A M/S. GMG ENGINEERING INDUSTRIES & ORS.

v.

M/S ISSA GREEN POWER SOLUTION & ORS.

(Civil Appeal No. 4472 of 2015)

B

MAY 15, 2015

[T. S. THAKUR AND R. BANUMATHI, JJ.]

Delay – Condonation of – Applications filed u/Or. 9 r C *13 to set aside the ex-parte decrees alongwith the applications to condone the delay of 355 days and 382 days respectively – Applications allowed imposing condition on the appellants to deposit the entire decreetal amount – High Court upholding the order – On appeal, held: Trial court* D *should not have imposed unreasonable and onerous condition of depositing the entire suit claim in the suits when the issues are yet to be decided on merits – In revision, High Court should have kept in view that the parties were yet to go for trial and appellants ought to have been afforded the* E *opportunity to contest the suits on merits – Since the reasons for the delay was satisfactorily explained, impugned order set aside – Delay in filing applications to set aside ex-parte decrees condoned and ex-parte decrees set aside – Code of Civil Procedure, 1908 – Or. 9 r 13.*

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Allowing the appeals, the Court

HELD: 1.1 The expression 'sufficient cause' is to receive liberal construction so as to advance substantial G **justice. When there is no negligence, inaction or want of bonafide is imputable to the appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in** H **any arbitrary, vague or fanciful manner. The true test is**

to see whether the applicant has acted with due diligence. [Para 8] [1113-F-G]

1.2 In the instant case, while the trial court exercised the discretion to condone the delay in filing the applications to set aside the ex-parte decrees, the trial court should not have imposed such an unreasonable and onerous condition of depositing the entire suit claim of Rs.1,50,00,000/- and Rs.10,00,000/- respectively in the suits when the issues are yet to be decided on merits. While considering the revision, the High Court should have kept in view that the parties are yet to go for trial and the appellants ought to have been afforded the opportunity to contest the suits on merits. When the S.L.Ps came up for admission, this Court passed the conditional order that subject to deposit a sum of Rs.50,00,000/- before the trial court, notice would be issued to the respondents. In compliance with the said order, the appellants deposited Rs.50,00,000/- before the trial court. Since the appellants have satisfactorily explained the reasons for the delay and with a view to provide an opportunity to the appellants to contest the suit, the impugned order is set aside. Delay in filing the applications to set aside the ex-parte decrees is condoned and the ex-parte decrees are set aside and the suits are restored to file. [Paras 11 and 12] [1115-E-H; 1116-A, C]

V.K. Industries and Ors. vs. M.P. Electricity Board, Rampur, Jabalpur **(2002) 3 SCC 159;** ***Tea*** *Auction Limited vs. Grace Hill Tea Industry And Anr.* **2006 (6) Suppl. SCR 163: (2006) 12 SCC 104: (2006) 9 SCALE 223;** *Vijay Kumar Madan and Ors. vs. R.N. Gupta Technical Education Society and Ors.,* **2002 (3) SCR 217 : (2002) 5 SCC 30 – referred to.**

A **Case Law Reference**

(2002) 3 SCC 159	**Referred to.**	**Para 6**
2006 (6) Suppl. SCR 163	**Referred to.**	**Para 9**
B **2002 (3) SCR 217**	**Referred to.**	**Para 10**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4472 of 2015.

C From the Judgment and Order dated 16.04.2013 in the High Court of Judicature at Madrs, Madurai Bench in C. R. P. (NPD) (MD) No. 4 of 2013.

WITH

D C. A. No. 4473 of 2015

Brijender Chahar, D. Kumaran, Satya Mitra Garg for the Appellants.

E Nalini Chidambaram, V. Balaji, C. Kannan, Sripatha, D. Veda, Rakesh K. Sharma for the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

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2. These appeals arise out of common order dated 16.04.2013, passed by the High Court of Madras, Madurai Bench in C.R.P. (NPD) (MD) No.4/2013 and C.R.P. (NPD) (MD) No.5/2013 respectively, confirming the order dated G 4.12.2012 passed by the Principal District Judge, Thanjavur, imposing conditions to deposit Rs.1,50,00,000/- and Rs.10,00,000/-, as a condition to condone the delay in filing the applications to set aside the ex-parte decrees passed in O.S.No.3 of 2011 and O.S. No.6 of 2011.

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3. Appellants and respondents entered into an agreement of sale on 1.08.2008, under which the respondents agreed to purchase the property of the appellants being the factory premise for a sum of Rs.5,00,00,000/- and the respondents paid Rs.1,50,00,000/- towards part of sale consideration. The sale transaction could not be completed. The respondents issued legal notice dated 24.11.2010 calling upon the appellants either to execute the sale deed or refund the advance amount of Rs.1,50,00,000/- with interest at the rate of 12% p.a. The appellants received the said notice and sent the reply offering to return the said amount but without interest. The respondents filed the suit being O.S.No.3/2011 for recovery of the sum of Rs. 1,50,00,000/- with interest. The case was adjourned from time to time on various dates. On 16.06.2011, the appellants-defendants were set ex-parte in the suit. After recording evidence adduced by the respondents-plaintiffs on 5.07.2011, the said suit was decreed ex-parte by the Principal District Judge, Thanjavur.

4. Respondents have also filed another suit O.S. No.6 of 2011 for recovery of a sum of Rs.10,00,000/- said to have been paid by them to the appellants by way of an advance towards the purchase of another property. The said suit was decreed ex-parte on 16.06.2011. The appellants have filed I.A. No.78 of 2012 to set aside the ex-parte decree alongwith application to condone the delay of 382 days under Section 5 of the Limitation Act. The said application was allowed by the Principal District Judge, Thanjavur by order dated 4.12.2012 imposing condition to deposit a sum of Rs.10,00,000/-.

5. The appellants filed I.A.No.77 of 2012 and I.A. No.78 of 2012 in both the suits praying for condonation of delay of 355 days and 382 days respectively in filing the

A applications under Order IX Rule 13 CPC, for setting aside the ex-parte decrees. The appellants averred that they came to know about the ex-parte decrees only on 13.07.2012, when they saw a public notice in the daily newspaper regarding the attachment of the suit property. The Principal District B Judge, Thanjavur vide separate order dated 4.12.12 condoned the delay of 355 days and 382 days in filing the applications under Order IX Rule 13 CPC for setting aside the ex-parte decree and allowed the applications in IA No.77 of 2012 and I.A. No.78 of 2012 but subject to condition that C the appellants should deposit Rs.1,50,00,000/- and Rs.10,00,000/- respectively in the court on or before 3.01.2013, failing which the applications will automatically stand dismissed. Being aggrieved by the stringent condition, the appellants filed revision petitions before the High Court. D The High Court vide impugned order dated 16.04.13 upheld the order imposing condition to deposit Rs.1,50,00,000/- and Rs.10,00,000/- as a condition precedent to condone the delay in filing application to set aside the ex-parte decrees and E thereby dismissed the revisions which are under challenge in these appeals.

6. Learned counsel for the appellants contended that the direction to deposit the entire decreetal amount of F Rs.1,50,00,000/- in O.S. No.3 of 2011 and the decreetal amount of Rs.10,00,000/- in O.S. No.6 of 2011 as a condition precedent to set aside the ex-parte decrees is onerous and unreasonable and prayed to set aside the impugned order. In support of his contention, learned Senior Counsel G Mr. Brijender Chahar for the appellants placed reliance upon the judgment of this Court in *V.K. Industries and Ors. vs. M.P. Electricity Board, Rampur, Jabalpur,* **(2002) 3 SCC 159**.

H 7. Learned Senior Counsel for the respondents Ms.

Nalini Chidambaram submitted that the trial court was constrained to impose the said condition in view of the dilatory tactics adopted by the appellants deliberately not being present for hearing in the trial court on several occasions when the suits were posted for trial. Learned Senior Counsel further submitted that even after ex-parte decrees dated 5.07.2011 were brought to the notice of the appellants by a series of telegrams (Annexures-R5/R1), the appellants did not file the applications to set aside the ex-parte decree within the period of limitation and waited for more than a year. It was submitted that the respondents are more than seventy years old and had borrowed sum of Rs.1,50,00,000/- and Rs.10,00,000/- from the bank and paid the said amount to the appellants under the agreements for sale and the appellants are paying interest on that amount to the bank. It was contended that even though the appellants sold away their property, they did not choose to refund the sum paid towards part of sale consideration and if the suits are decreed, the appellants have no assets to execute the decrees and the rights of both the parties should be balanced and therefore the impugned order does not warrant interference by this Court under Article 136 of the Constitution.

8. It is well settled that the expression 'sufficient cause' is to receive liberal construction so as to advance substantial justice. When there is no negligence, inaction or want of *bonafide* is imputable to the appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence.

9. While exercising the discretion for setting aside

A the ex-parte decrees or condoning the delay in filing the application to set aside the ex-parte decrees, the court is competent to direct the defendants to pay a portion of the decreetal amount or the cost. In *Tea Auction Limited vs. Grace Hill Tea Industry And Anr.*, **(2006) 12 SCC 104: (2006) 9 SCALE 223**, this Court has held as under:

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> **"15. ....A discretionary jurisdiction has been conferred upon the court passing an order for setting aside an ex parte decree not only on the basis that the defendant had been able to prove sufficient cause for his non-appearance even on the date when the decree was passed, but also on other attending facts and circumstances. It may also consider the question as to whether the defendant should be put on terms. The court, indisputably, however, is not denuded of its power to put the defendants to terms. It is, however, trite that such terms should not be unreasonable or harshly excessive. Once unreasonable or harsh conditions are imposed, the appellate court would have power to interfere therewith....."**

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10. In *Vijay Kumar Madan and Ors. vs. R.N. Gupta Technical Education Society and Ors.*, **(2002) 5 SCC 30**, this Court has held as under:

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> **"8. Costs should be so assessed as would reasonably compensate the plaintiff for the loss of time and inconvenience caused by relegating back the proceedings to an earlier stage. The terms which the court may direct may take care of the time or mode of proceedings required to be taken pursuant to the order under Rule 7. .....the court cannot exercise its power to put the defendant-applicant on such terms as may have the effect of**

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prejudging the controversy involved in the suit and virtually decreeing the suit though ex parte order has been set aside or to put the parties on such terms as may be too onerous..... That condition in the order of the trial court having been set aside by the High Court, we are inclined to sustain the order of the High Court but subject to certain modification. In our opinion the High Court was justified in setting aside the condition imposed by the trial court in its order which was too onerous, also vague, uncertain and suffering from want of clarity. The order of the High Court to the extent of setting aside the ex parte proceedings and directing the expeditious trial of the suit has to be sustained as it serves the ends of justice...."

The same view was reiterated in *V.K. Industries case* (supra).

11. In the present case, while the trial court has exercised the discretion to condone the delay in filing the applications to set aside the ex-parte decrees, in our view, the trial court should not have imposed such an unreasonable and onerous condition of depositing the entire suit claim of Rs.1,50,00,000/- and Rs.10,00,000/- respectively in the suits when the issues are yet to be decided on merits. While considering the revision, the High Court should have kept in view that the parties are yet to go for trial and the appellants ought to have been afforded the opportunity to contest the suits on merits. When the S.L.Ps came up for admission on 1.08.2013, this Court passed the conditional order that subject to deposit a sum of Rs.50,00,000/- before the trial court, notice shall be issued to the respondents. In compliance with the order dated 1.08.2013, the appellants have deposited Rs.50,00,000/- before the trial court. Since

A the appellants have satisfactorily explained the reasons for the delay and with a view to provide an opportunity to the appellants to contest the suit, the impugned order is liable to be set aside.

B 12. The order dated 16.04.2013 of the High Court passed in C.R.P. (NPD) (MD) No.4/2013 and C.R.P. (NPD) (MD) No.5/2013, is set aside and these appeals are allowed. Delay in filing the applications to set aside the ex-parte decrees is condoned and the ex-parte decrees passed in C O.S. No.3 of 2011 and O.S. No.6 of 2011 are set aside and the suits are ordered to be restored to file. The appellants shall file their written statements within a period of six weeks if not already filed. Since the suits are of the year 2011 and the respondents are stated to be senior citizens, the trial D court is directed to take up the suits at an early date and dispose of the suits expeditiously. It is made clear that we have not expressed any opinion on the merits of the matter. The amount of Rs.50,00,000/- deposited by the appellants before the trial court shall be invested in a Nationalized Bank E so that the accrued interest may enure to the benefit of either party. In the facts and circumstances of the case, we make no order as to costs.

Nidhi Jain Appeals allowed.

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SUBJECT-INDEX

ADMINISTRATIVE LAW:

(1) Principle of natural justice.
(See under: Central Excise Act, 1944) 437

(2) Promissory estoppel – Scheme to provide financial assistance to newly set up industries – Respondents applied under the Scheme – Refusal of appellants to sanction financial assistance to the respondents under the Scheme – Another set of applicants with similar grievance instituted writ petitions in which High Court directed Implementing Authorities to process the applications of applicants for grant of incentives – Supreme Court upheld the said order – Respondents filed writ petitions on the same ground which was rejected by Single Judge of the High Court on the ground of delay and laches – However, the Division Bench directed the Implementing Authorities for processing their applications in view of earlier decision – Held: In the singular facts and circumstances, it would be inexpedient and uncalled for, for the public exchequer to entertain the belated claim of the respondents on the basis of the doctrine of promissory estoppel which is even otherwise inapplicable to the case in hand – Delay and Laches.

Union of India & Ors. v. Shri Hanuman Industries & Anr. 302

APPEAL:

Letters Patent Appeal.
(See under: Letters Patent Appeal) 504

ARBITRATION:

Award – Judicial review of – Scope – Held: Court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair minded or reasonable person could do – Mines and Minerals (Regulation and Development) Act, 1957.

National Highways Authority of India v. M/s ITD Cementation India Ltd. 107

ARBITRATION AND CONCILIATION ACT, 1996:

(1) s. 31(7) – Award of pendente lite interest on the amount of arbitral award – When the contract between the parties contained an express bar regarding award of interest – Propriety of – Held: s. 31(7) specifically provides that arbitrator is bound by the terms of the contract so far as award of interest is concerned – Once the parties agreed that no interest would be paid, they were bound by that understanding – Thus, neither the party was entitled to claim interest nor the arbitral tribunal could have awarded the interest.

Union of India v. M/s Bright Power Projects (I) P. Ltd. 488

(2) s.34 – Arbitration award – Challenge to – Main contract between the Company as main contractor and the appellant as successful tenderer – For execution of the same, appellant entered into sub-contracts, C1 and C2 packages with the respondent-sub-contractor – Completion of 67% of the work by respondent but thereafter ceased to work – Non-payment of certain amount to

respondent by appellant – Arbitration matters – In the First Arbitration, respondent made claims against appellant claiming the unpaid balance amount – In the Second Arbitration, appellant made claims against the main contractor regarding pending payments pertaining to C1 and C2 packages – Award passed by the arbitrator wherein appellant liable to make payment to respondent – Held: Subletting was provided for by the main contract – However, it cannot be said that main contractor contractually (in the main agreement) assumed primary liability for the subcontractor's claims in respect of agreements made with the appellant – Appellant conceded before the Arbitrator that it would countenance an Award in favour of the respondent as long as it was indemnified for the payment made to the respondent by an equal offsetting payment by way of an Award in its favour in its arbitration with main contractor – Appellant was granted such an Award – Concession could be called a conditional one, however, the admission itself, taken alone, was not conditional – Appellant was bound and bonded by the legal consequences of the initial admission made by it before the arbitrator.

Zonal General Manager, M/s Ircon International Ltd. v. M/s Vinay Heavy Equipments 938

(3) s.34 – Contract – Sub contract – Determination of person, who is liable to make payment to the person performing work under the sub-contract given to him – Appellant given sub-contract by respondent, in respect of a contract which was given to it by the ONGC – Appellant upon doing certain work done under the sub-contract,

receiving payments directly from ONGC – Non-payment by respondent to the appellant for the work done – Dispute arising between them – In terms of the arbitration agreement between the appellant and the respondent, wherein ONGC was not a party, dispute referred to arbitral tribunal – Tribunal held that respondent was liable to make payment to the appellant – Held: ONGC not liable to make payment to appellant but the payment would be made by respondent, who had given a sub-contract to appellant – There is no correspondence establishing contractual relationship between ONGC and appellant – So as to prevent a long procedure and to expedite payment to appellant, who was actually doing the job for ONGC, instead of ONGC paying to appellant through respondent, ONGC was often paying directly to appellant.

M/s. Essar Oil Ltd. v. Hindustan Shipyard Ltd. & Ors. 924

ARMY RULES, 1954:

rr.5, 9 and 14.
(See under: Pension Regulations for the Army, 1961) 192

CENTRAL EXCISE ACT, 1944:

(1) s.2(f) – Excise duty – Payment of – Assessee engaged in purchase of syringes and needles in bulk from open market and thereafter sterilizing them and putting one syringe and needle in an unassembled form in a pouch and selling them – Syringe and needle capable of use once and thereafter were disposable – Pouches bore brand name belonged to assessee – Excise duty

previously imposed on the manufacturer of syringes and needles – Levy of excise duty again on assessee as a result of sterilization – Held: Disposable syringe and needle which are used for medical purposes is a finished product in itself – Sterilization does not lead to any value addition in the said product – Thus, the order passed by the tribunal that manufacturing has taken place and excise duty is attracted, set aside.

M/s. Servo-Med *Industries Pvt. Ltd. v. Commissioner of Central Excise*, Mumbai 690

(2) s. 4(1) (a) proviso (iii) and s. 4(4) (c) (as they stood between the amendment Acts of 1973 and 2000) – Demand notice to assessee company – Alleging that the assessee a subsidiary company sold its goods to its holding company (related person) at a price lower than the normal price – Held: Where the buyer is a related person, it merely raises a rebuttable presumption – Once this presumption is rebutted and it is shown that despite the buyer being a related person, the price was the sole consideration for the sale, such price would fall within s. 4(1)(a) for arriving at a 'normal price' – Proviso (iii) to s. 4(1)(a) is referable only to tainted cases – In the facts of the case, presumption of a transaction not being at arm's length, since has been rebutted, it is s. 4(1)(a) and not its proviso (iii) which gets attracted.

Commissioner of Central Excise, Hyderabad v. M/s. Detergents India Ltd. & Anr. 886

(3) s. 11A – Finance Act, 2003 – s. 154 – Initiation

of recovery proceedings without show cause notice – Exemption of excise duty for certain tobacco products to new industrial units in North-Eastern region, withdrawn – Withdrawal challenged by assessee – Subsequently, vide s. 154, withdrawal of benefit effected from retrospective effect – In R.C. Tobacco's case this Court upheld the constitutional validity of s. 154 – Thereafter, recovery order passed by the Department against assessee for the benefit drawn by the assessee – Said order passed without issuing notice – Challenge to, on the ground of violation of principles of natural justice – Held: Every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void – Validity of the order has to be decided on the touchstone of 'prejudice' – Ultimate test is always the same, viz., the test of prejudice or the test of fair hearing – On facts, issuance of notice would be an empty formality and the case stands covered by 'useless formality theory' – Thus, non-issuance of notice before sending communication did not result in any prejudice to assessee and it may not be feasible to direct the Department to take fresh action after issuing notice as that would be a mere formality.

M/s. Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati & Ors. 437

(4) s. 11A(1), 11AB, 11AC – Central Excise Duty – Evasion of – Non-computation of assessable value of finished goods properly – Place of removal of finished goods different from the factory gate, however, deduction of the amount of freight,

insurance and unloading charges from the price excisable goods – Demand of differential excise amount – Adjudicating Authority confirming the demand on account of under valuation – Said order set aside by the tribunal – Held: On the basis of the terms and conditions of the orders placed by the government authorities with the assessee, it is clear that the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods – Clear intent of the purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered and by virtue of s. 19, the property in goods was transferred at that time only – Tribunal did not take into consideration all these aspects – Thus, the order passed by the tribunal is set aside and that by the Adjudicating Authority restored – Central Excise Rules, 1994 – r. 9(1) – Sales of Goods Act, 1930 – s. 19.

Commisssioner, Customs and Central Excise, Aurangabad v. M/s Roofit Industries Ltd. 716

CENTRAL EXCISE RULES, 1944:

r. 9(1).

(See under: Central Excise Act, 1944) 716

CENTRAL EXCISE TARIFF ACT, 1985:

Chapter 90 Note 2(a) – Chapter Heading 9013.80 and 9028.90 – Classification of Liquid Crystal Display-LCD's – Assessee importing LCD's and said devices used in electric supply meter – Clearance sought under Heading 9013.80 – Held: LCDs should not constitute 'articles' provided

more specifically in other headings – Thus, LCDs imported by the appellant were classifiable under Chapter Heading 9013.80 and not under 9028.90 – General Rules for the Interpretation of the First Schedule-Import Tariff – r. 3(c).

M/s Secure Meters Ltd. v. Commissioner of Customs, New Delhi 219

CIRCULARS/GOVERNMENT ORDER/NOTIFICATION:
Circular No. 564 dated 5.7.1990 issued by the Central Board of Direct Taxes.
(See under: Income Tax Act, 1961) 979

COAL/COLLIERIES:
(1) Coal-Block allocation case – Investigation.
(See under: FIR and Investigation) 731

(2) (See under: Mineral Concession Rules, 1960) 29

CODE OF CIVIL PROCEDURE, 1908:
(1) Or. VII r. 11.
(See under: Limitation Act, 1963) 389

(2) O. IX r 13.
(See under: Delay /Laches) 1108

CODE OF CRIMINAL PROCEDURE, 1973:
s. 173(8) – Power of Magistrate to forward the complaint for further investigation – Magistrate had held that the Inspector, Crime branch had conducted investigation in a biased manner and the final report of the Inspector was not acceptable and directed the Additional Director General of Police to confer the power to Inspector, CBCID to

investigate the case – High Court held that there were material discrepancies in the evidence brought on record and, therefore, set aside the order of Magistrate – Held: High Court fell into error in its appreciation of the order passed by the Magistrate – The order, in fact, presents that the Magistrate was actually inclined to direct further investigation but because he chose another agency, he used the word "reinvestigation" – Therefore, that part of the order is set aside and it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the concerned Superintendent of Police – After the further investigation, the report shall be submitted before the Chief Judicial Magistrate who shall deal with the same in accordance with law – Investigation.

Chandra Babu @ Moses v. State Through Inspector of Police & Ors. 1002

COMMITTEE:

Selection committee, to select members of tribunal – Structure – Challenge to.
(See under: Companies Act, 2013) 551

COMPANIES ACT, 2013:

(1)(i) ss. 408, 410, 421 and 423 – Constitution of National Company Law Tribunal-NCLT and National Company Law Appellate Tribunal-NCLAT – Held: Constitutionally valid.
(ii) ss. 409, 411 – President and Members of the NCLT and Chairman and Members of the NCLAT – Prescription of qualifications including term of their office and salary allowances etc. – Challenge

to, as regards technical members of the tribunal and the appellate tribunal – Held: As per s. 409(3)(a) to (e) and s. 411 prescribing qualifications for appointment of technical member of the tribunal and appellate tribunal respectively, the technical Members should be selected from amongst only those officers who hold rank of Secretaries or Additional Secretaries and have technical expertise – This is against the R. Gandhi, President, Madras Bar Association's case – Thus, s. 409(3)(a) and (e) and s. 411(3) is held to be invalid – For appointment of technical Members to the NCLT, directions contained in R. Gandhi, President, Madras Bar Association's case to be scrupulously followed and these corrections to be carried out in s. 409(3) to set it right.

(iii) s. 412 – Selection of members of NCLT and NCLAT – Structure of the Selection Committee u/s. 412 – Composition of five member Committee, three from administrative branch/bureaucracy and two from judiciary – Challenge to – Held: Provisions of s. 412(2) is not valid – Direction issued to remove the defect by bringing the provision in accord with R. Gandhi, President, Madras Bar Association's case wherein it should be four member Committee-two from administrative branch/bureaucracy and two from judiciary.

Madras Bar Association v. Union of India & Anr. 638

(2) s. 409 – Clerical/typographical error in judgment dated 14.5.2015 in Writ Petition (Civil) No.1072 of 2013 – Correction carried out.

Madras Bar Association v. Union of India & Anr. 689

CONSTITUTION OF INDIA, 1950:

(1) Art. 14.
(See under: Housing) 841

(2) Art. 226 – Exercise of jurisdiction under.
(See under: Income Tax Act, 1961) 807

(3) (i) Art.226 – Writ jurisdiction – Contractual obligation – Contracts entered into by State/Public Authority with private parties – Legal position in different situations relating to such contracts – Enumerated.
(ii) Art.226 – Invocation of – Held: In pure contractual matters extraordinary remedy of writ u/ Article 226 or Article 32 of the Constitution cannot be invoked – However, in a limited sphere such remedies are available only when the non-Government contracting party is able to demonstrate that its a public law remedy which such party seeks to invoke, in contradistinction to the private law remedy simplicitor under the contract – If the rights are purely of private character, no mandamus can be issued –Income Tax Act, 1961.

Joshi Technologies International Inc. v. Union of India & Ors. 1042

(4) Arts.226 and 227 – Scope of – Held: Judicial orders of civil court are not amenable to writ jurisdiction u/Art.226 – An order passed by a civil court can only be assailed u/Art.227 – Once it is exclusively assailable u/Article 227, no intra-court appeal is maintainable.
(Also see under: Letters Patent Appeal as also under Party)

Sh Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors. 504

CONTEMPT OF COURT:
(See under: FIR) 731

CRIME AGAINST WOMEN:
(1) Dowry death.
(See under: Penal Code, 1860) 275
and 949

(2) Rape.
(See under: Penal Code, 1860) 496
and 960

CUSTOMS ACT, 1962:
s.112.
(See under: Customs Valuation Rules, 1988) 252

CUSTOMS VALUATION RULES, 1988:
rr.4, 5, 6, 10A – Import of goods – Transaction value @ Rs.36 per piece declared by the importer-respondent – Rejected by the Commissioner (appeal) and invoking r.6, he found that in 10 instances given by department, prices mentioned therein varied from Rs.73.94 and Rs.134.08 per piece and taking minimum of the said price fixed the transaction value at Rs.73.94 and confiscated the goods and imposed differential duty and redemption fine of Rs.20 lacs and penalty of Rs.5 lacs – Tribunal held that identical goods were imported @ Rs.58/- per piece and, therefore, there was no reason to justify the value fixed by Commissioner (appeal) – Held: The entire basis of the Tribunal's order was misplaced as it was

founded on total misconception of law and contrary to the facts on record – The order of Tribunal is set aside and order of Commissioner is affirmed insofar as it relates to redemption of the value declared by the respondent at Rs. 36 per piece and fixing the value at Rs.73.94 per piece, as well as demand of differential duty on that basis – Redemption fine of Rs.20 lakhs and the penalty of Rs.5 lakhs which is imposed in the facts of this case is on a higher side – Redemption fine is reduced to Rs.6 lakhs which is the equivalent to the differential duty and penalty imposed is set aside altogether – Customs Act, 1962 – s.112.

Commissioner of Customs, New Delhi-IV v. M/s Aryan Electronics 252

DELAY / LACHES:

(1) Condonation of – Applications filed u/Or. 9 r 13 CPC to set aside the ex-parte decrees alongwith the applications to condone the delay of 355 days and 382 days respectively – Applications allowed imposing condition on the appellants to deposit the entire decretal amount – Held: Trial court should not have imposed unreasonable and onerous condition of depositing the entire suit claim in the suits when the issues are yet to be decided on merits – Since the reasons for the delay was satisfactorily explained, impugned order set aside – Delay in filing applications to set aside ex-parte decrees condoned and ex-parte decrees set aside – Code of Civil Procedure, 1908 – O. 9 r 13.

M/s. GMG Engineering Industries & Ors. v. M/s ISSA Green Power Solution & Ors 1108

(2) (See under: Administrative Law) 302

(3) (See under: Penal Code, 1860) 1021

DEVELOPMENT CONTROL REGULATIONS, 1991:
(See under: Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971)..... 750

DOCTRINE/PRINCIPLES:
(1) Doctrine of proportionality.
(See under: Housing) 841

(2) Principle of natural justice.
(See under: Central Excise Act, 1944) 437

ELECTION LAWS:
(See under: Representation of the People Act, 1951) 67

EMPLOYEES STATE INSURANCE ACT, 1948:
ss. 75(1)(g) and 87 – Power to grant exemption from applicability of the Act – Whether lies u/s. 87 with appropriate government or u/s. 75(1)(g) with ESI Court – Held: In terms of s.87, appropriate Government alone has power to grant or refuse exemption – ESI Court u/s.75, has power to decide disputes between employer and the Corporation – Grant or refusal of exemption cannot be said to be a dispute between employer and the Corporation – Jurisdiction.

Zuari Cement Ltd. v. Regional Director E.S.I.C. Hyderabad & Ors. 474

ESTOPPEL:
(1) Promissory estoppel.

(See under: Administrative Law) 302

(2)(See under: New Package Scheme of Incentives for Tourism Projects, 1995) 1

EVIDENCE:

Circumstantial evidence – Last seen together theory.
(See under: Evidence Act, 1872) 375

EVIDENCE ACT, 1872:

(1) ss. 68, 71.
(See under: Succession Act, 1925) 397

(2) s.106 – Burden of proof under – Admission of last seen together rule – On facts, murder of wife and two daughters – Husband last seen together with the deceased – Conviction and sentence of husband for offences u/s. 302, 201, 498A IPC by the courts below holding that the onus of proof was on the husband to explain and prove his case due to admission of last seen together which the husband had failed to explain – On appeal, held: Prosecution did not bring any clinching evidence in support of last seen together theory so as to shift the burden of proof on the husband – Thus, the prosecution evidently failed to prove the guilt of the husband beyond doubt – Order of conviction and sentence of the husband set aside – Penal Code, 1860 – ss. 302, 201, 498A.

Ashok v. State of Maharashtra 375

(3) s. 113B.
(See under: Penal Code, 1860) 949

(4) s. 133 and Illustration (b) to s. 114.
(See under: Prevention of Corruption Act, 1988) 361

FEE:

Vend fee – Disallowance of.
(See under: Income Tax Act, 1961) 782

FINANCE ACT, 2003:

s.154.
(See under: Central Excise Act, 1944) 437

FIR:

Registration of – Interlocutory application seeking recusal of the CBI Director from the investigation in coalblock allocation case and also seeking appointment of SIT to investigate the abuse of authority by him – Application by the CBI Director seeking direction to register FIR against the Advocate and the petitioner/applicant for making deliberate and intentional false statements in the present proceedings – Took the plea that they were guilty of perjury and contempt of court and that the advocate was also guilty of violating the provisions of Official Secrets Act – Held: If the whistle blower gets access to the documents, secrecy of which ought to have been maintained by the CBI and if the disclosure of such documents is in public interest and not malafide, he cannot be held liable for contempt of court or perjury – File notes regarding the case of an accused in coalblock allocation case which was placed on record, cannot be described as an official secret' – Therefore, the application of the CBI Director dismissed – Contempt of Court – Official Secrets Act, 1923 – Penal Code, 1860.

Common Cause & Ors. v. Union of India and Ors. 731

FOREST (CONSERVATION) ACT, 1980:

s.2 – Mining lease – Renewal of lease – Requirement of prior approval of Central Government at the time of renewal as prescribed in s.2 not taken by M/s.Dalmia – By virtue of **Godavarman I**, the Director of Mines and Geology directed M/s.Dalmia to stop all mining activities – The said order was complied by M/s.Dalmia – Based on the subsequent judgment of **Godavarman II**, the MOEF granted conditional in-principle (Stage-I) approval for renewal of M/s. Dalmia's mining lease over 201.50 hectares of forest land out of 331.50 hectares – Violation of conditions of in-principle stage-I approval – Held: Violation had occurred at the time of order of first renewal itself striking at the root of the validity of lease as it was void at that very stage itself for non-compliance of the prior approval u/s.2 and on blatant refusal to comply with the conditions imposed in the in-principle first stage approval granted – Therefore, mining lease which was held by M/s Dalmia became void and inoperative for violation of the mandatory requirements of the conditions.

(Also see under: Mines and Minerals)

M/s. Muneer Enterprises v. M/s Ramgad Minerals and Mining Ltd. & Ors. 551

GUJARAT ENTERTAINMENT TAX ACT, 1977:

s. 29.

(See under: New Package Scheme of Incentives for Tourism Projects, 1995-2000) 1

HOUSING:

Housing Scheme – By State Housing and Infrastructure Development Board – Cost of developed plots initially fixed at Rs.16,500/- per sq.mtr. as per Rules of the Board – Final demand by the Board from the allottees after fixing the sale price at Rs.30,000/- per sq. mtr. – Final demand at enhanced rate challenged – High Court quashed the enhanced/final demand – Held: The advertisement of the housing scheme in the newspaper specifically stated that the price was provisional – The final sale price was fixed in accordance with the provisions of Griha Nirman Mandal Adhiniyam and Housing Board Accounts Rules – Hence the Board was not debarred from raising the cost of construction or claiming enhanced prices for the land – However, the said enhancement is arbitrary, unreasonable, unfair and without applying the principle of the doctrine of proportionality and thus violative of Art.14 of the Constitution – It would be just and proper to take into consideration the cost of developed plots at Rs.16,500/- per sq. mtr. and take escalation @10% for every year from 2007 to 2011 and ask the allottees to pay simple interest thereon – Constitution of India, 1950 – Art. 14 – Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 – s.50 – Madhya Pradesh Housing Board Accounts Rules, 1991 – Madhya Pradesh Preparation and Revision of Market Value guidelines Rules, 2000 – ss.4(2) and 75.

Madhya Pradesh Housing and Infrastructure Development Board & Ors. v. B. S. S. Parihar & Ors. 841

INCOME TAX ACT, 1961:

(1)(i) s.42 – Deduction – If Production Sharing Contract (PSC) between the government and the assessee does not contain any stipulation providing for allowance u/s.42 then assessee is not entitled to benefit under the said section – By virtue of this section, it is the PSC which governs the field, as without it, such deductions are not permissible under the Act – When benefit of deduction u/s.42 was wrongly granted in initial years of commencement of commercial production in the oil fields, it would not amount to a wrong act on part of income tax authorities and would not enure to the benefit of assessee in subsequent assessment years.

(ii) s.42 – Whether Model Production Sharing Contract (MPSC) can be read as part of and incorporated in the PSCs – Held: It is not permissible for assessee to take aid of MPSC or the clauses contained therein while construing the terms of PSCs.

(iii) s.42 – Whether there was any intention between the contracting parties, namely, the MoPNG and the appellant for giving benefit of deductions u/s.42 of the Act – Held: In the instant case, PSC between the parties categorically provided that the contract shall not be amended, modified varied or supplemented in any respect except by an instrument in writing signed by all parties, which shall state the date upon which the amendment or modification shall become effective – MoPNG had requested MoF to give its nod for amending the contract by incorporating provision of s.42 which was allegedly left out inadvertently – However, no authorisation came from MoF – Therefore, question of any intention to give benefit

of deduction u/s.42 between the parties would not arise.

(iv) s.42 – Non-inclusion of provision in the contract – Held: Cannot be treated as accidental and intentional omission – A contracting party cannot claim to be oblivious of the provisions of the law or the contents of the contract at the time of signing.

(v) s.42 – Non-inclusion of provision of s.42 in the contract – Whether mandamus can be issued by the Court to the parties to amend the contract and incorporate provisions to this effect – On the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction u/Article 226 of the Constitution – First, the matter is in the realm of pure contract – It is not a case where any statutory contract is awarded – The contract in question was signed after the approval of Cabinet was obtained – In the said contract, there was no clause pertaining to s.42 of the Act – The appellant is presumed to have knowledge of the legal provision, namely, in the absence of such a clause, special allowances u/s.42 would be impermissible – Still it signed the contract without such a clause, with open eyes – No doubt, the appellant claimed these deductions in its income tax returns which were allowed by the Income Tax Authorities – Further, no doubt, on this premise, it shared the profits with the Government as well – However, this conduct of the appellant or even the respondents, was outside the scope of the contract and that by itself may not give any right to the appellant to claim a relief in the nature of Mandamus to direct the Government to incorporate such a clause in the contract, in the face of the specific provisions in the contract to the contrary

as noted above, particularly, Article 32 thereof – It was purely a contractual matter with no element of public law involved thereunder.
(Also see under: Constitution of India, 1950)

Joshi Technologies International Inc. v. Union of India & Ors. 1042

(2) s.43B(a) – Deduction under – Disallowance of – For assessment year 1990-1991 –Held: Assessment year in question would attract amendment to s.43B by Finance Act, 1988 w.e.f. 1.4.1989 – In view of the amendment even if the vend fee paid by the assessee does not directly fall within the expression 'fee' contained in s.43B(a), it would be a 'fee' by 'whatever name called' – Hence, disallowance of vend fee s.43B correct since it was not paid before expiry of the relevant previous year.

Commissioner of Income Tax, Kerala v. M/s. Travancore Sugars and Chemicals Ltd. 782

(3) s.80HHC (1) and (3) (b) – Deduction in respect of profits from export business – Computation of – Assessee having turnover and income from business in India as well as from export business – Denial of deduction on the ground that assessee having not earned profit from the export, deduction would be nil – Held: In order to provide deduction, the pre-requisite is to ascertain that there are profits from the export business – If there are losses in the export business, but profits in domestic business is more than the export losses, benefit of s.80HHC would not be available –

Appellant-assessee since incurred losses in export business, not entitled to benefit u/s. 80HHC – The domestic income of the assessee from dividend, interest, profit or sale of shares and fees cannot be covered by expression 'total turnover' for the purpose of computation of the deduction as provided u/s 80HHC 3(b) and the Circular No. 564 dated 5.7.1990 issued by the Central Board of Direct Taxes.
Jeyar Consultant & Investment Pvt. Ltd. v. Commissioner of Income Tax, Madras 979

(4) s.132 – Warrant of authorization for search of the premises of assessee – Interference with by High Court – In exercise of jurisdiction u/Art. 226 – Propriety of – Held: Assessee is not entitled to communication of the reasons for the belief at the stage of issuing of the authorization – High Court committed serious error in reproducing in great details the content of satisfaction notes containing the reasons – Such exercise of High Court was highly premature conferring undue advantage to assessee and thereby frustrating the endeavour of the Revenue – View expressed by High Court with regard to satisfaction notes are also flawed – There was also no basis for the High Court to hold that there was possibility of manipulation of records – Findings of High Court with regard to sufficiency and adequacy of reasons and the authenticity and acceptability of the information on which satisfaction had been reached, was in the nature of appellate exercise, hence not permissible – Constitution of India, 1950 – Art. 226.
Director General of Income Tax (Investigation) Pune & Ors. *v. M/s. Spacewood Furnishers Pvt. Ltd.* & Ors. 807

INDUSTRIAL DISPUTES ACT, 1947:

s.25-FF – Reference of dispute – Appellant company took over the factory of third respondent company along with its workmen in accordance with provision of s.25-FF – After sometime appellant company framed a voluntary retirement scheme which all workmen of erstwhile company availed – After few months of accepting VRS, respondent-Union raised demand seeking their reinstatement in factory of third respondent – Labour Commissioner declined to make an order of reference to Industrial Tribunal stating that there was no industrial dispute in existence between the parties – Writ petition – High Court held that the acceptance of benefits of concerned workmen from appellant may not establish the fact that no force or compulsion was exercised by appellant and this was most contentious and disputed question of fact which could not have been decided by State Government in exercise of its administrative power and directed Labour Commissioner to make an order of reference to Industrial Dispute – Held: The allegations made against the appellant-Company regarding the alleged coercion, undue influence and force used on the workmen for obtaining their signatures on blank papers needs to be examined very carefully by the Industrial Tribunal after recording evidence from both the parties – Therefore, the question regarding the alleged termination of the concerned workmen is required to be referred to the Industrial Tribunal – The quashing of the order of refusal to make an order of reference by the High Court is

perfectly legal and valid which need not be interfered with.

M/s Ariane Orgachem Pvt. Ltd. v. Wyeth Employees Union & Ors. 144

INTEREST:

Pendente lite interest on the amount of arbitral award.
(See under: Arbitration and Conciliation Act, 1996) 488

INTERPRETATION OF STATUTES:

Where the statute prescribes the procedure, it should be done in the manner prescribed and in no other way.

Zuari Cement Ltd. v. Regional Director E.S.I.C. Hyderabad & Ors. 474

INVESTIGATION:

(1) Fair investigation – Coal-Block allocation case – Interlocutory application, seeking direction to the Director CBI not to interfere with investigations in coal-block allocation case and direction to appoint SIT to investigate the abuse of authority committed by the CBI Director in order to scuttle inquiries, investigations and prosecutions carried out by CBI, in coal block allocation cases and other important cases – Held: On account of superannuation of the Director, the plea of his refusal from the investigation has become infructuous – Investigations must not only be fair, but must appear to have been conducted in a fair manner – Responsibility of investigating agency to ensure that innocent person is not subjected to criminal

trial, is coupled with equally high degree of ethical rectitude to ensure that investigations are fair and without bias – The fact of the CBI Director meeting some of the accused persons without the Investigating Officer or the investigating team creates a doubt regarding fairness of the investigations – Therefore, some further inquiry is necessary to ensure the fairness of investigations in coalblock allocation cases as to whether any one or more such meetings had any impact on the investigations and subsequent charge-sheets or closure reports – Assistance of Central Vigilance Commission sought for determining the methodology for conducting such inquiry – Investigation.

Common Cause & Ors. v. Union of India and Ors. 731

(2) (See under: Code of Criminal Procedure, 1973) 1002

JUDICIAL REVIEW:

Judicial review of arbitration award. (See under: Arbitration) 107

JURISDICTION:

(1) Conferment of – Held: The parties, by consent, cannot agree to vest jurisdiction in the court to try the dispute, when the court does not have the jurisdiction.
(Also see under: Employees State Insurance Act, 1948 as also under Practice and Procedure)

Zuari Cement Ltd. v. Regional Director E.S.I.C. Hyderabad & Ors. 474

(2) Revisional jurisdiction – Scope of.

Chandra Babu @ Moses v. State Through Inspector of Police & Ors. 1002

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007:
r.12(3).
(See under: Penal Code, 1860) 960

LABOUR LAWS:
(See under: Industrial Disputes Act, 1947) 144

LAND ACQUISITION ACT, 1894:
ss. 4 and 6 – Land Acquisition proceedings by State Housing Board – Held: Once the land stood vested in the State u/s.16, parties/vendees and his vendees-respondents, could not have created and engineered rights or interests in the property against the State, except the right of seeking and receiving enhanced compensation.

The Chairman & Managing Director, TNHB & Anr. v. S. Saraswathy & Ors. 331

LETTERS PATENT APPEAL:
Maintainability of – Held: Whether a letters patent appeal would lie against the order passed by the Single Judge that has travelled to him from the other tribunals or authorities, would depend upon many a facet – The order passed by the civil court is only amenable to be scrutinized by the High Court in exercise of jurisdiction u/Article 227 which is different from Article 226 and no writ can be issued against the order passed by the civil court and, therefore, no letters patent appeal would be

maintainable – Tribunal being or not being party is not determinative of maintainability of a letters patent appeal – Constitution of India, 1950 – Arts.226 and 227.

Sh Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors. 504

LIMITATION:
(See under: Penal Code, 1860) 1021

LIMITATION ACT, 1963:
Art. 54 – Suit for specific performance of contract –Application u/Or. VII r. 11 CPC, seeking rejection of the plaint as barred by limitation – Held: Suit seeking specific performance was filed much beyond the period of three years – Code of Civil Procedure, 1908 – Or. VII r. 11.

Fatehji & Company & Anr. v. L.M. Nagpal & Ors. 389

MADHYA PRADESH GRIHA NIRMAN MANDAL ADHINIYAM, 1972:
s.50.
(See under: Housing) 841

MADHYA PRADESH HOUSING BOARD ACCOUNTS RULES, 1991:
(See under: Housing) 841

MADHYA PRADESH PREPARATION AND REVISION OF MARKET VALUE GUIDELINES RULES, 2000:
ss.4(2) and 75.
(See under: Housing) 841

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966:
ss.2(15), 2(19).
(See under: Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971) 750

MAHARASHTRA SLUM AREAS (IMPROVEMENT, CLEARANCE AND REDEVELOPMENT) ACT, 1971:
(i) s.3A, 3B, 3C, 4 – Object of.
(ii) Clubbing of slum areas over municipal plots and those over private plots – Appellants, residents in the slum on private plots owned by developer/owner of the land – Grievance of appellants that authorities have wrongly treated that there existed a consent for redevelopment from 70% of the occupants and in declaring common slum area over two different kind of lands – Appellant claimed that they should be allowed to have the redevelopment through a cooperative of occupants of private plots exclusively – Held: There is no illegality in clubbing of private land and Municipal Corporation land for declaring a contiguous area as slum area for the purposes of approving a slum rehabilitation scheme for such area – Authorities having verified the particulars contained in Annexure II, were entitled to treat the entire slum area existing over private lands as well as Municipal Corporation lands as one slum area and since consent of 70% or more of slum dwellers of such area was available, the authorities did not commit any illegality so as to vitiate the grant of approval for slum development scheme in question – Development Control Regulations, 1991 – Maharashtra Regional and Town Planning

Act, 1966 – ss.2(15), 2(19) – Mumbai Municipal Corporation Act, 1888 – s.354AAA.

Balasaheb Arjun Torbole & Ors. v. The Administrator & Divisional Commissioner & Ors 750

MINERAL CONCESSION RULES, 1960:
(1) r.9(1).
(See under: Mines and Minerals) 551

(2) r.27 – Whether the act of surrender in order to become complete should have been accepted by the State – Held: Acceptance by the State though not a statutory requirement, the provisions contained in the mining lease, in particular, Part VIII paragraphs 4 and 5 impliedly require such acceptance – Pursuant to the act of surrender, delivery of possession is not mandatory required u/r.27(2)(1) of the Rules.

M/s. Muneer Enterprises v. M/s Ramgad Minerals and Mining Ltd. & Ors. 551

(3) rr.64B, 64C – Coal – Royalty – Whether royalty is payable on processed coal that is coal consumed or removed from the boundaries of the leased area in a beneficiated form or on the raw or unprocessed or Run-of-Mine (ROM) coal at the pit head – Held: In view of insertion of r.64B and 64C, the levy of royalty on coal has now been postponed from the pit head to the stage of removal of the coal (whether unprocessed or ROM coal or whether beneficiated coal) – In view of decision in Central Coalfields Ltd., TISCO and Tata Steel is entitled to refund of royalty from

10.8.1998 to 25.9.2000 – For the period from 25.9.2000 onwards, TISCO is obliged to pay royalty as per r.64B and r.64C of the Rules – Mines and Minerals (Development and Regulation) Act, 1957 – s.9 – Coal – Royalty.

Tata Steel Ltd. v. Union of India & Ors. 29

MINES AND MINERALS:

Mining lease – Transfer of – If original lessee surrenders leased area to forest department of the State Government then subsequently permission to original lessee to transfer its mining lease to the first respondent was wrongly allowed by the State Government – There was no scope for the lessee to resile from the said surrender and contend that it still had a right to transact the said licence for any other purpose including for effecting any transfer in favour of anyone – Mines and mineral being national wealth, dealing with the same as the largesse of the State by way of grant of lease or in the form of any other right in favour of any party can only be resorted to strictly in accordance with the provisions governing disposal of such largesse and could not have been resorted to as has been done by the State Government and the Director of Mines and Geology of the State of Karnataka – Such a conduct of the State and its authorities highly condemnable – Forest (Conservation) Act, 1980 – s.2 – Mineral Concession Rules – r.9(1) – Forest Act, 1980.

(Also see under: Forest Act, 1980)

M/s. Muneer Enterprises v. M/s Ramgad Minerals and Mining Ltd. & Ors. 551

MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957:
(1) s.9.
(See under: Mineral Concession Rules, 1960) 29

(2) Seigniorage Fee – Entitlement of contractor to the additional amount payable as a result of upward revision in royalty in respect of minor minerals pursuant to subsequent legislation – Held: Since increase in the rates due to additional cost incurred is not taken into account in the indexing of any inputs to the price adjustment formula in general materials, the contractor is entitled to be paid the additional cost incurred by it – Royalty.
(Also see under: Arbitration)

National Highways Authority of India v. M/s ITD Cementation India Ltd. 107

MUMBAI MUNICIPAL CORPORATION ACT, 1888:
s.354AAA.
(See under: Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971) 750

NARCOTIC DRUGS AND PSYCOTROPIC SUBSTANCES ACT, 1985:
(1) ss. 15, 50 – Search and seizure – Recovery of bags containing poppy husk from a vehicle – All persons sitting in the truck ran away except one – Order of conviction and sentence of the accused for the offence punishable u/s. 15, on the basis of the evidence on record – Held: Evidence of prosecution witnesses and official witnesses was trustworthy and credible – There was no need of

holding test identification parade since the two prosecution witnesses identified the accused in court – The materials on record show that appellants-accused were in conscious possession of the said articles – Bag containing poppy husk were seized from the truck and was not a case of personal search of a person, thus, there was no need for non-compliance of s. 50 – Further, no adverse inference could be drawn for non-examination of the independent witnesses since they had been won over.

Kulwinder Singh & Anr. v. State of Punjab 175

(2) s.20 – Search and seizure of 11 kgs of intoxicated drug-ganja from the wife and husband – Wife apprehended, however, her husband managed to escape – Courts below finding the prosecution evidence inconsistent and untrustworthy and that the prosecution failed to prove its charges beyond reasonable doubts, acquitted them of the charges – Held: Prosecution sufficiently proved its case to establish the guilt of the accused – Thus, the wife and her husband convicted u/s. 20 and sentenced to simple imprisonment for five years.

State of Haryana v. Asha Devi and Anr. 348

NATURAL JUSTICE:

Concept and doctrine of natural justice – Explained and discussed.

(Also see under: Central Excise Act, 1944)

M/s. Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati & Ors. 437

NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) s.138 – Dishonour of cheque – Liability – Appellant booked a flat proposed to be developed by company and gave cheque to the Director-respondent of the company – Project did not materialize – Respondent drew a cheque of same amount in favour of appellant of an account maintained by him with his banker towards refund of the booking amount – Dishonour of said cheque – Appellant filed complaint u/s.138 against respondent – Acquittal of respondent on the ground that the company was not made party and as respondent was made accused in his personal capacity, he was not liable to make payment for the company – Held: As per s.138, the person who draws a cheque on an account maintained by him for paying the payee alone attracts liability – Since respondent was the drawer of the cheque, he was liable in his personal capacity when the company was not made a party to the complaint.

Mainuddin Abdul Sattar Shaikh v. Vijay D. Salvi 1033

(2) ss.138, 141 – Whether notice u/s.138 is mandatorily required to be sent to the directors of a company before a complaint could be filed against such directors along with the company – Held: There is no requirement in the Act that in such eventuality the directors are to be individually issued separate notices u/s.138 since the persons who are in charge of affairs of company and running the affairs, must naturally be aware of the notice of demand u/s.138 issued to such company

– Therefore, no notice is additionally contemplated to be given to such directors – Notice.

Kirshna Texport & Capital Markets Ltd. v. ILAA. Agrawal & Ors 284

NEW PACKAGE SCHEME OF INCENTIVES FOR TOURISM PROJECTS, 1995-2000:
Clause 10 – Scheme by the State Government, inviting investments in tourism units, promising incentives, reliefs and concessions – Appellants started construction of multiplex in accordance with the Scheme and the Notification and applied for Temporary Registration Certification – However, progress of appellant's project hampered as a result of major earth quake in State and large scale communal riots – Appellant sought extension of time – State Level Committee granted extension – Appellant again sought extension of time which was rejected – Thereafter, High Court held that the operative period of the Scheme came to an end on 30.11.2000 by which time appellants had not commenced commercial operation, thus, appellants not entitled to any benefits or incentives under the Scheme – It found that the time for completing the project and commencing the commercial operation would stand extended as a result of G.R. dt.28.06.2000 only upto 31.07.2002 and upto 30.11.2002 and appellant did not commence the commercial operations even within such extended time period – Held: Appellants entitled to have full benefit and advantage of Clause 10 and the curtailment of the period and opportunity available under said Clause 10 by subsequent G.R. dt. 28.06.2000 was bad and ineffective – State Government was estopped from

going back on the promise so made in the Scheme – Order of High Court that the operative period of the Scheme came to an end on 30.11.2000 and that there could be no further extension of time limit, set aside – State Level Committee to assess whether appellants could justifiably have claimed extension under clause 10 of the Scheme – Gujarat Entertainment Tax Act, 1977 – s. 29.

Devi Multiplex & Anr. v. State of Gujarat & Ors. 1

NOTICE:

(1) Notice u/s.138 of Negotiable Instruments Act, 1881.
(See under: Negotiable Instruments Act, 1881) 284

(2) (See under: Central Excise Act, 1944) 437

OFFICIAL SECRETS ACT, 1923:
(See under: FIR) 731

PARTY:

Necessary party – Court or tribunal whose order is sought to be quashed, if not arrayed as party in writ petition – Held: Writ petition can be held not maintainable if a tribunal or authority that is required to defend the impugned order has not been arrayed as a party, as it is a necessary party – Constitution of India, 1950 – Arts.226 and 227
(Also see under: Letters Patent Appeal)

Sh Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors. 504

PENAL CODE, 1860:

(1) s.120B.
(See under: Prevention of Corruption Act, 1988) 361

(2) ss. 302, 201, 498A.
(See under: Evidence Act, 1872) 375

(3) ss.304B, 498A and 306 – Dowry death – Prosecution against husband, his mother and his siblings – Prosecution abated against mother due to her death – Conviction by courts below – Husband-accused undergone the sentence awarded – Appeal by the accused-siblings of husband – Held: Offence u/s 304B can be said to have been committed not only when 'demand of dowry' is made, but also when 'cruelty or harassment' for or in connection with such demand, is made – There is no material to show that the appellants-accused harassed the victim resulting in her death – Moreover, the possibility of exaggeration in prosecution version in implicating all the family members cannot be ruled out – Therefore, appellants-accused acquitted u/s 304B giving them benefit of doubt – Conviction under other offences is upheld.

Monju Roy & Ors. v. State of West Bengal..... 275

(4) s.304B – Death of married women – In her matrimonial house – Within 7 years of marriage – Prosecution of 10 accused – Case of one accused abated due to her death during trial – Conviction of 9 accused by trial court – Acquittal of all the accused by High Court – Held: Though the prosecution case suffers from many infirmities, yet incriminating circumstances of the case

indicate that the deceased was physically assaulted soon before her death – Demand of dowry and harassment on its account was also sufficiently proved – Thus main ingredients of s.304B proved to trigger the presumption u/s.113B of Evidence Act – The burden of proof shifts on the accused, which they failed to discharge – However, it was not conclusively proved that all the accused were present in the house at the time of incident – Therefore, 7 of the accused who are not the residents of the house are acquitted – The 2 accused i.e. the husband and father-in-law of the deceased are convicted – Evidence Act, 1872 s. 113B – Dowry death.

Basisth Narayan Yadav v. Kailash Rai and Ors 949

(5) s.307 – Cross cases u/s.307 by appellants and respondents in the year 1992 – Respondent no. 2 convicted u/s. 307/34 – In complaint against appellant u/s. 307, no action taken till 2005 – In 2005, respondent no.2 filed an application for summoning progress report – No order passed in that application – In 2008, respondent no. 2 filed another application – Held: Mere delay in completion of proceedings may not be by itself a ground to quash proceedings where offences are serious, but the Court having regard to the conduct of the parties, nature of offence and the extent of delay in the facts and circumstances of a given case can quash the proceedings – In the present case, the complainant stood convicted in a cross case – At least for 10 years after commencement of the trial, he did not even bother to seek simultaneous trial of the cross case – The step

taken for the first time in the year 2005 should have been taken in the year 1995 itself when the trial against respondent No.2 commenced – Having regard to the nature of allegations and entirety of circumstances, it will be unfair and unjust to permit respondent No.2 to proceed with a complaint filed 16 years after the incident against the appellants – Limitation – Delay/laches.

Sirajul & Ors. v. The State of U.P. & Anr. 1021

(6) ss. 363, 366 and 376 – Offence of kidnapping and rape – Age of prosecutrix, determination of – Conviction of respondent u/ss. 363, 366 and 376 for commission of rape and sentenced accordingly – However, acquittal by High Court holding that decision of the trial court not sustainable since the prosecution failed to prove that the girl was less than 16 years of age at the time of the incident – Held: Discrepancy of two days in the two documents-Birth Certificate and Middle School Examination Certificate adduced by the prosecution is immaterial – These documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place and can be used for ascertaining the age of the prosecutrix as per r. 12(3)(b) – High Court should have relied firstly on the documents as stipulated u/r. 12(3)(b) and only in the absence, the medical opinion should have been sought – Trial court rightly held that the ossification test is not the sole criteria for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her medical examination had been enclosed – Thus, in view the medical examination reports, statements of the prosecution

witnesses which inspire confidence and the certificates proving the age of the prosecutrix to be below 16 years of age on the date of the incident, order of acquittal passed by the High Court is set aside and the judgment and order by the trial court is upheld – Juvenile Justice (Care and Protection of Children) Rules, 2007 – r. 12(3).

State of Madhya Pradesh v. Anoop Singh 960

(7) s.376 – Rape of minor girl of unsound mind – Two eye-witnesses to the incident – Acquittal by the courts below – Held: The prosecution case suffers from inherent inconsistencies and flaws – The three witnesses have three versions and the testimonies of the two eye-witnesses are irreconcilable – Medical evidence also does not support prosecution case – The evidence of the doctor as well is inconsistent – Order of acquittal upheld.

State of Madhya Pradesh v. Keshar Singh..... 496

(8) ss.376/511 – Attempt to rape 12 years old girl – Trial court acquitted accused-respondent of offence u/ss.376/511 and found him guilty for offence u/s.354 and granted benefit of Probation of Offenders Act in view of his clear record and no prior conviction – High Court refused to interfere with the order of trial court – On State's appeal, Held: There was no eye-witness on record apart from the prosecutrix herself for proving offence of attempt of rape – PW3 only saw the accused fleeing away and the alleged eye-witness, was never produced before the Court nor her statement was recorded u/s.161 Cr.P.C. – Also, no medical

examination of the prosecutrix was conducted – The offence of attempt to rape was, therefore, not proved beyond reasonable doubt – However, he was rightly convicted u/s.354 – The offence of outraging the modesty is heinous in nature and there is no reason for granting benefit of probation in this case.

State of Rajasthan v. Sri Chand 321

(9) s. 396 – Conviction under – By courts below – Held: Conviction solely based on identification of the accused person by eye-witnesses and their identification in Test-Identification Parade – Identification of the accused by the eye-witnesses was doubtful in view of the fact that the incident occurred in the pitch of darkness and hence has to be viewed with caution by looking for corroboration – No recovery of stolen property or weapons of crime was made to connect the accused persons with the crime – In absence of corroborating evidence, conviction solely based on the identification of the accused, cannot be sustained – Appellants-accused acquitted, giving them benefit of doubt.

Iqbal and Anr. v. State of Uttar Pradesh 239

(10) (See under: FIR) 731

PENSION REGULATIONS FOR THE ARMY, 1961: Regulation 173; Army Rules, 1954: rr.5, 9 and 14 – Disability pension – Entitlement for – Held: There is a statutory presumption, that the disease/ disability for which a member of Army service is boarded out, had been contracted by him during

his tenure, unless the same is displaced by cogent and persuasive reasons recorded by Medical Board – Burden to disprove the correlation of disability with the Army service has been cast on the authorities – In the instant case, the Medical Board computed the composite disability of respondent to be 20% – There was no reason assigned in the proceedings of the Medical Board, as to why his disabilities eventually adjudged to be constitutional or genetic in nature had escaped the notice of the authorities concerned at the time of his acceptance for Army service – Comprehensive consideration of the Regulation, Rules and the General Principles as applicable, the service profile of the respondent and the proceedings of the Medical Board showed that the respondent had been wrongly denied the benefit of disability pension.

Union of India & Ors. v. Manjeet Singh 192

PRACTICE AND PROCEDURE:

Objection as to want of jurisdiction – Held: Such objection can be raised at any stage.

Zuari Cement Ltd. v. Regional Director E.S.I.C. Hyderabad & Ors. 474

PRECEDENT:

Precedential value of a judgment – Any declaration or conclusion arrived at without application of mind or without any reason cannot be deemed to be declaration of law of a general nature and cannot be deemed as a precedent.

Madhya Pradesh Housing and

Infrastructure Development Board & Ors. v. B. S. S. Parihar & Ors. 841

PREVENTION OF CORRUPTION ACT, 1988:

(1) ss. 7 and 13(1)(d) r/w s. 13(2) – Case of illegal gratification – Trap laid and the accused caught demanding and accepting bribe – Conviction and sentence u/s. 7 and 13(1)(d) r/w s. 13(2) by trial court, however set aside by the High Court – Held: Essential ingredient of demand and acceptance of bribe proved by the prosecution – Recovery of tainted money proved – Same was witnessed by key eye witnesses and their testimonies corroborated by other material witnesses – Offence u/s. 7 confirmed by the unchallenged recovery of the tainted amount – Defense raised various presumptions to disprove the prosecution case – However, no evidence adduced by accused, to rebut the presumption u/s. 20 – Further, the probability of the accused not being present cannot be considered – Suggestion that document writers set up the trap to implicate the accused cannot be accepted – Thus, the order of acquittal by the High Court set aside and the order of conviction and sentence by the trial court restored.

State of Andhra Pradesh v. P. Venkateshwarlu 262

(2) s. 13(1)(d) rw 13(2) – Penal Code, 1860 – s. 120B – Illegal gratification – Multiple demanders in common bribe demand –Graft demand made by A1 and A2 – Trap laid – Complainant handed over the money to A2 – Transaction witnessed by independent witness – A2 caught by trap team – A2 returned currency notes first going into A1's office and then from his own desk –Conviction and

sentence of A 1 and A2 u/s. 120B IPC rw ss. 7 and 13(2) rw s. 13(1)(a) and (b) – High Court set aside the conviction of A1 u/s. 13(1)(d) rw 13(2) while upheld conviction of A2 thereunder; and upheld the conviction of A1 and A2 u/s 120B IPC and s.7 but reduced the sentence to imprisonment of one year each – Held: In cases where there are multiple demanders in a common or conjoint bribe demand, and for whatsoever reason, only one receives the sum on their behalf, and is entrapped in consequence, depending on the strength of the remainder of evidence, constructive receipt by co-accused persons is open to establishment by the prosecution, in order that those who intermediately obtain bribes be latched with equal culpability as their co-accused and entrapped receivers – If the receipt and handling of bribe money by A2 so convincingly and inexorably points towards his custodianship of part of the same bribe amount on behalf of his superior officer, A1, then A1 cannot rely on mere non-handling/ non-receipt of the bribe money, as his path to exculpation – It is clear that A1 was present in the office that forenoon – A1's absence from the office at the time of the trap strengthens the claim that his junior officer, A2, received part of the bribe amount as a custodian on his behalf – Further, the circumstances and testimonies of complainant and A2 substantiates the conviction of A1 – Thus, conviction of A1 sustainable – Evidence Act, 1872 – s. 133 and Illustration (b) to s. 114.

D. Velayutham v. State Rep. by Inspector of Police, Salem Town, Chennai 361

PROBATION OF OFFENDERS ACT, 1958:
Benefit of the Act – To the offender guilty of outraging modesty of a girl.
(See under: Penal Code, 1860) 321

RENT CONTROL & EVICTION:
(See under: West Bengal Premises Tenancy Act, 1997) 791

REPRESENTATION OF THE PEOPLE ACT, 1951:
s. 9A – Disqualification for Government contracts, etc. – Petitioner elected to State Legislative Assembly from an Assembly Constituency – Thereafter, declaration by Governor that petitioner incurred disqualification stipulated u/s. 9A since the petitioner entered into culprit contracts with the State after his election to the Legislative Assembly – Held: Purpose of s. 9A is to maintain the purity of the legislature and to avoid conflict of personal interest and duty of the legislators – It would be strange logic that persons with a subsisting contract with the government are perceived to be undesirable to become members of the legislature as there is a likelihood of conflict between their duty as legislators, if elected and their personal interest as contractors, but legislators can enter into contracts with the government with impunity – Submission that the disqualification prescribed u/s. 9A operates only at the threshold thereby rendering a person ineligible for contesting any election thus, the petitioner did not incur any disqualification; and that disqualification operate only during the subsistence of the culprit contracts but not after they ceased to subsist, cannot be accepted.

Election Commission of India v. Bajrang Bahadur Singh & Ors. 67

ROYALTY:

(1) (See under: Mineral Concession Rules, 1960) 29

(2) (See under: Mines and Minerals (Regulation and Development) Act, 1957) 107

SALES OF GOODS ACT, 1930:

s. 19.
(See under: Central Excise Act, 1944) 716

SERVICE LAW:

(1) Pension – In case of army serviceman.
(See under: Pension Regulations for the Army, 1961) 192

(2) Promotion – Of Constables and Head Constables – To the post of Sub-Inspectors – Process of promotion challenged by unsuccessful candidates – Held: Appellants having participated in the process of interview, cannot be permitted to challenge the process after declaration of the result – In absence of any oblique motive or miscarriage of justice, interference with executive action not called for – Uttar Pradesh Police Regulations, 1976 – Regulation 445(B)(4).
HC Pradeep Kumar Rai and Ors. v. Dinesh Kumar Pandey and Ors. Etc. 825

(3) Regularisation – Claim for, with retrospective effect – Appellant initially appointed on the post of Assistant Manager on contractual basis and not on

any sanctioned posts and continuously working on the said posts – Advertisements by respondent-authorities for appointment to the said posts – Challenge to – High Court directing respondent to consider the claim of appellants for regularization on the existing vacancies – During pendency of writ petition, policy decision formulated wherein 60% of the vacancies were sought to be filled up from amongst 27 contractual employees which was later approved by the State Government – Pursuant thereto, appellants appointed to the said posts – Appellant seeking regularization of their services from the date of issuance of advertisement – Held: Appellants were appointed on the post only pursuant to the policy decision of the respondents for regularisation of contractual employees, thus, the appellants cannot seek regularization with retrospective effect from the date of issuance of advertisement because at that time regularisation policy was not in vogue – By policy of regularisation, it was intended to give the benefit only from the date of appointment – Court cannot read anything into the policy decision which is plain and unambiguous – Appellants have completed more than ten years of continuous service with respondent – They continued in service not by the orders of the court/tribunal, but by the policy decision – Thus, the judgment of the High Court quashing the appointment of the appellants is set aside – However, appellants' plea for regularization with retrospective effect is rejected.

Surendra Kumar & Ors. v. Greater Noida Industrial Development Authority & Ors. 970

SUCCESSION ACT, 1925:

s.63(c) – Evidence Act, 1872 – ss. 68, 71 – Will – Execution of – Correctness and validity – Execution of Will by testator as sole and absolute owner amongst others, of the relevant property – Said property bequeathed in favour of appellant out of love and affection – Trial court granted letter of administration to the appellant holding that the Will had been validly executed by testator with a sound state of mind in presence of two attesting witnesses – High Court set aside the order – Held: Evidence of attesting witnesses as a whole is clearly deficient vis-à-vis with the requirements of s. 63(c) – Evidence of the said attesting witnesses and the Sub-Registrar does not exhibit either denial of the execution of the Will or their failure to recollect the execution, as a result, s. 71 not attracted – Thus, evidence of the witnesses analysed collectively or in isolation, does not evince animo attestandi, an essential imperative of valid attestation of a Will – Further, the materials on record do not present a backdrop, wherein the testator would have preferred appellant to be the legatee of his property – Bequest is exfacie unnatural, unfair and improbable – Suspicious circumstances attendant on the disposition do militatively impact upon the inalienable imperatives of solemnity and authenticity of any bequest to be effected by a testamentary instrument.

Jagdish Chand Sharma v. Narain Singh Saini (Dead) Through His Lrs. & Ors. 397

TAX/TAXATION:

(See under: Gujarat Entertainment Tax Act, 1977) 1

TEST IDENTIFICATION:

Evidentiary value – Held: Evidence of identification of the miscreants in the Test Identification Parade is not a substantive evidence – Prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime.

Iqbal and Anr. v. State of Uttar Pradesh 239

TRIBUNAL:

Constitution of National Company Law Tribunal and National Company Law Appellate Tribunal – Validity of.

(See under: Companies Act, 2013) 551

URBAN DEVELOPMENT:

(See under: Housing) 841

UTTAR PRADESH POLICE REGULATIONS, 1976:

Regulation 445(B)(4).

(See under: Service Law) 825

WEST BENGAL PREMISES TENANCY ACT, 1997:

s. 7(1) (2) and (3) – Protection against eviction of tenant – Suit for eviction by landlord – Tenant's applications u/s. 7(1) and 7(2) – Trial court while allowing the application u/s. 7(1) directed the tenant to deposit the arrears of rent – Tenant instead of depositing the rent to civil court (as required u/s. 7(1) after Amendment Act of 2005) deposited the same to Rent Controller – Application of tenant for permission to deposit the arrears of rent before civil court, when reached before Supreme Court, was rejected with liberty to approach appropriate court to decide whether non-

compliance of s. 7(1) in depositing the rent was bonafide – Thereafter application u/s. 7(2) of tenant allowed by trial court and confirmed by High Court – Held: Protection against eviction is available to the tenant only after strict compliance of statutory provisions – In the present case, the tenant failed to comply with s. 7(1) – However, in view of the decision to Supreme Court giving liberty to tenant to satisfy his bonafide, order allowing application u/s. 7(2) is correct.

Monoj Lal Seal and others v. Octavious Tea and Industries Ltd. 791

WILL:

Execution of.
(See under: Succession Act, 1925) 397

WORDS AND PHRASES:

(i) 'Related person' – Meaning of, in the context of Proviso (iii) to s. 4(1)(a) of Central Excise and Salt Act, 1944.
(ii) 'Holding Company' and 'Subsidiary Company' – Meaning of.

Commissioner of Central Excise, Hyderabad v. M/s. Detergents India Ltd. & Anr. 886

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