;** *Commissioner of Customs and Central Excise v. Hongo India Private Limited* **(2009) 5 SCC 791;** *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and Ors.* **(2010) 5 SCC 23: 2010 (4) SCR 680;** *Hukumdev Narain Yadav v. Lalit Narain Mishra* **(1974) 2 SCC 133: 1974 (3) SCR 31;** *Vidyacharan Shukla v. Khubchand Baghel* **AIR 1964 SC 1099: 1964 SCR 129;** *Hukumdev Narain Yadav v. Lalit Narain Mishra* **(1974) 2 SCC 133: 1974 (3) SCR 31:;** *Mangu Ram v. MCD* **(1976) 1 SCC 392: 1976 (2) SCR 260;** *Patel Naranbhai Marghabhai v. Dhulabhai Galbabhai* **(1992) 4 SCC 264: 1992 (3) SCR 384 – relied on.**

State of Goa v. Western Builders **(2006) 6 SCC 239: 2006 (3) Suppl. SCR 288;** *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Ors.* **(2008) 7 SCC 169: 2008 (5) SCR 1108;** *Coal India Limited and Anr. v. Ujjal Transport Agency and Ors.* **(2011) 1 SCC 117;** *Ambica Industries v. Commissioner of Central Excise* **(2007) 6 SCC 769: 2007 (7) SCR 685 – referred to.**

2. The issue deserves to be considered from another angle. By taking advantage of the liberty given by the Single Judge of the Delhi High Court, the appellants invoked the jurisdiction of the Bombay High Court under Section 35 of the Act. However, while doing so, they violated the time limit specified in order dated 26.7.2010. Indeed, it is not even the case of the appellants that they had filed appeals under Section 35 of the Act within 30 days computed from 26.7.2010. Therefore, the Division Bench of the Bombay High Court rightly observed that even though the issue relating to jurisdiction of the Delhi High Court to grant time to the appellants to file appeals is highly debatable, the time specified in the order passed by the Delhi High Court cannot be extended. [Para 24] [1240-B-D]

A **3. As regards the plea of financial crisis, the appellants miserably failed to make out a case, which could justify an order by the Appellate Tribunal to relieve them of the statutory obligation to deposit the amount of penalty. The appellants have the exclusive knowledge of** B **their financial condition/status and it was their duty to candidly disclose all their assets, movable and immovable including those in respect of which orders of attachment may have been passed by the judicial and quasi judicial forums. However, instead of coming clean,** C **they tried to paint a gloomy picture about their financial position, which the Appellate Tribunal rightly refused to accept. If what was stated in the applications filed by the appellants and affidavit dated 10.10.2008 is correct, then the appellants must be in a state of begging which not** D **even a man of ordinary prudence will be prepared to accept. It is clear that the appellants deliberately concealed the facts relating to their financial condition. Therefore, the Appellate Tribunal did not commit any error by refusing to entertain their prayer for total exemption.** E **[Para 26] [1240-F-H; 1241-A-B]**

Benara Values Ltd. v. Commissioner of Central Excise **(2006) 13 SCC 347: 2006 (9) Suppl. SCR 341;** *Siliguri Municipality v. Amalendu Das* **(1984) 2 SCC 436: 1984 (2) SCR 344;** *Samarias Trading Co. (P) Ltd. v. S. Samuel* **(1984)** F **4 SCC 666: 1985 (2) SCR 24;** *Commissioner of Central Excise v. Dunlop India Ltd.* **(1985) 1 SCC 260: 1985 (2) SCR 190;** *Indu Nissan Oxo Chemicals Industries Ltd. v. Union of India* **(2007) 13 SCC 487: 2007 (13) SCR 173 – relied on**

G **Case Law Reference:**

2006 (3) Suppl. SCR 288	**Referred to.**	**Para 8**
2008 (5) SCR 1108	**Referred to.**	**Para 8**
2011 (1) SCC 117	**Referred to.**	**Para 8**

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2001 (3) Suppl. SCR 619	**Relied on.**	**Para 11**	A
2007 (13) SCR 952	**Relied on.**	**Para 11**	
2008 (2) SCR 861	**Relied on.**	**Para 11**	
(2009) 5 SCC 791	**Relied on.**	**Para 11**	B
2010 (4) SCR 680	**Relied on.**	**Para 11**	
1974 (3) SCR 31	**Relied on.**	**Para 12**	
1964 SCR 129	**Relied on.**	**Para 13**	
1974 (3) SCR 31	**Relied on.**	**Para 13**	C
1976 (2) SCR 260	**Relied on.**	**Para 13**	
1992 (3) SCR 384	**Relied on.**	**Para 13**	
2007 (7) SCR 685	**Referred to.**	**Para 23**	D
2006 (9) Suppl. SCR 341	**Relied on.**	**Para 27**	
1984 (2) SCR 344	**Relied on.**	**Para 27**	
1985 (2) SCR 24	**Relied on.**	**Para 27**	E
1985 (2) SCR 190	**Relied on.**	**Para 27**	
2007 (13) SCR 173	**Relied on.**	**Para 27**	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10301 of 2011. F

From the Judgment & Order dated 18.02.2011 of the High Court of Bombay in FEMA Appeal (ST) No. 22247 of 2010.

WITH

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C.A. Nos. 10302 & 10303 of 2011.

Ranjit Kumar, Manik Dogra, Bharat Arora, Navin Chawla, Amit Mahajal for the Appellant.

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A A.K. Panda, P.K. Dey, B. Krishna Prasad for the Respondents.

The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. Leave granted.

B

2. In these appeals prayer has been made for setting aside the order of the Division Bench of the Bombay High Court whereby the applications filed by the appellants for condonation of delay in filing appeals under Section 35 of the Foreign C Exchange Management Act, 1999 (for short, 'the Act') were dismissed along with the appeals filed against order dated 2.8.2007 passed by the Appellate Tribunal for Foreign Exchange (for short, 'the Appellate Tribunal').

D **Background facts**

3. On an information received from the Reserve Bank of India that M/s. Classic Credit Ltd. and M/s. Panther Fincap and Management Services Ltd. had taken loan of 25 lakh shares each of DSQ Industries Ltd. on 1.3.2011 from M/s. Greenfield E Investment Ltd, Mauritius and the Indus Ind Bank Ltd with whom M/s. Greenfield Investment Ltd. was maintaining NRE Account had informed that records did not indicate any such transaction, the Directorate of Enforcement, Mumbai conducted enquiries from different sources including Securities and Exchange F Board of India, Shri Ketan Parekh, M/s. Integrated Enterprises (I) Ltd., Chennai and Indsec Securities and Finance Ltd. Thereafter, show cause notice dated 23.9.2004 was issued to M/s. Greenfield Investments Ltd., Mauritius, Shri Pravin Guwalewala, Mauritius, Smt. Neena Guwalewala, Mauritius, G Shri A. K. Sen, Mauritius, M/s. Classic Credit Ltd., Mumbai, M/s. Panther Fincap and Management Services Ltd., Mumbai, Shri Ketan Parekh, Shri Kartik K. Parekh, Shri Kirit Kumar N. Parekh and Shri Navinchandra Parekh for taking action against them for contravention of the provisions of the Act. After hearing H the noticees, the Special Director of Enforcement, Mumbai (for

short, 'the Special Director') passed order dated 30.1.2006 and, whereby he held that some of the noticees had violated Sections 3(d) and 6(3)(e) of the Act and imposed penalty of Rs.40 crores on M/s. Classic Credit Ltd.; Rs.40 crores on M/s. Panther Fincap and Management Services Ltd.; Rs.75 crores on M/s. Greenfield Investments Ltd.; Rs.80 crores on Shri Shri Ketan Parekh; Rs.12 crores on Shri Kartik K. Parekh; Rs.60 crores on Shri Pravin Guwalewala and Rs.20 crores on Shri A.K. Sen with a direction that they shall deposit the amount within 45 days from the date of receipt of the order.

4. The appellants challenged the aforesaid order by filing appeals under Section 19 of the Act. They also filed applications under Rule 10 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 read with Section 19 (1) of the Act for dispensing with the requirement of deposit of the amount of penalty. In paragraphs 4 to 8 of the application filed by him, Shri Ketan V. Parekh made the following averments:

> "4. The applicant submits that no case is made out against the applicant as Section 3 (d) of the Act is only attracted in case of a transaction in a foreign currency/foreign security. The appellants case does not attract the provision of Section 3 (d) of the Act.
>
> 5. That impugned order passed by Special Director is liable to be set aside in view of the grounds of appeal and the applicant has every hope of succeeding in the matter. As such the applicant has a very good prima facie case on merits and is likely to succeed in the appeal.
>
> 6. That the applicant is suffering from a grave financial hardship since all his assets including, properties, movable and immovable have been attached by an order of Ld. Debt Recovery Tribunal on 11th April, 2001 (a copy of the order dated 11th April, 2001 is annexed herewith and marked as Annexure B-1). Moreover the applicant/

A appellant is a notified person and all his assets including, properties, movable and immovable have been attached by the Government of India pursuant to the Notification dated 6th October, 2001. A copy of the Notification dated 6th October, 2001 is attached herewith and marked as
B Annexure B-2.

7. That the appellant is further suffering due to another order of attachment passed by the Dy. CIT, Central Cir 40 under Section 281B of the Income Tax Act dated 7th April, 2003 whereby accounts of the appellant have been
C attached. A copy of the order dated 07.04.2003 is attached herewith and marked as Annexure-B3.

8. That by order dated 12th December, 2003 passed by SEBI, the applicant has also been prohibited from carrying
D out its business activity at buying selling or dealing in securities in any manner directly or indirectly and have also been debarred from associating with the Securities market for the period of Fourteen years. A copy of the SEBI order dated 12th December, 2003 is annexed herewith and
E marked as Annexure-B4."

In paragraphs 4 to 10 of his application, Kartik Parekh averred as under:

"4. The applicant submits that no case is made out against
F the applicant as Section 3 (d) of the Act is only attracted in case of a transaction in a foreign currency/foreign security. The appellants case does not attract the provision of Section 3 (d) of the Act.

G 5. The applicant submits that the appellant was at a same footing as Mr. Kirit Kumar Parekh and Mr. Naveen Chandra Parekh. While the respondent has exonerated Mr. Kirit Kumar Parekh and Mr. Naveen Chandra Parekh from all offences, he has perversely held the applicant/
H appellant liable for the offences under the Act.

6. In any event, Mr. Ketan Parekh in his letter to the adjudicating authority has admitted that the control and management of the company fully vested in him and that the applicant is not responsible for the day to day activities of the company and hence cannot be held liable for the alleged contravention of provisions of the Act. In any event, even for the sake of argument it is admitted that the appellant was an executive director of CCL and Panther, unless it can be proven beyond any scope of doubt that the appellant was managing the day to day operations of the aforesaid companies, he cannot be held liable for any offence committed by the Company. The impugned order will be set aside on this ground itself.

7. That impugned order passed by Special Director is liable to be set aside in view of the grounds of appeal and the applicant has every hope of succeeding in the matter. As such the applicant has a very good prima facie case on merits and is likely to succeed in the appeal.

8. That the applicant company is suffering from grave financial hardship since the assets of the applicant/ appellant have been attached pursuant to the order of the Hon'ble Debt Recovery Tribunal, Mumbai dated 11th April, 2001 confirmed on 25th September, 2001 (a copy of the order dated 11th April, 2001 confirmed on 25th September, 2001 is annexed herewith and marked as Annexure B-1).

9. That by order dated 12th December, 2003 passed by SEBI, the appellant has been prohibited from carrying out its business activity of buying, selling or dealing in securities in any manner directly or indirectly and have also been debarred from associating with the Securities market for the period of fourteen years. (A copy of the SEBI order dated 12th December, 2003 is annexed herewith and marked as Annexure-B4."

A 10. In view of the submissions made above it is respectfully submitted that the applicant/appellant is not in a position to deposit the penalty amount of Rs.12,00,00,000 (Rupees Twelve Crores) imposed in the impugned order. The appellant/applicant has absolutely no means to pay the B penalty amount as pre-deposit and such pre-deposit would cause undue hardship to the applicant/appellant."

In the application filed on behalf of M/s. Panther Fincap and Management Services Limited, the following averments were made:

C

"4. The applicant submits that no case is made out against the applicant as Section 3 (d) of the Act is only attracted in case of a transaction in a foreign currency/foreign security. The appellants case does not attract the provision D of Section 3 (d) of the Act.

5. That impugned order passed by Special Director is liable to be set aside in view of the grounds of appeal and the applicant has every hope of succeeding in the matter. As such the applicant has a very good prima facie case E on merits and is likely to succeed in the appeal.

6. That the applicant is suffering from a grave financial hardship since the accounts of the Company have also been attached by the Income Tax Department under F Section 281B of the Income Tax Act by order dated 7th April, 2003 passed by Dy. CIT, Central Cir. 40, Mumbai. Further even the Bank accounts and properties of the promoter and managing director of the Company has also been attached under Section 281B of the Income Tax Act G by order dated 7th April, 2003 passed by Dy. CIT, Central Cir. 40, Mumbai (a copy of the order dated 7th April, 2003 is annexed herewith and marked as Annexure B-1).

7. That by order dated 12th December, 2003 passed by H SEBI, the appellant company as well as its promoter have

been prohibited from carrying out its business activity of buying, selling or dealing in securities in any manner directly or indirectly and have also been debarred from associating with the Securities market for the period of fourteen years. (A copy of the SEBI order dated 12th December, 2003 is annexed herewith and marked as Annexure-B2.

8. In view of the submissions made above it is respectfully submitted that the applicant/appellant is not in a position to deposit the penalty amount of Rs.40,00,00,000 (Rupees Forty Crores) imposed in the impugned order. The appellant/applicant has absolutely no means to pay the penalty amount as pre-deposit and such pre-deposit would cause undue hardship to the applicant/appellant."

5. After hearing the counsel for the parties, the Appellate Tribunal passed order dated 2.8.2007 and directed the appellants to deposit 50% of the amount of penalty with a stipulation that if they fail to do so, the appeals will be dismissed. The relevant portion of that order is extracted below:

"Without discussing the merits of these appeals, we are of the view that the adjudication order is not ex facie bad when the price of the borrowed DSQ shares has not been discharged but is required to be paid by the appellants which normally can be at the place where creditor, i.e. GIL, resides or is engaged in business, i.e. Mauritius. Therefore, allegations of contravention of Section 3(d) cannot be termed as ex facie bad, hence the appellants have no prima facie case. They have many questions to answer. After deciding one factor included in "undue hardship", we proceed to look to the financial position of the appellants. *It is the burden on the appellants to disclose correct financial position which in these appeals the appellants have totally failed to disclose. The appellants are not candid enough to bring out their*

A *correct financial status. Merely because Directorate of Enforcement has not come out forcefully against the ground of financial disability, this Tribunal cannot believe that appellants, who were roaring in crores at one time, are not in a position to make pre-deposit of the penalty,*
B *especially when this Tribunal is simultaneously duty-bound to, as provided in Second Proviso of Section 19 (1) FEM Act, 1999, to ensure recovery of penalty. However, we are conscious that this Tribunal may not unwittingly pass an order whereby injustice can possibly*
C *be caused."*

(emphasis supplied)

6. Shri Ketan Parekh challenged the aforesaid order in Writ Petition No.8385 of 2007 filed in the Delhi High Court on
D 13.11.2007. The other two appellants, namely, Kartik K. Parekh and Panthar Fincap and Management Services Ltd. filed Writ Petition Nos. 8231 and 8232 of 2007 on 5.11.2007 and prayed for quashing the order of the Appellate Tribunal. After taking cognizance of the judgment of this Court in *Raj Kumar Shivhare*
E *v. Assistant Director, Directorate of Enforcement* (2010) 4 SCC 772, the learned Single Judge dismissed the writ petitions vide order dated 26.7.2010, the relevant portions of which are extracted below:

F "1. There is a categorical pronouncement on 12th April 2010 by the Supreme Court in *Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement* (2010) 4 SCC 772 that even an order passed by the Appellate Tribunal in an application seeking dispensation of the pre-deposit of the penalty would be appealable under Section
G 35 of the Foreign Exchange Management Act 1999 ('FEMA') and that the remedy under Article 226 of the Constitution is not available against such order.

2. In that view of the matter, the present petitions cannot
H be entertained by this Court. It is, however, open to the

Petitioners to avail of the appropriate remedy in terms of para 45 of the above judgment of the Supreme Court. A

3. The petitions are dismissed."

7. Thereafter, the appellants filed appeals under Section 35 of the Act before the Bombay High Court. They also filed B applications for condonation of 1056 days' delay. The Division Bench of the Bombay High Court dismissed the applications for condonation of delay by observing that it does not have the power to entertain an appeal filed beyond 120 days and even though in terms of the liberty given by the Delhi High Court, the C appellants could have filed appeals within 30 days, but they failed to do so and, therefore, delay in filing the appeals cannot be condoned.

Arguments D

8. Shri Ranjit Kumar, learned senior counsel appearing for the appellants argued that the impugned order is liable to be set aside because while dismissing the applications for condonation of delay, the Division Bench of the High Court did not take cognizance of Section 14 of the Limitation Act, 1963. E Learned senior counsel submitted that in terms of that section, entire period during which the writ petitions filed by the appellants remained pending before the Delhi High Court is liable to be excluded while computing the period of limitation and if that is done, the appeals filed under Section 35 cannot F be treated as barred by time. Learned senior counsel referred to Section 29(2) of the Limitation Act and the judgments of this Court in *State of Goa v. Western Builders* (2006) 6 SCC 239, *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others* (2008) 7 SCC 169, *Coal* G *India Limited and another v. Ujjal Transport Agency and others* (2011) 1 SCC 117 and argued that even though the period of limitation prescribed under Section 35 of the Act is different from the period specified in Article 137 of the Schedule appended to the Limitation Act, in the absence of express H

A exclusion of Section 14 of the Limitation Act, the appellants are entitled to seek exclusion of the time spent by them in bona fide prosecution of remedy before a wrong forum. Shri Ranjit Kumar submitted that at the time of filing writ petitions before the Delhi High Court, all the High Courts were entertaining such petitions
B and granting relief to the aggrieved parties and it is only after the judgment in *Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement* (supra) that the High Courts cannot entertain writ petition because of the availability of the statutory remedy of appeal under Section 35 of the Act. Learned senior
C counsel further submitted that if the period between 7.11.2007, i.e. the date on which the writ petitions were filed before the Delhi High Court and 26.7.2010, i.e. the date on which the same were dismissed is excluded, the appeals filed before the Bombay High Court on 27.8.2010 cannot be treated as barred
D by time. Learned senior counsel then argued that financial condition of the appellant is extremely precarious and the Appellate Tribunal committed serious error by directing them to deposit 50% of the penalty imposed by the Special Director as a condition for hearing the appeals. He also referred to
E affidavit dated 10.10.2008 filed by appellant Ketan V. Parekh before the Appellate Tribunal to show that he was declared a notified person in terms of Section 3(2) of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 and all his moveable and immovable properties including bank accounts have been attached and he has been prohibited
F from operating the same.

9. Shri A. K. Panda, learned senior counsel appearing for the respondents supported the impugned order and argued that the Division Bench of the Bombay High Court did not commit
G any error by declining the appellants' prayer for condonation of delay because the appeals were filed beyond the maximum period prescribed under Section 35 and the provisions of the Limitation Act cannot be invoked for condonation of delay or for exclusion of the time during which the writ petitions filed by
H the appellants remained pending before the Delhi High Court.

Shri Panda emphasized that even before the judgment of this Court in *Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement* (supra), the legal position was crystal clear and in terms of Section 35 of the Act an appeal could be filed against any decision or order of the Appellate Tribunal within 60 days from the date of communication of the decision or order and in terms of proviso to that section, the High Court can extend the period by another 60 days and no more. Learned senior counsel then submitted that the appellants cannot invoke Section 14 of the Limitation Act because their action of filing the writ petitions before the Delhi High Court was not bona fide. He pointed out that vide order dated 7.11.2007, the learned Single Judge of the Delhi High Court had accepted the request made by counsel appearing for the appellants and treated the writ petition filed by Kartik K. Parekh as an appeal and similar order appears to have been passed in the case of M/s. Panther Fincap and Management Services Limited but those orders were subsequently recalled at the instance of the two appellants. Shri Panda submitted that the Appellate Tribunal did not commit any error by directing the appellants to deposit 50% of the penalty imposed by the Special Director because they had been found guilty of clandestine monetary transactions and did not disclose their true financial position.

The relevant provisions :

10. Section 35 of the Act as also Sections 5, 14 and 29(1) and (2) of the Limitation Act, which have bearing on the decision of the issue raised in the appeals, read as under –

> "35. Appeal to High Court - Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:
>
> Provided that the High Court may, if it is satisfied that the

A appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.—In this section "High Court" means—

B (a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(b) where the Central Government is the aggrieved party, C the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain."

D 5. Extension of prescribed period in certain cases - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the E appeal or making the application within such period.

Explanation - The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period F may be sufficient cause within the meaning of this section.

14. Exclusion of time of proceeding bona fide in court without jurisdiction - (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, G whether in a court of first instance or of the appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to H entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court of other cause of a like nature.

Explanation - For the purpose of this section, -

(a) In excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) Misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

29. Savings - (1) Nothing in this Act shall affect section 25 of the Indian Contract Act,1872. (9 of 1872).

(2) Where any special or local law prescribes for any suit,

A appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, B appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

C 11. The question whether the High Court can entertain an appeal under Section 35 of the Act beyond 120 days does not require much debate and has to be answered against the appellants in view of the law laid down in *Union of India v. Popular Construction Co.* (2001) 8 SCC 470, *Singh Enterprises v. CCE* (2008) 3 SCC 70, *Commissioner of* D *Customs, Central Excise v. Punjab Fibres Ltd.* (2008) 3 SCC 73, *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others* (supra), *Commissioner of Customs and Central Excise v. Hongo India Private Limited* (2009) 5 SCC 791 and *Chhattisgarh* E *State Electricity Board v. Central Electricity Regulatory Commission and others* (2010) 5 SCC 23.

12. In *Hukumdev Narain Yadav v. Lalit Narain Mishra* (1974) 2 SCC 133, this Court interpreted Section 29(2) of the F Limitation Act in the context of the provisions of the Representation of the People Act, 1951. It was argued that the words "expressly excluded" appearing in Section 29(2) would mean that there must be an explicit mention in the special or local law to the specific provisions of the Limitation Act of which G the operation is to be excluded. While rejecting the argument, the three-Judge Bench observed:

" ... what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the legislature

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intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. *In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."*

(emphasis supplied)

13. In *Union of India v. Popular Construction Company* (supra), this Court considered the question whether Section 5 of the Limitation Act can be invoked for condonation of delay in filing an application under Section 34 of the Arbitration and Conciliation Act, 1996. The two-Judge Bench referred to earlier decisions in *Vidyacharan Shukla v. Khubchand Baghel* AIR 1964 SC 1099, *Hukumdev Narain Yadav v. Lalit Narain Mishra* (1974) 2 SCC 133, *Mangu Ram v. MCD* (1976) 1 SCC 392, *Patel Naranbhai Marghabhai v. Dhulabhai Galbabhai* (1992) 4 SCC 264 and held:

"As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.

A Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award 'in accordance with' sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not
B relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application 'in accordance with' that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond
C the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that:

> *'36.* Enforcement.—*Where the time for making an application to set aside the arbitral award under*
> D *Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the court.'*

E This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to 'proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall
F follow' (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the
G scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

14. *In Singh Enterprises v. CCE (supra), the Court interpreted Section 35 of the Central Excise Act, 1944 which*
H *is* pari materia *to Section 35 of the Act and observed:*

"The Commissioner of Central Excise (Appeals) as also the tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short 'the Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

15. In Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others (supra), a three-Judge Bench again considered Section 34(3) of the Arbitration and Conciliation Act, 1996. J.M. Panchal, J., speaking for himself and Balakrishnan, C.J., referred to the relevant provisions and observed:

A "....When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall B stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 C days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act."

D 16. In *Commissioner of Customs and Central Excise v. Hongo India (P) Ltd.* (supra), another three-Judge Bench considered the question whether Section 5 of the Limitation Act can be invoked for condonation of delay in filing an appeal or reference to the High Court, referred to the judgments in *Union* E *of India v. Popular Construction Co.* (supra), *Singh Enterprises v. CCE* (supra) and observed –

"As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that F an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the G appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, H

justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days." A

17. In *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission* (supra), a two-Judge Bench interpreted Section 125 of the Electricity Act, 2003, which is substantially similar to Section 35 of the Act and observed: B

"Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression "within a further period of not exceeding 60 days" in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days. C D E

The object underlying establishment of a special adjudicatory forum i.e. the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision F G H

A or order of the Tribunal. The exclusion of the jurisdiction of the civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.

It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the
B Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and
C provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law."

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The Court then referred to some of the precedents and held:

"In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for
E entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract the applicability of Section 5 of the Limitation
F Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

G 18. The question whether Section 14 of the Limitation Act can be relied upon for excluding the time spent in prosecuting remedy before a wrong forum was considered by a two Judge Bench in *State of Goa v. Western Builders* (supra) in the context of the provisions contained in Arbitration and

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Conciliation Act, 1996. The Bench referred to the provisions of the two Acts and observed: A

> *"There is no provision in the whole of the Act which prohibits discretion of the court. Under Section 14 of the Limitation Act if the party has been bona fidely prosecuting his remedy before the court which has no jurisdiction whether the period spent in that proceedings shall be excluded or not. Learned counsel for the respondent has taken us to the provisions of the Act of 1996: like Section 5, Section 8(1), Section 9, Section 11, sub-sections (4), (6), (9) and sub-section (3) of Section 14, Section 27, Sections 34, 36, 37, 39(2) and (4), Section 41, sub-section (2), Sections 42 and 43 and tried to emphasise with reference to the aforesaid sections that wherever the legislature wanted to give power to the court that has been incorporated in the provisions, therefore, no further power should lie in the hands of the court so as to enable to exclude the period spent in prosecuting the remedy before other forum. It is true but at the same time there is no prohibition incorporated in the statute for curtailing the power of the court under Section 14 of the Limitation Act. Much depends upon the words used in the statute and not general principles applicable. By virtue of Section 43 of the Act of 1996, the Limitation Act applies to the proceedings under the Act of 1996 and the provisions of the Limitation Act can only stand excluded to the extent wherever different period has been prescribed under the Act, 1996. Since there is no prohibition provided under Section 34, there is no reason why Section 14 of the Limitation Act (sic not) be read in the Act of 1996, which will advance the cause of justice. If the statute is silent and there is no specific prohibition then the statute should be interpreted which advances the cause of justice."*

B C D E F G

19. The same issue was again considered by the three- H

A Judge Bench in *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department* (supra) to which reference has been made hereinabove. After holding that Section 5 of the Limitation Act cannot be invoked for condonation of delay, Panchal, J (speaking for himself and
B Balakrishnan, C.J.) observed:

> "Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section
C 14 can be pressed into service:
>
> (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
>
> D (2) The prior proceeding had been prosecuted with due diligence and in good faith;
>
> (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
>
> E (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
>
> (5) Both the proceedings are in a court.
>
> *The policy of the section is to afford protection to a litigant*
> F *against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the*
> G *provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of*
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*limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (*sic *of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.*

At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the

A proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order
B of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the
C award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to
D an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the
E powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the
F Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application
G within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for

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a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award." A B

In his concurring judgment, Raveendran, J. referred to the judgment in *State of Goa v. Western Builders* (supra) and observed:

"On the other hand, Section 14 contained in Part III of the Limitation Act does not relate to extension of the period of limitation, but relates to exclusion of certain period while computing the period of limitation. Neither sub-section (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the proviso to Section 34(3) exclude the application of Section 14, as Section 14 is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to Section 29(2) of the Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders therefore lays down the correct legal position." C D E F G

20. The same view was reiterated in *Coal India Limited v. Ujjal Transport Agency* (supra). H

A 21. The aforesaid three judgments do support the argument of Shri Ranjit Kumar that even though Section 5 of the Limitation Act cannot be invoked for condonation of delay in filing an appeal under the Act because that would tantamount to amendment of the legislative mandate by which special B period of limitation has been prescribed, Section 14 can be invoked in an appropriate case for exclusion of the time during which the aggrieved person may have prosecuted with due diligence remedy before a wrong forum, but on a careful scrutiny of the record of these cases, we are satisfied that Section 14 C of the Limitation Act cannot be relied upon for exclusion of the period during which the writ petitions filed by the appellants remained pending before the Delhi High Court. In the applications filed by them before the Bombay High Court, the appellants had sought condonation of 1056 days' delay by D stating that after receiving copy of the order passed by the Appellate Tribunal, they had filed writ petitions before the Delhi High Court, which were disposed of on 26.7.2010 and, thereafter, they filed appeals before the Bombay High Court under Section 35 of the Act. Paragraphs 1, 2 and 3 of the E applications for condonation of delay which are identical in all the cases were as under:

"1. The Appellant ab ove named has preferred an Appeal against the order dated 2nd August 2007 (hereinafter referred to as the "impugned order") passed by the F Respondent No.1 against the Appellant above named. The Appellant states that the impugned order was received by the Appellant on 5th October 2007. The Appellant states that there is a delay of 1056 days in filing the above appeal, the reasons for which are being stated in detail G hereunder and, therefore, the Appellant above named prays that the delay in filing the present appeal may please be condoned.

2. RELIEFS SOUGHT :

H (a) That this Hon'ble Court be pleased to condoned the

delay of 1056 days in filing the said Appeal; A

(b) That such further and other reliefs as the facts and circumstances may require.

3. REASONS FOR THE DELAY : B

3.1 The Appellant declares that there is delay of 1056 days in filing the appeal as prescribed in the Limitation Act, 1963.

3.2 The Appellant further states that the delay occurred as C the Writ Petition was filed before Delhi High Court on 5th November, 2007. The said writ was filed under the provisions of Articles 226 and 227 of the Constitution of India seeking issuance of a writ order or direction in the nature of Mandamus or any other writ for setting aside the D impugned order dated 2nd August, 2007, passed by the Appellate Tribunal for Foreign Exchange under Rule 10 of the Adjudicating Proceedings and Appeal, 2000 for Dispensation. In the said Writ proceedings Hon'ble High Court of Delhi had passed an order on 26th July 2010. Vide the said order dated 26th July, 2010, while relying E on the judgment of the Hon'ble Supreme Court, it was held by the Hon'ble Delhi High Court that even an order passed by the Appellate Tribunal in an application seeking dispensation of pre-deposit of the penalty would be appealable under section 35 of the FEMA and that remedy F under Article 226 is not available against such an order.

Further, Hon'ble Delhi High Court also held that the present petition cannot be entertained by this Court. It is, however, open to the Appellant's to avail of the appropriate remedy G in terms of para 45 of the above judgment of the Supreme Court.

3.3 Hence, pursuant to the said order passed by Hon'ble Delhi High Court the Appellant above named prefers an H

A appeal before this Hon'ble Bombay High Court.

3.4 Under the said circumstances the Appellant most humbly prays that this Hon'ble Court may be pleased to condone the delay.

B 3.5 It is submitted that the delay, in filing of the present Appeal has not prejudiced the Respondent in any manner, whatsoever, and, therefore, this Hon'ble Court be pleased to condone the said delay.

C 3.6 It is, further submitted that the delay of 1056 days in filing the present Appeal was bonafide, unintentional and inadvertent."

22. A careful reading of the above reproduced averments shows that there was not even a whisper in the applications D field by the appellants that they had been prosecuting remedy before a wrong forum, i.e. the Delhi High Court with due diligence and in good faith. Not only this, the prayer made in the applications was for condonation of 1056 days' delay and not for exclusion of the time spent in prosecuting the writ E petitions before the Delhi High Court. This shows that the appellants were seeking to invoke Section 5 of the Limitation Act, which, as mentioned above, cannot be pressed into service in view of the language of Section 35 of the Act and interpretation of similar provisions by this Court.

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23. There is another reason why the benefit of Section 14 of the Limitation Act cannot be extended to the appellants. All of them are well conversant with various statutory provisions including FEMA. One of them was declared a notified person G under Section 3(2) of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 and several civil and criminal cases are pending against him. The very fact that they had engaged a group of eminent Advocates to present their cause before the Delhi and the Bombay High Courts

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shows that they have the assistance of legal experts and this seems to the reason why they invoked the jurisdiction of the Delhi High Court and not of the Bombay High Court despite the fact that they are residents of Bombay and have been contesting other matters including the proceedings pending before the Special Court at Bombay. It also appears that the appellants were sure that keeping in view their past conduct, the Bombay High Court may not interfere with the order of the Appellate Tribunal. Therefore, they took a chance before the Delhi High Court and succeeded in persuading learned Single Judge of the Court to entertain their prayer for stay of further proceedings before the Appellate Tribunal. The promptness with which the learned senior counsel appearing for appellant – Kartik K. Parekh made a statement before the Delhi High Court on 7.11.2007 that the writ petition may be converted into an appeal and considered on merits is a clear indication of the appellant's unwillingness to avail remedy before the High Court, i.e. the Bombay High Court which had the exclusive jurisdiction to entertain an appeal under Section 35 of the Act. It is not possible to believe that as on 7.11.2007, the appellants and their Advocates were not aware of the judgment of this Court in Ambica Industries v. Commissioner of Central Excise (2007) 6 SCC 769 whereby dismissal of the writ petition by the Delhi High Court on the ground of lack of territorial jurisdiction was confirmed and it was observed that the parties cannot be allowed to indulge in forum shopping. It has not at all surprised us that after having made a prayer that the writ petitions filed by them be treated as appeals under Section 35, two of the appellants filed applications for recall of that order. No doubt, the learned Single Judge accepted their prayer and the Division Bench confirmed the order of the learned Single Judge but the manner in which the appellants prosecuted the writ petitions before the Delhi High Court leaves no room for doubt that they had done so with the sole object of delaying compliance of the direction given by the Appellate Tribunal and, by no stretch of imagination, it can be said that they were bona fide prosecuting remedy before a wrong forum. Rather, there was

A total absence of good faith, which is sine qua non for invoking Section 14 of the Limitation Act.

24. The issue deserves to be consiJered from another angle. By taking advantage of the liberty given by the learned
B Single Judge of the Delhi High Court, the appellants invoked the jurisdiction of the Bombay High Court under Section 35 of the Act. However, while doing so, they violated the time limit specified in order dated 26.7.2010 which, in turn, is based on paragraph 45 of the judgment of this Court in *Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement*
C (supra). Indeed, it is not even the case of the appellants that they had filed appeals under Section 35 of the Act within 30 days computed from 26.7.2010. Therefore, the Division Bench of the Bombay High Court rightly observed that even though the issue relating to jurisdiction of the Delhi High Court to grant time
D to the appellants to file appeals is highly debatable, the time specified in the order passed by the Delhi High Court cannot be extended.

25. In view of the above discussion, we hold that the
E impugned order does not suffer from any legal infirmity.

26. Notwithstanding the above conclusion, we have considered the submission of Shri Ranjit Kumar that the appellants are facing huge financial crises and the Appellate Tribunal committed serious error by not entertaining their prayer
F to dispense with the requirement of deposit of the amount of penalty in its entirety, but have not felt convinced. In our considered view, the appellants miserably failed to make out a case, which could justify an order by the Appellate Tribunal to relieve them of the statutory obligation to deposit the amount
G of penalty. The appellants have the exclusive knowledge of their financial condition/status and it was their duty to candidly disclose all their assets, movable and immovable including those in respect of which orders of attachment may have been passed by the judicial and quasi judicial forums. However,
H instead of coming clean, they tried to paint a gloomy picture

about their financial position, which the Appellate Tribunal rightly refused to accept. If what was stated in the applications filed by the appellants and affidavit dated 10.10.2008 is correct, then the appellants must be in a state of begging which not even a man of ordinary prudence will be prepared to accept. To us, it is clear that the appellants deliberately concealed the facts relating to their financial condition. Therefore, the Appellate Tribunal did not commit any error by refusing to entertain their prayer for total exemption.

27. In this context, reference can usefully be made to the judgment of this Court in *Benara Values Ltd. v. Commissioner of Central Excise* (2006) 13 SCC 347. In that case, a two Judge Bench interpreted Section 35-F of the Central Excise Act, 1944, which is pari materia to Section 19(1) of the Act, referred to the judgments in *Siliguri Municipality v. Amalendu Das* (1984) 2 SCC 436, *Samarias Trading Co. (P) Ltd. v. S. Samuel* (1984) 4 SCC 666, *Commissioner of Central Excise v. Dunlop India Ltd.* (1985) 1 SCC 260 and observed:

> "Two significant expressions used in the provisions are "undue hardship to such person" and "safeguard the interests of the Revenue". Therefore, while dealing with the application twin requirements of considerations i.e. consideration of undue hardship aspect and imposition of conditions to safeguard the interests of the Revenue have to be kept in view.
>
> As noted above there are two important expressions in Section 35-F. One is undue hardship. This is a matter within the special knowledge of the applicant for waiver and has to be established by him. A mere assertion about undue hardship would not be sufficient. It was noted by this Court in *S. Vasudeva v. State of Karnataka* that under Indian conditions expression "undue hardship" is normally related to economic hardship. "Undue" which means something which is not merited by the conduct of the claimant, or is very much disproportionate to it. Undue

A hardship is caused when the hardship is not warranted by the circumstances.

For a hardship to be "undue" it must be shown that the particular burden to observe or perform the requirement is out of proportion to the nature of the requirement itself, and the benefit which the applicant would derive from compliance with it.

The word "undue" adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant.

The other aspect relates to imposition of condition to safeguard the interests of the Revenue. This is an aspect which the Tribunal has to bring into focus. It is for the Tribunal to impose such conditions as are deemed proper to safeguard the interests of the Revenue. Therefore, the Tribunal while dealing with the application has to consider materials to be placed by the assessee relating to undue hardship and also to stipulate conditions as required to safeguard the interests of the Revenue."

28. The same view was reiterated in *Indu Nissan Oxo Chemicals Industries Ltd. v. Union of India* (2007) 13 SCC 487 by considering proviso to Section 129-E of the Customs Act, 1962, which is almost identical to Section 19 of the Act.

29. In the result, the appeals are dismissed. Four weeks' further time is allowed to the appellants to comply with the direction given by the Appellate Tribunal, failing which the appeals filed by them shall stand automatically dismissed. The parties are left to bear their own costs.

D.G. Appeals dimissed.

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(2) (i) Non-mentioning the name of accused by witness in his statement u/s.161 Cr.P.C. - Accused named for the first time in the deposition in court - Held: Accused is entitled to benefit of doubt.

(ii) Extra-ordinary case - Extra-ordinary situations demand extra-ordinary remedies - In an unprecedented case, the court has to innovate the law and may also pass unconventional order keeping in mind the extra-ordinary measures. (Also see under: Penal Code, 1860)

Prithipal Singh Etc. v. *State of Punjab & Anr. Etc.* 862

CUSTODIAL DEATH:
(See under: Penal Code, 1860; and Constitution of India,1950) 862

CUSTOMS ACT, 1962:
(See under: Central Excise Act, 1944). 240

DELAY/LACHES:
(1) Delay in lodging FIR - Effect on prosecution case - Plea that all the family members of deceased did not make any statement to police until the eventual disclosure of the names of the two accused by deceased herself in her dying declaration - Held: It is not expected that the close family members would proceed to police station to lodge a report when the injured are in critical condition - Delay in lodging complaint could not be considered fatal to the prosecution case. (Also see under: Penal Code, 1860).

Deepak Verma v. *State of Himachal Pradesh* 270

(2) (See under: Code of Criminal Procedure, 1973). 154

(3) (See under: Limitation Act, 1963) 1204

DOCTRINES/PRINCIPLES:

(1) Doctrine of estoppel.
(See under: Administrative law)... 1

(2) Doctrine of proportionality.
(See under: Administrative Law; and
Code of Civil Procedure, 1908) 1141

(3) Wednesbury principle.
(See under: Administrative Law; and
Service Law) 840

(4) Principles of natural justice.
(i)(See under: Natural justice) 1000
(ii) (See under: Administrative Law; and
Service Law) 840

DOWRY PROHIBITION ACT:

ss.3 and 4.
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EDUCATION/EDUCATIONAL INSTITUTIONS:

Admission to Post-Graduate or Diploma Courses in medicine - Modification in the conditions by the State Government after declaration of result and preparation of select list - Power of - Held: Once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the said

courses - Benefits of admission in the reserved category is the result of the policy adopted by the State Government to provide for candidates from the reserved category - Appellants having been selected on the basis of merit, in keeping with the results of the written examination, the submission that such admissions in the reserved category will have to be made keeping in mind the necessity of upholding the standard of education in the institution, cannot be accepted.

Parmender Kumar & Ors. v. *State of Haryana & Ors.* 1065

EQUITY:

(See under: Adverse possession; and Evidence) 211

ESTOPPEL:

(See under: Administrative law) 1

EVIDENCE:

(1) Burden of proof - Held: A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner - It is for him to clearly plead and establish all facts necessary to establish adverse possession - Equity.
(Also see under: Adverse Possession)

State of Haryana v. *Mukesh Kumar & Ors.* 211

(2) Circumstantial evidence - Held: Though conviction may be based solely on circumstantial evidence, however, the circumstances from which the conclusion of guilt is to be drawn should be fully established - The facts so established must be consistent with the hypothesis of the guilt of the accused and the chain of evidence must be

so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been committed by the accused.
(Also see under: Penal Code, 1860)

Haresh Mohandas Rajput v. *State of Maharashtra* 921

(3) Dying declaration.
(See under: Penal Code, 1860) 270

(4) (i) Evidence of an accomplice not put on trial - Conviction on basis of his uncorroborated testimony - Held: Such an accomplice is a competent witness - He deposes in court after taking oath and there is no prohibition in any law not to act upon his deposition without corroboration - However, no reliance can be placed on the evidence of accomplice unless evidence is corroborated in material particulars - There has to be some independent witness tending to incriminate the accused in the crime.

(ii) Testimony of sole eye-witness - Reliability of - Held: There is no legal impediment in convicting a person on the sole testimony of a single witness - If there are doubts about testimony, court would insist on corroboration - Test is whether the evidence is cogent, credible and trustworthy or otherwise.
(Also see under: Penal Code, 1860)

Prithipal Singh Etc. v. *State of Punjab & Anr. Etc.* 862

(5) Onus to prove incurable unsound mind of spouse - Lies on the party alleging it.

(See under: Hindu Marriage Act, 1955) 945

(6) Secondary evidence - Trial court granting the plaintiff liberty to lead secondary evidence - Held: Trial court did not commit any error in permitting the plaintiff to lead secondary evidence when the original assignment deed was reportedly lost.
(Also see under: Code of Civil Procedure, 1908)

Rasiklal Manickchand Dhariwal & Anr. v. *M/s. M.S.S. Food Products* 1141

(7) Standard of proof - Departmental proceeding vis-à-vis criminal proceedings.
(See under: Labour laws; and Service law) 1089

EVIDENCE ACT, 1872:

(1) s.106 - Applicability of - Burden of proof under - Held: s. 106 is not intended to relieve the prosecution of its burden to prove the guilt of accused beyond reasonable doubt - It is designed to meet certain exceptional cases, in which, it would be impossible for prosecution to establish certain facts which are particularly within the knowledge of the accused.
(Also see under: Penal Code, 1860)

Prithipal Singh Etc. v. *State of Punjab & Anr. Etc.* 862

(2) s.133 r/w s.114, Illustration (b) - Evidentiary value of "approver" and its acceptability with or without corroboration - Held: Though a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an approver, yet the universal practice is not to convict upon the testimony of an accomplice unless it is corroborated in material particulars - Insistence

upon corroboration is based on the rule of caution and is not merely a rule of law - Corroboration need not be in the form of ocular testimony of witnesses and may even be in the form of circumstantial evidence.
(Also see under: Penal Code, 1860; and Code of Criminal Procedure, 1973)

Mrinal Das & Ors. v. *State of Tripura* 411

EXCISE LAWS:
Liquor.
(See under: Uttar Pradesh Excise Act, 1910) 98

FOREIGN EXCHANGE MANAGEMENT ACT, 1999:
(1) s.19 - Appeal - Pre-deposit of penalty - Dispensation of - Held: The appellants failed to make out a case, which could justify an order by Appellate Tribunal to relieve them of the statutory obligation to deposit the amount of penalty - Appellants had the exclusive knowledge of their financial condition/status and it was their duty to candidly disclose all their assets, movable and immovable, including those in respect of which orders of attachment may passed by judicial and quasi judicial forums - Besides, they deliberately concealed the facts relating to their financial condition - Therefore, Appellate Tribunal rightly refused to entertain their prayer for total exemption.

Ketan V. Parekh v. *Special Director, Directorate of Enforcement and Anr.* 1204

(2) s. 35.
(See under: Limitation Act, 1963) 1024

GOA, DAMAN AND DIU AGRICULTURAL TENANCY ACT, 1964:
(See under: Goa Land Use (Regulation) Act, 1991) 735

GOA LAND USE (REGULATION) ACT, 1991:
(i) ss.2, 13 - Compensation - Determination of - Acquisition of agricultural land - Held: - In view of permanent restriction regarding user and the bar in regard to any non-agricultural use, the acquired land would have to be valued only as an agricultural land and could not be valued with reference to sales statistics of other nearby lands which had the potential of being used for urban development - At least 50% would have to be deducted from market value of freehold land with development potential to arrive at market value of such land which could be used only for agricultural purposes - Goa, Daman and Diu Agricultural Tenancy Act, 1964.

(ii) Object of the enactment - Discussed.
(Also see under: Land acquisition)

Goa Housing Board v. *Rameshchandra Govind Pawaskar & Anr.* 735

HINDU MARRIAGE ACT, 1955:
(i) s.13 - Petition for divorce by husband on grounds of (i) 'cruelty' and (ii) incurable 'unsound mind' of wife - Held: Husband established and proved both the grounds - Various doctors and other witnesses examined to prove that the wife was suffering from mental disorder - All the four doctors/Psychiatrists who treated the wife and prescribed medicines also expressed the view that it was "incurable" - The acts and conduct of the wife were such as to cause pain, agony and suffering to the husband which amounted to cruelty

in matrimonial law - Further, they were living separately for the last more than nine years and there is no possibility to unite them - Divorce petition filed by husband allowed.

(ii) s.13 - Dissolution of marriage by decree of divorce on ground of 'unsound mind' - Held: The onus of proving that the other spouse is incurably of unsound mind or is suffering from mental disorder lies on the party alleging it - It must be proved by cogent and clear evidence.

(iii) s.13 - Dissolution of marriage by decree of divorce on ground of 'cruelty' - Repeated threats to commit suicide - Held: Cruelty postulates treating of a spouse with such cruelty as to create reasonable apprehension in his mind that it would be harmful or injurious for him to live with the other party - Giving repeated threats to commit suicide amounts to cruelty.

Pankaj Mahajan v. *Dimple @ Kajal* 945

HIRE-PURCHASE AGREEMENT:

Recovery process - Forcible possession of vehicles - Held: Even in case of mortgaged goods subject to Hire-Purchase Agreements, recovery process has to be in accordance with law - Guidelines laid down by Reserve Bank of India are significant - If any action is taken for recovery in violation of such guidelines or the principles as laid down by Supreme Court, such action cannot but be struck down.
(Also see under: Consumer Protection Act, 1986).

Citicorp. Maruti Finance Ltd. v.
S. Vijayalaxmi 1050

INTERLOCUTORY APPLICATIONS:

Orders passed by trial court on interlocutory applications Challenged before Supreme Court - Plea that the trial court erred in not adhering to the pre-trial procedures and contentions raised by defendants not considered by High Court - Held: Not permissible - The proper course available to defendants was to bring to the notice of High Court the aspect by filing a review application - Such course was never adopted.
(Also see under: Code of Civil Procedure, 1908).

Rasiklal Manickchand Dhariwal & Anr. v. *M/s. M.S.S. Food Products* 1141

INTERNATIONAL ARBITRATION ACT, 2002 (SINGAPORE):

(1) (i) International commercial arbitration - Held: Where the arbitration agreement provides that the seat of arbitration is Singapore and arbitration proceedings are to be conducted in accordance with the Singapore International Arbitration Centre Rules (SIAC Rules) then the Act 2002 of Singapore will be the law of arbitration as is provided in rule 32 of SIAC Rules - Once the arbitrator is appointed and the arbitral proceedings are commenced, the SIAC Rules become applicable shutting out the applicability of s.42 of the 1996 Act including Part I and the right of appeal u/s.37 thereof - Arbitration and Conciliation Act, 1996 - ss.2, 9, 42 - Singapore International Arbitration Centre Rules - r.32.

(ii) Proper law and Curial law - Distinction between - Discussed.
(Also see under: Arbitration)

Yograj Infrastructure Ltd. v. *SSang Yong Engineering and Construction Co. Ltd.* 301

(2) Interlocutory application - Clarification/ correction of clerical errors in the judgment - In para 35 of the judgment reported in **2011 SCR 14 301**, it was indicated that the SIAC Rules would be the Curial law of the arbitration proceedings - Held: It is clarified that the Curial law is the International Arbitration law of Singapore and not the SIAC Rules.

Yograj Infrastructure Ltd. v. *SSang Yong Engineering and Construction Co. Ltd.* 324

INTERNATIONAL LAW:

Warsaw Convention.
(See under: Consumer Protection Act, 1986). 47

INTERPRETATION OF STATUTES:

(1) Compliance - Held: When any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act - Jammu and Kashmir Land Acquisition Act, 1990.
(Also see under: Jammu and Kashmir Land Acquisition Act, 1990).

J & K Housing Board & Anr. v. *Kunwar Sanjay Krishan Kaul & Ors.* 976

(2) Same words having different meanings in different provisions of the same enactment - Permissibility - Held: The same words used in different parts of a statute should normally bear the same meaning - But depending upon the context, the same words used in different places of a statue may also have different meaning - The use of the words 'publication of the notification' in ss.4(1) and 6 on the one hand and in s.23(1) on

the other, in the LA Act, is a classic example, where the same words have different meanings in different provisions of the same enactment - The context in which the words are used in ss.4(1) and 6, and the context in which the same words are used in s.23(1) are completely different - Land Acquisition Act, 1894 - ss.4, 6 and 23.
(Also see under: Land Acquisition Act, 1894)

Kolkata Metropolitan Development Authority v. *Gobinda Chandra Makal & Anr.* 373

JAMMU AND KASHMIR LAND ACQUISITION ACT, 1990:
(i) ss.4(1)(a), (b), (c) - Compliance of - Held: Procedure provided in sub-ss. (a), (b) and (c) are mandatory and are to be strictly complied with.
(ii) ss.4(1), 5-A - Acquisition notification for development of housing colony - Challenged by respondents-land owners by filing writ petition before High Court - High Court allowed the writ petition with liberty to respondents to file objections within 15 days - Held: The conditions prescribed in s.4(1)(c) was not complied with - Notification was published in two daily newspapers but one of them was not a newspaper published in regional language which is the requirement of s.4(1)(c) - A corrigendum issued for enlarging the area of acquisition was also not published in any newspaper - The procedures provided in s.4(1)(a)(b) and (c) are to be strictly complied with - It is not in dispute that when the officers attempted to serve the notice by affixation or to persons in charge of the land, they were informed about the absence of the land-owners due to disturbance in the area - Inspite of such

information, the authorities did not send proper notice to the respondents or comply with the provisions, particularly, s.4(1)(c) - Order of High Court quashing the acquisition proceedings from the stage of s.5A of the Act upheld - Land Acquisition.
(Also see under: Interpretation of Statutes).

J & K Housing Board & Anr. v. *Kunwar Sanjay Krishan Kaul & Ors.* 976

JUNIOR ACCOUNTS OFFICERS SERVICE POSTAL WING (GROUP C) RECRUITMENT RULES, 1977:
rr.14 and 18.
(See under: Service Law) 840

JURISDICTION:
Jurisdiction of civil court.
(See under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971) 533

LABOUR LAWS:
Dismissal from service - Theft committed by workman - Domestic enquiry - Workman found guilty - Labour Court upheld the punishment of dismissal - Acquittal in criminal case - On writ petition by workman, Single Judge of High Court modified the order of dismissal into an order of termination and directed the employer to pay the terminal benefits - Division Bench, on appeal by workman, quashed the award of Labour Court and held the workman entitled to reinstatement into service with all consequential benefits - Held: High Court simply decided the case taking into consideration the acquittal of delinquent employee and nothing else - There was no finding by High Court that the charges leveled in the domestic

enquiry had been the same which were in the criminal trial - Workman shall be entitled only to the relief granted by the writ court, as the employer did not challenge the said order.
(Also see under: Service law).

Divisional Controller, KSRTC v. *M.G. Vittal Rao* 1089

LAND ACQUISITION:

(1) Acquisition of agricultural land - State and its instrumentalities resorting to massive acquisition of agricultural land in the name of public purpose, without complying with the mandate of the statute - Held: It is wholly unjust, arbitrary and unreasonable to deprive such persons of their houses/land/industry by way of acquisition of land in the name of development of infrastructure or industrialization - Before acquiring private land the State and/or its agencies/instrumentalities should, as far as possible, use land belonging to the State for the specified public purposes - If the acquisition of private land becomes absolutely necessary, then the authorities must strictly comply with the relevant statutory provisions and the rules of natural justice.
(Also see under: Land Acquisition Act, 1894)

Raghbir Singh Sehrawat v. *State of Haryana and Ors.* 1113

(2) (i) Compensation - Determination of, in respect of similarly situated land in the same area - Held: Similarly situated land in the same area, having the same advantages and acquired under the same notification should be awarded the same compensation - But if an acquired land is subject to a statutory covenant that it can be used only for

agriculture and cannot be used for any other purpose, necessarily it will have to be valued as agricultural land.

(ii) Vacant land vis-à-vis land in possession of long term lessee - Compensation - Determination of.
(Also see under: Goa Land Use (Regulation) Act, 1991)

Goa Housing Board v. *Rameshchandra Govind Pawaskar & Anr.* *735*

(3) (See under: Jammu and Kashmir Land Acquisition Act, 1990) 976

LAND ACQUISITION ACT, 1894:

(1) ss. 4(1) and 6 - Land acquisition for expansion of depot of Roadways Corporation - Held: The decision taken by the Government is not vitiated by any error of law nor is it irrational or founded on the extraneous reasons - Corporation or its successor not being a 'company' as defined in s. 3(e), Part VII of the Act is not applicable and as such procedure contemplated in Part VII having not been followed, it cannot be said that acquisition is bad in law - Appellants can be suitably compensated - Not a case fit for exercise of power under Art. 142 - Constitution of India, 1950 - Art. 142.

Ramji Veerji Patel & Ors. v. *Revenue Divisional Officer & Ors.* 821

(2) ss. 4(1), 6(1), 5A(2) and 9 - Acquisition of agricultural land - No opportunity of hearing given - Actual possession of land still with land-owner - Held: No evidence to show that actual possession of the land on which the crop was standing had

been taken after giving notice to the appellant nor was he present at the site when the possession of the acquired land was stated to have been delivered to the beneficiary - Exercise showing delivery of possession was farce and inconsequential - The record prepared by the revenue authorities showing delivery of possession of the acquired land to the beneficiary has no legal sanctity - Land-owner was not given opportunity of hearing as per the mandate of s.5A(2) - Thus, acquisition of his land is illegal and is quashed - State directed to pay to land-owner, cost of Rs. 2,50,000/- - Costs.
(Also see under: Land acquisition)

Raghbir Singh Sehrawat v. *State of Haryana and Ors.* 1113

(3) (i) s.23 - Acquisition of land classified as agricultural land marsh land - Compensation as enhanced by reference court and affirmed by High Court, modified.

(ii) s.23 - Acquisition of land - Determination of compensation - Addition towards appreciation in value between the date of exemplar sale and the date of preliminary notification as regards the acquisition in question - Held: Unless the difference is more than one year, normally no addition should be made towards appreciation in value, unless there is special evidence to show some specific increase within a short period.

(iii) s.23 - Acquisition of land - Determination of compensation - Addition of percentages for advantageous frontage - Held: Advantage of a better frontage is considered to be a plus factor while assessing the value of two similar properties,

particularly in any commercial or residential area, when one has a better frontage than the other - However where the value of large tracts of undeveloped agricultural land situated on the periphery of a city in an area which is yet to be developed is being determined with reference to value of nearby small residential plot, the question of adding any percentage for the advantage of frontage to the acquired lands, does not arise.

(iv) s.23 - Acquisition of land - Determination of compensation - Deductions for development from value of small developed plots to arrive at the value of acquired lands - Factors to be taken into consideration - Explained - On facts, the reference court after considering the facts found that one-third of the value of the small developed plot should be deducted towards development/development cost, to arrive at the value of the acquired lands -High Court did not interfere with the said percentage of deduction - In the circumstances, no reason to alter the percentage of deduction of 33.33%.

(v) ss. 4 and 23 - Acquisition of land - Determination of compensation - Relevant date - Adjustment of advance payment - Held: The relevant date for determination of compensation would be the date of publication of the preliminary notification u/s.4(1) of the LA Act -However if in anticipation of acquisition the Land Acquisition Officer had made any payment to the land owner they will be entitled to credit therefor with interest at 15% per annum from the date of payment to date of publication of preliminary notification - Though solatium and additional amount will be calculated on the entire compensation amount, statutory interest payable to land-owner will be

calculated only after adjusting the advance payment with interest therein towards the compensation amount.

(vi) ss.4 and 23 - Acquisition of land - Determination of compensation - Relevant date for determining compensation - Held: One of the principles in regard to determination of market value u/s.23(1) is that the rise in market value after the publication of the notification u/s.4(1) of the Act should not be taken into account for the purpose of determination of market value - In s.23(1), the words "the date of publication of the notification u/s 4(1)" would refer to the date of publication of the notification in the gazette.
(Also see under: Interpretation of Statutes)

Kolkata Metropolitan Development Authority v. *Gobinda Chandra Makal & Anr.* 373

LEGISLATION:

Need for legislation - There is an urgent need for a fresh look on the entire law of adverse possession - Recommendation to Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in law of adverse possession.
(Also see under: Adverse possession)

State of Haryana v. *Mukesh Kumar & Ors.* 211

LIFE INSURANCE CORPORATION ACT, 1956:

s. 21 - Corporation to be guided by directions of Central Government - Guidelines dated 30.5.2002 laid down by the Central Government that the provisions of the Public Premises Act, 1971 should be used primarily to evict totally unauthorised

occupants and to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State, or to move under genuine grounds under the Rent Control Act for resuming possession - Held: The guidelines are not directions u/s. 21 - Purpose of these guidelines is to prevent arbitrary use of powers under the Public Premises Act - Relevance of the guidelines would depend upon the nature of guidelines and the source of power to issue such guidelines - Source of the right to apply for determination of standard rent is the Rent Control Act, and not the guidelines - Also, by subsequent clarificatory order, the Central Government made it clear that the guidelines dated 30.5.2002 would not apply to affluent tenants - Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
(Also see under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971)

Banatwala & Company v. *L.I.C. of India & Anr.* 533

LIMITATION ACT, 1963:

s.14 - Delay in filing appeal - Condonation of - Imposition of penalty on appellants for contravening provisions of FEMA - Plea that the entire period during which writ petition remained pending before Delhi High Court should be excluded - Held: Not tenable - Existence of good faith is a *sine qua non* for invoking s.14 - Appellants filed writ petition before wrong forum and came to the forum having jurisdiction to entertain the appeal after delay of 1056 days and sought condonation of delay - Delay was rightly held not condonable since there was no averment

in the applications seeking condonation that they had been prosecuting remedy before a wrong forum, i.e. the Delhi High Court with due diligence and in good faith - Besides, the prayer made in the applications was for condonation of 1056 days delay and not for exclusion of the time spent in prosecuting the writ petitions before the wrong forum Delhi High Court - This showed that the appellants were seeking to invoke s.5 which cannot be pressed into service in view of the language of s.35 of the FEMA - There was total absence of good faith, which is *sine qua non* for invoking s.14- Foreign Exchange Management Act, 1999 - Delay - Condonation of.
(Also see under: Foreign Exchange Management Act, 1999)

Ketan V. Parekh v. *Special Director, Directorate of Enforcement and Anr.* 1204

LIQUOR:
Beer - Process of Brewing - Discussed.
(Also see under: Uttar Pradesh Excise Act, 1910) 98

MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999:
s. 21.
(See under: Bail) 617

MAHARASHTRA RENT CONTROL ACT, 1999:
(1) ss. 2(14), 8 and 29 - Provisions for fixation of standard rent and maintenance of essential services under the Act - Applicability of, to public premises owned by public corporations/ undertakings - Held: The subjects of fixation of standard rent and restoration of essential services by the landlord are covered under the Rent Control

Act and not under the Public Premises Act - Application of the tenants for the said matters when necessary, are maintainable under the Rent Control Act - Eviction and recovery of arrears of rent are alone covered under the Public Premises Act - Thus, the provisions of the Maharastra Rent Control Act with respect to fixation of standard rent for premises, and requiring the landlord not to cut off or withhold essential supply or service, and to restore the same when necessary, are not in conflict with or repugnant to any of the provisions of the Public Premises Act - Provisions of Rent Control Act govern the relationship between the public undertakings and their occupants to the extent it covers the other aspects of the relationship between the landlord and tenants, not covered under the Public Premises Act - Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - ss. 2(e), 5, 7 and 15.
(Also see under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971; Constitution of India,1950; Life Insurance Corporation Act, 1956; and Rent control and eviction)

Banatwala & Company v. *L.I.C. of India & Anr.* 533

(2) s.3(1)(a) and (b) - Exemption from application of the Act - Claim for - Tenability - Status of appellant - (National Textile Corporation) - Held: The Central Government and the appellant are separate legal entities and not synonymous - Appellant is being controlled by the provisions of the 1995 Act and not by the Central Government - Appellant is a Government Company and neither government nor government department - Nor can it claim the status of an 'agent' of the Central

Government as the rights vested in the appellant stood crystallised after being transferred by the Central Government - Hence not entitled for exemption u/s.3(1)(a) or 3(1)(b) of the Act - Textile Undertakings (Nationalisation) Act, 1995 - Contract Act, 1872 - ss.182 and 230.
(Also see under: Textile Undertakings (Nationalisation) Act, 1995; and Pleadings)

National Textile Corporation Ltd. v. *Nareshkumar Badrikumar Jagad & Ors.* 472

MINES AND MINERALS:
Mining lease - Overlapping of the area covered by the two leases - Held: When large areas are granted for mining purposes, some confusion as to the boundaries of such areas especially if they are adjacent to each other is not abnormal - In such cases, a fresh demarcation is to be conducted and boundaries are to be fixed - Directions issued for proper identification and demarcation of the areas.

Ashok Kumar Lingala v. *State of Karnataka & Ors.* 800

MOTOR VEHICLES ACT, 1988:
(i) ss. 149(2) and 170 - Claim petition - Position in cases where the claimants implead the insurer as a respondent - Held: Where the insurer is a party-respondent, either on account of being impleaded as a party by the tribunal u/s. 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it would be entitled to contest the matter by raising all grounds, without being restricted to the grounds available u/s. 149(2) of the Act.

(ii) s. 149(2) - Claim petition - Position in cases where the insurer is only a noticee u/s. 149(2) and has not been impleaded as a party to the claim proceedings - Held: An insurer, without seeking to avoid or exclude its liability under the policy, on grounds other than those mentioned in s. 149(2)(a) and (b), can contest the claim, in regard to the quantum - s. 149(2) does not require the insurer to concede wrong claims or false claims or not to challenge erroneous determination of compensation - If the owner of the vehicle(insured) fails to file an appeal when an erroneous award is made, he fails to contest the same and consequently, the insurer should be able to file an appeal, by applying the principle underlying s. 170 - Matter referred to larger bench.

(iii) ss. 173, 168 and 149 - Joint appeal by the owner of the vehicle (insured) and insurer - Maintainability of - Held: Maintainable - When the insurer becomes a co-appellant, the insured does not cease to be a person aggrieved - When a counsel holds vakalatnama for an insurer and the insured in a joint appeal, the court cannot say his arguments and submissions are only on behalf of the insurer and not on behalf of the insured.

(iv) Claim petition - For compensation in regard to a motor accident - Nature of - Held: An award by the tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.

United Insurance Co. Ltd. v. *Shila Datta & Ors.* 763

NATURAL JUSTICE:

(1) Principles of natural justice - Extent and application of -Requirement of giving reasonable opportunity of being heard before an order is made by an administrative, quasi-judicial or judicial authority, when such an order entails adverse civil consequences - Held: There can be exceptions to the said doctrine - Its extent and its application cannot be put in a strait-jacket formula - Whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred; the purpose for which the power is conferred and the final effect of the exercise of that power on the rights of the person affected. (Also see under: Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992)

Ashiwin S. Mehta & Anr. v. *Union of India & Ors.* 1000

(2) (See under: Administrative Law) 840

NEGOTIABLE INSTRUMENTS ACT, 1881:

(i) s.138 - Sentencing under - Respondent found guilty u/s.138 - Magistrate sentenced her to pay a fine of Rs.2000 and in default to undergo imprisonment and also directed her to pay Rs.20,000 as compensation to the complainant and in default to undergo simple imprisonment for three months - Held: Magistrate having levied fine of Rs.2,000/-, it was impermissible to levy any compensation having regard to s.357(3), Cr.P.C. - Code of Criminal Procedure, 1973 - s.357(3).

(ii) s.138 - Methods to improve the disposal of

cases u/s.138 of the Act - Suggested.

(iii) s.138 - Purpose of enactment - Held: Cases arising u/s.138 are really civil cases masquerading as criminal cases - The avowed object of Chapter 17 of the Act is to "encourage the culture of use of cheques and enhance the credibility of the instrument" - It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the cheque) and for enforcement of the civil liability (for realization of the cheque amount) thereby obviating the need for the creditor to move two different forums for relief.

(iv) s.143(1) - Imposition of fine - Held: In view of conferment of such special power and jurisdiction upon the First Class Magistrate, the ceiling as to the amount of fine stipulated in s.29(2) of the Code is removed - Consequently, in regard to any prosecution for offences punishable u/s.138 of the Act, a First Class Magistrate may impose a fine exceeding Rs.5000/-, the ceiling being twice the amount of the cheque.
(Also see under: Code of Criminal Procedure, 1973)

R. Vijayan v. *Baby and Anr.* 712

PENAL CODE, 1860:

(1) (i) s.302 r/w s.34 - Murder - 13 accused - Prayer of A-12 for grant of 'pardon' and to treat him as an 'approver' allowed by trial court - Disclosure made by him - Examined as PW-6 - Trial court convicted two accused u/s.302 but acquitted the remaining ten accused - High Court set aside acquittal of four accused and convicted them u/ss. 302/34 and also affirmed conviction of

the other two accused u/s.302 - Held: Justified - The statement of approver (PW-6) was confidence inspiring and there was nothing wrong in accepting his entire statement - The ocular evidence of the approver (PW-6) stood corroborated by the medical evidence - There was common intention among the accused persons including the six persons identified by the eye-witnesses - High Court was right in applying s.34 and basing conviction of six accused persons.

(ii) s.34 - Applicability of - Held: The existence of common intention amongst the participants in the crime is the essential element for application of s.34 and it is not necessary that the acts of several persons charged with the commission of an offence jointly must be the same or identically similar - In the instant case, from the materials placed by the prosecution, particularly, from the eye-witnesses, the common intention can be inferred among the accused persons including the six persons identified by the eye-witnesses - It is clear that the 13 assailants had planned and remained present on the shore of the river to eliminate the deceased - In view of these materials, High Court was right in applying s.34 IPC to base conviction of six accused persons.

(iii) ss.34 and 149 - Distinction between common intention and common object - Discussed.
(Also see under: Code of Criminal Procedure, 1973; and Evidence Act, 1872)

Mrinal Das & Ors. v. *State of Tripura* 411

(2) (i) ss. 302/34, 364/34 and 201/4 - Conviction and sentence - Abduction and murder of human right activist by police officials - Conviction of DSP

and ASI u/ss. 302/34 and sentence of life imprisonment imposed - Conviction of four appellants u/ss. 120-B and 364/34 and sentence of RI for five years and seven years respectively - High Court acquitted ASI, however, enhanced the sentence of four appellants from 7 years rigorous imprisonment to life imprisonment - Held: There is trustworthy evidence in respect of abduction of the activist as well as his illegal detention - Courts below rightly drew the presumption that the appellants were responsible for the abduction, illegal detention and murder - Order of the High Court upheld.

(ii) s.302/34 - One accused convicted u/s.302/34, other accused persons stood acquitted - Effect of - Held: It is impossible to hold that accused shared the common intention with other co-accused who is acquitted unless it is shown that some other unknown persons were also involved in the offence - Accused can be charged for having shared the common intention with another or others unknown, either by direct evidence or by legitimate inference.

(Also see under: Code of Criminal Procedure, 1973; Constitution of India, 1950; Criminal law; Criminal trial; Evidence; and Evidence Act.)

Prithipal Singh Etc. v. *State of Punjab & Anr. Etc.* 862

(3) (i) ss.302 and 323 r/w s.27 of Arms Act - Conviction of two accused for causing death of two persons by gun shot injuries - Held: Prosecution established that it was only on account of the rejection of marriage proposal that the accused, as an act of retaliation and vengeance, jointly committed the offence - Dying declaration

of the victim and the statements of her relations, who had appeared as prosecution witnesses, duly established the commission of the offence, as well as, the common motive for the two accused to have joined hands in committing the crime - Conviction upheld.

(ii) ss.302 and 323 r/w s.27 of Arms Act - Conviction of two accused for causing death of two persons - Plea of A-2 that no role attributed to him - Held: Evidence on record showed that the two accused had come together on a scooter to commit the offence - A-1fired first two shots at the victim from his double barrel gun - Thereafter A-2 provided two live cartridges to A-1 - After commission of the crime, both accused jointly made escape on a scooter - Therefore, it cannot be held that A-2 was merely a bystander and was incidentally present at the place of occurrence - He was rightly convicted.
(Also see under: Delay/laches; and
Criminal law)

Deepak Verma v. *State of Himachal Pradesh* 270

(4) ss. 302 and 376 - Rape and murder of a minor girl -Circumstantial evidence - Conviction -Held: Dead body of deceased was found inside the house of accused - There were blood stains on the bed-sheet and on the floor underneath the cot - Evidence of the doctor who conducted the post-mortem, that there had been sexual assault on the victim and she died of strangulation - Conviction affirmed - However, the case does not fall within the "rarest of rare cases" - Punishment of death sentence awarded by High Court set aside and the sentence of life imprisonment as

awarded by trial court restored.
(Also see under: Evidence; and Sentence/ sentencing).

Haresh Mohandas Rajput v. *State of Maharashtra* 921

(5) ss.405, 406, 420 r/w s.34.
(See under: Code of Criminal Procedure, 1973). 154

(6) ss. 406 r/w s. 34
(See under: Code of Criminal Procedure, 1973) 1033

PLEADINGS:

(i) Purpose and necessity of - Held: Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial - A decision of a case cannot be based on grounds outside the pleadings of the parties - A party has to take proper pleadings and prove the same by adducing sufficient evidence - In view of the provisions of O. 8, r. 2, CPC, the appellant was under an obligation to take a specific plea to show that the eviction suit filed against it was not maintainable which it failed to do - The appellant ought to have taken a plea in the written statement that it was merely an 'agent' of the Central Government, thus the suit against it was not maintainable - The appellant did not take such plea before either of the courts below - More so, whether A is an agent of B is a question of fact and has to be properly pleaded and proved by adducing evidence - The appellant miserably failed to take the required pleadings for the purpose - Code of Civil Procedure, 1908 - O. 8, r. 2.

(ii) New plea - Held: A new plea cannot be taken

in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings.
(Also See under: Maharashtra Rent Control Act, 1999; and Textile Undertakings (Nationalisation) Act, 1995).

National Textile Corporation Ltd. v. *Nareshkumar Badrikumar Jagad & Ors.* 472

PROPERTY:

(i) Right to property - Held: Is not only constitutional or statutory right but also a human right - Therefore, even claim of adverse possession has to be read in that context - Constitution of India, 1950.
(ii) Protection of property rights - Discussed.
(Also see under: Adverse possession)

State of Haryana v. *Mukesh Kumar & Ors.* 211

PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971:

(i) ss. 2(e), 5, 7, 15 - Eviction of unauthorised occupants from Public Premises and recovery of arrears of rent from them - Initiation of proceedings under the Act - Held: Proceedings initiated by the landlord would be fully competent under the Act - Occupants would not be entitled to seek any remedy under the Bombay Rent Act or the subsequent Maharashtra Rent Control Act since the jurisdiction of the civil court has been ousted u/s. 15 - Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 - Maharashtra Rent Control Act, 1999.

(ii) ss. 10 and 15 - Jurisdiction of civil courts for the remedies of fixation of rent or maintenance of essential services - Held: Is not ousted - Actions covered under the Act are concerning eviction of unauthorised occupants and recovery of arrears of rent - The Act does not speak anything about the fixation of standard rent or maintenance of essential services and no remedy is provided thereunder - The fact that the proceeding for one purpose is provided under one statute cannot lead to an automatic conclusion that the remedy for a different purpose provided under another competent statute becomes unavailable.
(Also see under: Maharashtra Rent Control Act,1999: Life Insurance Corporation Act, 1956; and Constitution of India,1950).

Banatwala & Company v. *L.I.C. of India & Anr.* 533

REFERENCE TO LARGER BENCH:
Appeal by insurer - Maintainability - Question referred to larger Bench.
(See under: Motor Vehicles Act, 1988) 763

RENT CONTROL AND EVICTION:
(1) (i) Exemption from operation of Rent Act - Legislative expectations from public bodies as landlords - Held: Exercise of discretion of public authorities must be tested on the assumption that they would act for public benefit and would not act as private landlords - However, these principles not relevant while considering a dispute between a statutory body as landlord and an affluent tenant in regard to a commercial or non-residential premises.

(ii) Relationship between landlord and tenant in

general - Changes brought about by the Rent Control Acts - Explained and discussed.
(Also see under: Public Premises (Eviction of Unauthorised Occupants) Act,1971; Maharashtra Rent Control Act, 1999; and Constitution of India, 1950).

Banatwala & Company v. *L.I.C. of India & Anr.* 533

(2) (See under: Maharashtra Rent Control Act, 1999; and Textile Undertakings (Nationalisation) Act, 1995) 472

RIGHT TO INFORMATION ACT, 2005:
(i) s.8(1)(d) - Examination of candidates for enrolment as Chartered Accountants - Claim as intellectual property by Institute of Chartered Accountants of India (ICAI) of its instructions and solutions to questions given to examiners and moderators and exemption thereof u/s s.8(1)(d) of the Act - Held: ICAI voluntarily publishes the "suggested answers" in regard to the question papers in the form of a book for sale every year, after the examination - Therefore s.8(1)(d) of the Act does not bar or prohibit the disclosure of question papers, model answers (solutions to questions) and instructions if any given to the examiners and moderators after the examination and after the evaluation of answerscripts is completed, as at that stage they will not harm the competitive position of any third party.

(ii) s.9 - Examination of candidates for enrolment as Chartered Accountants - Claim of copy right by ICAI with regard to instructions and solutions to questions issued by it to examiners and moderators and thus seeking protection u/s 9 -

Held: ICAI being a statutory body created by the Chartered Accountants Act, 1948 is 'State' - Providing access to information in respect of which ICAI holds a copyright, does not involve infringement of a copyright subsisting in a person other than the State - Therefore ICAI is not entitled to claim protection against disclosure u/s.9 of the Act - Besides, the words 'infringement of copyright' have a specific connotation - A combined reading of ss. 51 and 52(1)(a) of Copyright Act shows that furnishing of information by an examining body, in response to a query under the RTI Act may not be termed as an infringement of copyright.

(iii) s. 8(1)(e) - Examination of candidates for enrolment as Chartered Accountants - Examination held by appellant ICAI - Held: The instructions and solutions to questions communicated by the examining body to the examiners, head-examiners and moderators, are information available to such persons in their fiduciary relationship and, therefore, exempted from disclosure u/s.8(1)(d) of the Act.

(iv) s.4(1)(b) and (c) - Information to which RTI Act applies - Explained - In dealing with information not falling u/s.4(1)(b) and (c), the competent authorities under the Act will not read the exemptions in s.8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.

(v) ss. 3, 4, 8, 9, 10 and 11 - Object of the Act - Held: Is to harmonize the conflicting public interests, that is, ensuring transparency to bring

in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand - While ss. 3 and 4 seek to achieve the first objective, ss. 8, 9, 10 and 11 seek to achieve the second objective.

(vi) s.8 - Categories of information which are exempted from disclosure u/s.8 - explained - In the instant case the Chief Information Commissioner rightly held that the information sought under queries (3) and (5) were exempted u/s.8(1)(e) and that there was no larger public interest requiring denial of the statutory exemption regarding such information.

(vii) Examination of candidates for enrolment as Chartered Accountants held by ICAI - Information sought under the Act - Held: As the information sought under parts (i), (iii) and (v) of the query are not maintained and is not available in the form of data with ICAI in its records, it is not bound to furnish the same - Chartered Accountants Regulations, 1988 - Regulation 39(2).

(viii) Examination of candidates for enrolment as Chartered Accountants held by ICAI - Information sought under the Act - Held: On facts, it cannot be said that the applicant had indulged in improper use of the Act - His application was intended to bring about transparency and accountability in the functioning of ICAI - However, how far he was entitled to the information was a different issue.

(ix) New regime of disclosure of maximum information - Duty of competent authorities under the RTI Act to maintain a proper balance - Held: Examining bodies like ICAI should tune themselves to the new regime - Accountability and prevention of corruption is possible only through transparency - As the examining bodies and their examination processes have not been exempted, the examining bodies will have to gear themselves to comply with the provisions of the Act - Additional workload is not a defence.

Institute of Chartered Accountants of India v. *Shaunak H.Satya & Ors.* 328

SENTENCE/ SENTENCING:

Death sentence - 'Rarest of the rare case' - Explained - For awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances - As to whether death sentence should be awarded, would depend upon the factual scenario of the case in hand.
(Also see under: Penal Code, 1860).

Haresh Mohandas Rajput v. *State of Maharashtra* 921

SERVICE LAW:

(1) Disciplinary proceedings - Departmental Inquiry against a Junior Clerk in the Subordinate Court - Chief Judge on consideration of the report submitted by the Inquiry Officer, dismissed the delinquent from service - Held: The Inquiry Officer did not base his findings on the evidence recorded ex-parte but referred to that only for purposes of appreciation of the evidence of the witnesses examined by the department in *de novo inquiry*

wherein the appellant fully participated - The findings were based on evidence recorded subsequently in presence of the delinquent and, as such, did not suffer from any legal infirmity - Deliquent's right of departmental appeal was not taken away and he could have challenged that order in the departmental appeal to the higher authority - He did not avail of that opportunity and instead challenged the order in a writ petition before the High Court - His right of appeal not affected by the order passed by the Chief Judge - Central Civil Services (Classification, Control and Appeal) Rules, 1965 - r. 14.

S. Loganathan v. *Union of India and Ors.* 1081

(2) Promotion - Examination for promotion to the post of Junior Accounts Officer- Candidates stated to have resorted to mass-copying - Held: High Court ought not to have interfered with the decision taken by the employers requiring the candidates to reappear in the subsequent examination, in order to qualify for regular promotion - The procedure adopted by the employers cannot be said to be suffering from any such irrationality or unreasonableness, which would have enabled the High Court to interfere with the decision - Junior Accounts Officers Service Postal Wing (Group C) Recruitment Rules, 1977 - rr.14 and 18.
(Also see under: Administrative Law)

Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Limited and Ors. v. *Surendra Nath Pandey and Ors.* 840

(3) TERMINATION/DISMISSAL:
(i) Dismissal from service - Workman found guilty

of theft and awarded punishment of dismissal - Acquittal in criminal case - Plea of reinstatement - Held: The question of considering reinstatement after the decision of acquittal or discharge by a competent criminal court would arise only if dismissal from service was based on conviction by criminal court in view of the provisions of Art. 311(2)(b) of the Constitution or analogous provisions in the statutory rules - In a case where enquiry has been held independently of the criminal proceedings, acquittal in the criminal case is of no help - Constitution of India, 1950 - Art. 311(2)(b).

(ii) Misconduct - Theft - Loss of confidence - Plea of reinstatement - Held: Once the employer has lost confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed - In case of theft, loss of confidence of employer in employee is important and not the quantum of theft.

(iii) Departmental proceedings vis-à-vis criminal proceedings - Standard of proof - Held: While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt - As the standard of proof in both the proceedings is quite different, and termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of

departmental proceedings - Nor can such an action of the department be termed as double jeopardy - Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry - Evidence.
(Also see under: Labour Laws).

Divisional Controller, KSRTC v. *M.G. Vittal Rao* 1089

(4) (i) Upgradation - Applicability of reservation provisions - Biennial Cadre Review (BCR) Scheme - Nature of - Held: As upgradation involves neither appointment nor promotion, it will not attract reservation - The BCR scheme was a scheme for upgradation simpliciter without involving any creation of additional posts or any process of selection for extending the benefit - Such a scheme of upgradation did not invite the rules of reservation - Constitution of India, 1950 - Arts. 16(4) and 16(4A).

(ii) Promotion and upgradation - Distinguished - Principles relating to applicability of rules of reservation - Discussed.

Bharat Sanchar Nigam Ltd. v. *R. Santhakumari Velusamy & Ors.* 502

SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992:

(i) ss. 11, 3(3) and (4) - Attachment of properties of Notified persons - Sale of shares - Appellants, their family members and the corporate entities purchased more than 90 lakh shares in 'A'

Company - Attachment of the majority of the holding - Order of the Special Court permitting the Custodian to sell 54,88,850 shares of 'A' Company at Rs. 90/- per share - Held: Special Court failed to make a serious effort to realise the highest possible price for the said shares - Special Court overlooked the norms laid down by it; ignored the directions of Supreme Court and glossed over the procedural irregularities committed by the Custodian - However, sale of 54,88,850 shares was approved and all procedural modalities are stated to have been carried out and 36.90 lakh shares of 'A' Company are claimed to have been extinguished, the relief sought for by the appellants to rescind the entire sale of 54,88,850 shares would be impracticable and fraught with grave difficulties - Matter remitted to Special Court for taking necessary steps to recover the 4.95% shares from 'A' Company or its management, and put them to fresh sale strictly in terms of the norms.

(ii) s. 10 - Sale of shares of Notified persons - Discretion exercised by Special Court under - Held: On facts, Special Court exercised its discretion in complete disregard to its own scheme and 'terms and conditions' approved by it for sale of shares and in violation of the principles of natural justice, thus, the facts of the case calls for interference.

(iii) Object and purpose of the Act - Held: Is not only to punish the persons involved in the act of criminal misconduct by defrauding the banks and financial institutions but also to see that the properties, belonging to the persons notified by the Custodian were appropriated and disposed

of for discharge of liabilities to the banks and financial institutions - Thus, a notified party has an intrinsic interest in the realisations, on the disposal of any attached property because it would have a direct bearing on the discharge of his liabilities in terms of s. 11 - Custodian has to deal with the attached properties only in such manner as the Special Court may direct - Custodian is required to assist in the attachment of the notified person's property and to manage the same thereafter - Special Court shall be guided by the principles of natural justice - Doctrines/principles - Principles of natural justice.

(Also see under: Natural justice).

Ashiwin S. Mehta & Anr. v. *Union of India & Ors.* 1000

TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997:

(i) s.14(a)(i) - Jurisdiction of Tribunal - Held: Tribunal has no jurisdiction to decide upon the validity of the terms and conditions incorporated in the license of a service provider, but it will have jurisdiction to decide "any" dispute between the licensor and the licensee on interpretation of the terms and conditions of the license - The incorporation of the definition of **Adjusted Gross Revenue** in the license agreement was part of the terms regarding payment which had been decided upon by the Central Government as a consideration for parting with its rights of exclusive privilege in respect of telecommunication activities, and having accepted the license and availed the exclusive privilege of the Central Government to carry on telecommunication activities, the licensees could not have

approached the Tribunal for an alteration of the definition of Adjusted Gross Revenue in the license agreement - The decision of the Central Government on the point was final under the first proviso and the fifth proviso to s.11(1) of the Act - Telegraph Act, 1885.

(ii) 11(1)(a) - Recommendations of TRAI - Held: TRAI has been conferred with the statutory power to make recommendations on the terms and conditions of the license to a service provider and the Central Government is bound to seek the recommendations of TRAI on such terms and conditions at different stages, but the recommendations of TRAI are not binding on the Central Government and the final decision on the terms and conditions of a license to a service provider rested with the Central Government.

(iii) s.11(1)(b), (c), (d) - Recommendations of TRAI - Held: The functions of TRAI under clause (b) of sub-s. (1) of s.11 of TRAI Act are not recommendatory.

(iv) s.11(1)(a) and s.11(1)(b) - Distinction between - Discussed.

(v) s.14(a)(i) - Stage when dispute can be raised regarding the computation of **Adjusted Gross Revenue** made by the licensor - Held: The dispute can be raised by the licensee, after the license agreement has been entered into and the appropriate stage when the dispute can be raised is when a particular demand is raised on the licensee by the licensor - When such a dispute is raised against a particular demand, the Tribunal will have to go into the facts and materials on the basis of which the demand is raised and decide whether the demand is in accordance with the

license agreement and in particular the definition of Adjusted Gross Revenue in the license agreement and can also interpret the terms and conditions of the license agreement.
(Also see under: Appeal; and Telegraph Act)

Union of India and Anr. v. *Association of Unified Telecom Service Providers of India and Ors.* 657

TELEGRAPH ACT:

s.4(1), proviso - Held: A license granted in favour of any person under proviso to sub-s.(1) of s.4 of the Act is in the nature of a contract between the Central Government and the licensee - Consequently, the terms and conditions of the license are part of a contract between the licensor and the licensee - Telecom Regulatory Authority of India Act, 1997.
(Also see under: Telecom Regulatory Authority of India Act, 1997)

Union of India and Anr. v. *Association of Unified Telecom Service Providers of India and Ors.* 657

TEXTILE UNDERTAKINGS (NATIONALISATION) ACT, 1995:

ss.3(1) and (2) - Right, title and interest of textile undertaking vested in Central Government and thereafter in appellant-National Textile Corporation by statutory transfer - Meaning of the expression 'vesting' - Held: 'Vesting' means having obtained an absolute and indefeasible right - It refers to and is used for transfer or conveyance - 'Vesting' may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision

of the Act.
(Also See under: Maharashtra Rent Control Act, 1999; and Pleadings)

National Textile Corporation Ltd. v. *Nareshkumar Badrikumar Jagad & Ors.* 472

UTTAR PRADESH BREWERY RULES 1961:
r.53.
(See under: Uttar Pradesh Excise Act, 1910). 98

UTTAR PRADESH EXCISE ACT, 1910:
(i) s.29(e)(i) - Beer - Excisablity of - Stage when the beer manufactured is exigible to duty - Held: When the fermentation process of wort is completed, it becomes an alcoholic liquor for human consumption and there is no legal impediment for subjecting beer to excise duty at that stage - State has legislative competence to levy excise duty on beer either after the completion of the process of fermentation and filtration, or after fermentation - Excise laws - Liquor.
(ii) s.28A - Imposition of additional duty - Excess manufacturing wastage - Basis for determination - Held: The base measurement is taken in the fermentation vessel and 9% standard allowance is provided to cover losses on account of evaporation, sullage and other contingencies within the Brewery - Uttar Pradesh Brewery Rules 1961 - r.53.
(Also see under: Constitution of India, 1950)

State of U.P. & Ors. v. *Mohan Meakin Breweries Ltd. & Anr.* 98

WARSAW CONVENTION:
(See under: Consumer Protection Act, 1986) 47

WORDS AND PHRASES:

(1)'Court' - Meaning of - Discussed.

Trans Mediterranean Airways v.
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(2)Term 'intellectual property' - Meaning of.

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(3) 'Vesting' - Meaning of.

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