

To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate. [Para 8] [1184-C-E]

Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) 2 SCC 107; *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123; *Vedabai v. Shantaram Baburao Patil* (2001) 9 SCC 106, relied on.

1.2. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay. [Para 8] [1184-F-H; 1185-A]

G. Ramegowda v. Spl. Land Acquisition Officer (1988) 2 SCC 142; *State of Haryana v. Chandra Mani* (1996) 3 SCC

A 132; *State of U.P. v. Harish Chandra* (1996) 9 SCC 309; *State of Bihar v. Ratan Lal Sahu* (1996) 10 SCC 635; *State of Nagaland v. Lipok Ao* (2005) 3 SCC 752; *State (NCT of Delhi) v. Ahmed Jaan* (2008) 14 SCC 582, relied on.

B 2.1. A reading of the impugned order makes it clear
 that the High Court did make a bald reference to the
 application for condonation of delay filed by the
 respondents but allowed the same without advertng to
 the averments contained therein and the reply filed on
 C behalf of the appellant. The High Court erroneously
 assumed that the delay was of 1067 days, though, as a
 matter of fact, the appeal was filed after more than four
 years. Another erroneous assumption made by the High
 Court was that the appellant had not filed reply to
 D controvert the averments contained in the application for
 condonation of delay. It may have been possible for this
 Court to ignore the first error in the impugned order
 because by deleting the figures and words “4 years and
 28” in paragraphs 2 and 3 of the application and
 E substituting the same with the figure 1067, the
 respondents misled the High Court in believing that the
 delay was of 1067 days only but it is not possible to
 fathom any reason why the Division Bench of the High
 Court omitted to consider the detailed reply which had
 F been filed on behalf of the appellant to contest the prayer
 for condonation of delay. Notwithstanding this, the
 impugned order may have been set aside and remitted
 the case to the High Court for fresh disposal of the
 application filed by the respondents under section 5 of
 G the Limitation Act but, it is not proper to adopt that course
 because the respondents did not approach the High
 Court with clean hands. [Para 10] [1185-A-H; 1186-A]

2.2. It is clear that the Law Department of respondent
 No.1 was very much aware of the proceedings of the first
 H as well as the second suit. In the first case, RM was

appointed as an advocate and in the second case BR A
was instructed to appear on behalf of the respondents,
but none of the officers is shown to have personally
contacted either of the advocates for the purpose of filing
written statement and preparation of the case and none
bothered to appear before the trial Court on any of the B
dates of hearing. It is a matter of surprise that even
though an officer of the rank of General Manager (Law)
had issued instructions to RM to appear and file vakalat
as early as in May 2001 and Manager (Law) had given
vakalat to BR Advocate in the month of May 2005, in the C
application filed for condonation of delay, the
respondents boldly stated that the Law Department came
to know about the ex parte decree only in the month of
January/February 2008. The respondents went to the
extent of suggesting that the parties may have arranged D
or joined hands with some employee of the corporation
and that may be the reason why after engaging
advocates, nobody contacted them for the purpose of
giving instructions for filing written statement and giving
appropriate instructions which resulted in passing of the E
ex parte decrees. The above statement is not only
incorrect but is ex facie false and the High Court
committed grave error by condoning more than four
years' delay in filing of appeal ignoring the judicially
accepted parameters for exercise of discretion under F
section 5 of the Limitation Act. [Para-13] [1187-G-H; 1188-
A]

2.3. The impugned order of the High Court is set
aside and the application for condonation of delay filed
by the respondents is dismissed. As a corollary, the G
appeal filed by the respondents against judgment and
decree dated 30.10.2004 shall stand dismissed as barred
by time. However, it is made clear that the disposal of the
instant appeal shall not absolve the higher functionaries
of respondent No.1 from the responsibility of conducting H

A a thorough probe into the matter so that accountability of the defaulting officers/officials may be fixed and the loss, if any, suffered by respondent No.1 recovered from them after complying with the rules of natural justice. [Para 14] [1188-B-C]

B *State of Bihar and others v. Kamleshwar Prasad Singh and another* **2000 AIR SC 2388**; *Spl. Tehsildars, Land Acquisition, Kerala v. K.V. Ayisumma* **AIR 1996 SC 2750**; *Punjab Small Industries and Export Corporation Ltd. and others v. Union of India and others* **1995 Suppl. (4) SCC 681**;
C *P.K. Ramachandran v. State of Kerala and another* **(1997) 7 SCC 566**, referred to.

Case Law Reference:

D	2000 AIR SC 2388	Referred to	Para 5
	AIR 1996 SC 2750	Referred to	Para 5
	1995 Suppl. (4) SCC 681	Referred to	Para 5
E	(1997) 7 SCC 566	Referred to	Para 5
	(1987) 2 SCC 107	Relied on	Para 8
	(1998) 7 SCC 123	Relied on	Para 8
F	(2001) 9 SCC 106	Relied on.	Para 8
	(1988) 2 SCC 142	Relied on	Para 8
	(1996) 3 SCC 132	Relied on	Para 8
G	(1996) 9 SCC 309	Relied on	Para 8
	(1996) 10 SCC 635	Relied on	Para 8
	(2005) 3 SCC 752	Relied on	Para 8
H	(2008) 14 SCC 582	Relied on.	Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. A
2075 of 2010.

From the Judgment & Order dated 25.3.2009 of the High Court of Gujarat at Ahmedabad in Civil Application No. 14201 of 2008 in First Appeal No. 4180 of 2008. B

L.N. Rao, Nikhil Goel, Naveen Goel, Marsoak Bafaki, Sheela Goel for the Appellant.

Anip Sachthey, Mohit Paul, Shagun Matta, Sherin Daniel for the Respondents. C

The Judgment of the Court was delivered by

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

2. Whether the Division Bench of Gujarat High Court was justified in condoning more than four years' delay in filing of appeal by the respondents against judgment and decree dated 30.10.2004 passed by Civil Judge (Sr. Division) Gandhinagar (hereinafter referred to as "the trial Court") in Special Civil Suit No.32 of 2001 is the question which arises for consideration in this appeal. D E

3. The appellant was allotted a piece of land for setting up an industrial unit at Ankleshwar subject to the terms and conditions embodied in agreement of licence dated 2.4.1976 which, among other things, provided for consumption of specified quantity of water by the appellant. The agreement also provided for payment of 70% of the cost of agreed quantity of water irrespective of consumption. In 1982, respondent No.1 demanded non utilization charges amounting to Rs.4068/-, which were deposited by the appellant. After some time, respondent No.1 demanded Rs.2,69,895/- towards water charges. For next 10 years, the parties entered into long correspondence on the issue of levy of water charges, etc. Finally, respondent No.1 issued bill dated 13.1.1996 requiring F G H

- A the appellant to pay Rs.22,96,207/- towards water charges. The appellant challenged the same in Special Civil Suit No.32 of 2001. The summons issued by the trial Court were duly served upon the respondents but no written statement was filed on their behalf to controvert the averments contained in the plaint and
- B none appeared on the dates of hearing despite the fact that the case was adjourned on more than one occasion. The suit was finally decreed on 30.10.2004 and it was declared that the appellant is not liable to pay Rs.22,96,207/- by way of minimum charges for water for the period between 1978 and 16.4.2001
- C and, thereafter, till the water was supplied by respondent No.1. After few months, the appellant filed another suit which was registered as Civil Suit No.222 of 2005 and prayed that respondent No.1 be directed to issue no objection certificate in its favour. The summons of the second suit were also served
- D upon the respondents, but neither the written statement was filed nor any one appeared on their behalf. The second suit was also decreed on 12.12.2007 and respondent No.1 was directed to issue no objection certificate to the appellant. In compliance of the decree passed in the second suit, the concerned authority of the Corporation issued no dues certificate dated 9.7.2008.
- E

4. After four months and fifteen days of taking action in furtherance of the decree passed in the second suit, the respondents filed an appeal against judgment and decree dated 30.10.2004 passed in Special Civil Suit No.32 of 2001.

- F They also filed an application under Order 41 Rule 3A of the Code of Civil Procedure read with Section 5 of the Limitation Act for condonation of delay by making the following assertions:

- G "1. That this appeal is preferred against the judgment and decree of the learned Civil Judge (SD), Gandhinagar passed on 30.10.2004. That the suit was filed for permanent injunction and declaration and on the ground that the advocate of the GIDC has appeared but no written statement was filed and, therefore, the learned Judge resorted to Order 8 Rule 11 of the Civil Procedure Code
- H

and granted the declaration as prayed for in the plaint. That after the decree being passed, the present plaintiff filed another suit being Civil Suit No.222 of 2005 and in which the decree was passed on 12.12.2007. That particular decree is to be challenged before this Honourable Court and, therefore, in 2008, after the second decree was passed, it was brought to the notice of the Legal Department as well as to the Executive Engineer at GIDC, Ankleshwar as to how this has happened and it seems that because of numerous transfers as well as it is also possible that the party might have arranged or joined hands with some employee of the Corporation and thereby after engaging advocate, no body has gone to the advocate for the purpose of giving instruction or filing the written statement and as a result thereof, decree is passed and only in the month of January/February, the law department came to know and therefore, an inquiry was made into the matter but the GIDC could not trace out as to at whose hands the mistake or mischief was done, however, when after inquiry everything was noticed and, therefore, the application for certified copy was made on 17.11.2008 and on 18.11.2008, the copy was ready and the same was sent to the advocate and thereafter the present appeal is preferred.

2. That a long span from 30.10.2004 to 18.11.2008, practically four years time is passed and this has happened only because of some mistake or mischief on the part of the staff and, therefore, the appeal could not be preferred, otherwise it is a matter of substantial right of the GIDC where the water charges are leveled in spite of water being used or not and when the bills were already drawn, there was not intention on the part of the GIDC not to contest the suit. But it is difficult to trace out how this has happened and, therefore, when the inquiry was conducted in detail, the facts were brought to the notice and on that basis the cause has arisen to file this appeal and the delay

A of 1067 days cause in filing the appeal is required to be condoned in the interest of justice."

On notice, a detailed reply was filed on behalf of the appellant in the form of an affidavit of its Director, Shri Sanjay Kantilal Shah, paragraphs 4.16, 5 and 6 whereof read as under:

B "4.16. That the First Appeal preferred by the appellant has been preferred with Civil Application No.14201 of 2008 and the said application for condonation of delay under
C Order 41 Rule (3A) read with Section 5 of the Limitation Act. As a matter of fact, the petitioner company being a Government Corporation is bound to follow the rules and regulations as it is and cannot deviate itself from the provisions of law. As a matter of fact in filing the present
D First Appeal there is a delay of more than 4 years. Moreover, in the second suit, the decree and judgment is already passed and thereafter now the petitioner has no right to challenge the order of the Civil Suit No.32/2001. But for the reasons best known to the appellant the correct number of days has not been mentioned in the
E condonation of delay application. As a matter of fact, the petitioner being a Government Corporation has to follow the rules and regulations strictly and is required to give proper explanation as to why the Appeal has not been preferred within the time frame and if they were so, being
F aggrieved by the order passed by the Ld. Civil Judge (SD) Gandhinagar. If the condonation of delay is taken into consideration the said page is only a 4 pages wherein no proper explanation as to what the petitioner was doing for the past year has been given in the said and thereby also the said application is required to be dismissed in limine.

G 5. With regard to para -1 of the Civil Application, I most humbly and respectfully submit that it is true that the decree passed by the Ld. Civil Judge (S.D) Gandhinagar on 13.10.2004. It is also true that in the said Suit, the
H advocate for the GIDC had appeared but had not filed

written statement and therefore, the Ld. Judge has passed the order under the provisions of the Code of Civil Procedure and granted declaration as prayed for in the plaint. It is also true that after decree was passed, the present respondent filed another suit being Civil Suit No.222/2005 and the said decree was passed on 12.12.2007. It is not true that in the year 2008 after the second decree was passed it was brought to the knowledge of the Legal Department that the earlier decree was required to be challenged. Lack of legal knowledge cannot be said to be ground to condone the delay. If the facts had not been brought well in time then for the said it cannot be said that the respondent company is required to be punished. As a matter of fact nothing has been mentioned on Affidavit as to who did not give proper instructions or as to who had possibly played the mischief and as to who had joined the hand with the respondent company. It is only the blame game which is being played and allegations are being leveled in order to save its own skin but there is no truth behind the facts mentioned therein and thereby there is no way as to how the present application can ever be allowed. Moreover the respondent is not knowing any persons of the G.I.D.C. (as on today or at any time).

6. With regard to para-2 of the Civil Application, I most humbly and respectfully say and submit that it is true that more than 4 years time has been passed from the date of the decree but as to who has played the mischief or mistake or had it been intentionally filed within the time frame that is for the reasons best known to the appellent corporation and that is something on which the petitioner company would not like to comment at this juncture. No proper justification or explanation has been brought on record as to what was happening for the past 4 years, has also not given anything in detail and neither true and correct facts have been mentioned nor the calculation in respect

A of the days have been made properly and thereby also on all the said counts, the present application is required to be dismissed with exemplary cost."

5. The Division Bench of the High Court referred to the judgments of this Court in *State of Bihar and others v. Kamleshwar Prasad Singh and another*, 2000 AIR SC 2388, *N. Balakrishnan v. M. Krishnamurthy*, JT 1998 (6) SC 242, *State of Haryana v. Chandra Mani and others* AIR 1996 SC 1623, *Spl. Tehsildars, Land Acquisition, Kerala v. K.V. Ayisumma* AIR 1996 SC 2750, *Punjab Small Industries and Export Corporation Ltd. and others v. Union of India and others* 1995 Suppl. (4) SCC 681, *P.K. Ramachandran v. State of Kerala and another* (1997) 7 SCC 566 and *Collector, Land Acquisition, Anantnag v. Mst. Katiji* AIR 1987 SC 1353 and condoned the delay by making a cryptic observation that the cause shown by the respondents is sufficient. The relevant portion of the High Court's order is reproduced below:

E "Applying the principles laid down by the Supreme Court to the facts of the present case, we are satisfied that sufficient cause is made out by the applicant for condonation of delay. *Over and above, in view of the fact that reasons mentioned in this application have not been controverted by the other side* and also in view of the principles governing the discretionary exercise of power under Section 5 of the Limitation Act, 1963, we are of the view that sufficient cause has been stated for not filing the appeal in time and hence, delay caused in filing appeal is to be condoned and the application is required to be allowed."

G (Emphasis supplied)

6. Shri L.N. Rao, learned senior counsel appearing for the appellant argued that the impugned order is liable to be set aside because the High Court allowed the application for condonation of delay by erroneously assuming that the delay

was of 1067 days only. Learned senior counsel pointed out that appeal against judgment and decree dated 30.10.2004 was filed on 24.11.2008 i.e., after more than four years, but by scoring out the figures and words "4 years and 28" in paragraphs 2 and 3 of the application and substituting the same with figure "1067", the respondents misled the High Court in believing that delay was of 1067 days. He then referred to affidavit dated 16.2.2009 of Shri Sanjay Kantilal Shah to show that substantial grounds had been put forward on behalf of the appellant for opposing the respondents' prayer for condonation of delay of more than four years and submitted that the Division Bench of the High Court committed serious error in condoning the delay by assuming that no reply had been filed by the appellant. Learned senior counsel also invited the Court's attention to affidavits dated 25.11.2009 and 4.2.2010 of Shri Pravin Keshav Lal Modi and Shri Harishbhai Patel respectively filed in this Court on behalf of the respondents as also the list of events attached with the second affidavit to show that the functionaries of respondent No.1 were very much aware of the proceedings of Special Civil Suit No.32 of 2001 and Civil Suit No.222 of 2005 and submitted that the High Court should not have accepted patently incorrect assertions contained in the application for condonation of delay, which was supported by an affidavit of none else than the General Manager of respondent No.1, Shri R.B. Jadeja, that the Law Department came to know about the judgment of Special Civil Suit No.32/2001 only in January/February, 2008.

7. Shri Anip Sachthey, learned counsel for the respondents fairly admitted that the appeal was filed after lapse of more than four years of judgment dated 30.10.2004 but submitted that this Court should not interfere with the discretion exercised by the High Court to condone the delay and the respondents should not be penalized simply because the advocates appointed by the Corporation did not bother to file written statement and appear before the trial Court on the dates of hearing. Learned counsel emphasized that this Court has

- A but, do not consider it proper to adopt that course, because as will be seen hereinafter, the respondents did not approach the High Court with clean hands.

11. The statement containing the list of events annexed with the affidavit of Shri Harishbhai Patel shows that before filing
 B suit, the appellant had issued notice dated 5.2.2001 to which respondent No.1 sent reply dated 13.3.2001. The summons of Special Civil Suit No. 32/2001 instituted by the appellant were served upon the respondents sometime in the month of April/
 C May 2001. On 16.5.2001, General Manager (Law) instructed Ms. Rekhaben M. Patel to appear on behalf of the respondents. Executive Engineer, Ankleshwar was also directed to contact the advocate for preparing the reply affidavit. On 23.5.2001, Deputy Executive Engineer, Ankleshwar forwarded the comments to Ms. Rekhaben M. Patel. On 18.4.2002, the
 D appellant filed an application for ex parte proceedings against the respondents. On 30.11.2002, the trial Court directed the respondents to appear on 12.12.2002 with indication that if they fail to do so, ex parte proceedings will be held. Thereupon, General Manager (Law) wrote letter dated 10.12.2002 to Ms.
 E Rekhaben to remain present on the next date of hearing i.e., 12.12.2002. On 30th December, 2002, Deputy Executive Engineer, Ankleshwar wrote to the advocate in the matter of submission of para-wise comments. On 2.1.2003, the Executive Engineer is said to have sent a letter to the advocate informing
 F her about the next date of hearing i.e., 10.1.2003 and asked her to remain present. After almost one year and ten months, the trial Court pronounced the ex parte judgment and decreed the suit. The summons of the second suit were received sometime in May, 2005. On 20.6.2005, Shri B.R. Sharma,
 G Advocate was instructed to appear on behalf of the respondents. On 10.1.2006, Deputy Executive Engineer, Ankleshwar informed the new advocate about the next date of hearing which was 23.1.2006. The second suit was decreed on 12.12.2007.

H

12. During the course of hearing, learned counsel for the respondents fairly conceded that in the second suit filed by the appellant there was a specific mention of decree dated 30.10.2004 passed in Special Civil Suit No. 32/2001. He also conceded that even though the first suit remained pending before the trial Court for three years and five months and the second suit remained pending for more than two years, none of the officers of the Law Department or the Engineering Department of respondent No.1 appeared before the Court.

13. From what we have noted above, it is clear that the Law Department of respondent No.1 was very much aware of the proceedings of the first as well as the second suit. In the first case, Ms. Rekhaben M. Patel was appointed as an advocate and in the second case Shri B.R. Sharma was instructed to appear on behalf of the respondents, but none of the officers is shown to have personally contacted either of the advocates for the purpose of filing written statement and preparation of the case and none bothered to appear before the trial Court on any of the dates of hearing. It is a matter of surprise that even though an officer of the rank of General Manager (Law) had issued instructions to Ms. Rekhaben M. Patel to appear and file vakalat as early as in May 2001 and Manager (Law) had given vakalat to Shri B.R. Sharma, Advocate in the month of May 2005, in the application filed for condonation of delay, the respondents boldly stated that the Law Department came to know about the ex parte decree only in the month of January/February 2008. The respondents went to the extent of suggesting that the parties may have arranged or joined hands with some employee of the corporation and that may be the reason why after engaging advocates, nobody contacted them for the purpose of giving instructions for filing written statement and giving appropriate instructions which resulted in passing of the ex parte decrees. In our view, the above statement contained in para 1 of the application is not only incorrect but is ex facie false and the High Court committed grave error by condoning more than four years' delay in filing

- A of appeal ignoring the judicially accepted parameters for exercise of discretion under Section 5 of the Limitation Act.

14. In the result, the appeal is allowed. The impugned order of the High Court is set aside and the application for condonation of delay filed by the respondents is dismissed. As
B a corollary, the appeal filed by the respondents against judgment and decree dated 30.10.2004 shall stand dismissed as barred by time. However, it is made clear that the disposal of this appeal shall not absolve the higher functionaries of
C respondent No.1 from the responsibility of conducting a thorough probe into the matter so that accountability of the defaulting officers/officials may be fixed and the loss, if any, suffered by respondent No.1 recovered from them after complying with the rules of natural justice.

N.J.

Appeal allowed.

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(Also see under: Central Excise and Tariff Act, 1985)

The Commissioner of Central Excise, Goa & Anr. v. M/s. Funskool (India) Ltd. & Anr.

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CENTRAL EXCISE AND TARIFF ACT, 1985:

First Schedule – Chapter 95 – Heading 95.04 – Items ‘Snake and Ladder’, ‘Monopoly’ and ‘Scrabble/Upwards’ – Classification of – Order of Supreme Court dated 12.11.2009 – Clarification of – Appeal by Department dealt with 34 items and not with 12 items as mentioned in the order dated 12.11.2009 – It is clarified that 3 out of 34 items dealt with ‘Scrabble’/‘Upward’, ‘Monopoly’ and ‘Snake and Ladder’ – Applying the judgment in *M/s Pleasantime Products*, the said three items- ‘Snake and Ladder’, ‘Monopoly’ and ‘Scrabble/Upwards’ stand classifiable under Ch. 95.04 – Matter is remitted to the tribunal to examine as to whether each of the remaining 31 items would stand covered by CSH 9504.90 or by CSH 9503.00 – Central Excise Act, 1944 – s.11-A.

(Also see under: Central Excise Act, 1944)

The Commissioner of Central Excise, Goa & Anr v. M/s. Funskool (India) Ltd. & Anr.

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CENTRAL RESERVE POLICE FORCE RULES,
1955:

r. 28 – Delinquent official punished with 'compulsory retirement' on the charge of suppression of real date of birth at the time of joining service – Letter by delinquent official to higher authority requesting to consider his re-employment – Treating the letter as appeal, punishment enhanced to 'removal from service' – Review dismissed by authority concerned – Dismissal of writ petition – Held: Letter requesting re-employment cannot be treated as appeal u/r. 28 – Imposition of enhanced punishment was unjustified – Direction to pay pensionary benefits with interest – Service Law.

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CHANDIGARH (SALE OF SITES AND BUILDINGS)
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r.7-A(2) – Purchase of site in auction – Physical possession of site taken over – Surrender of site thereafter – Demand of penalty @ 2.5% of the premium u/r 7-A – After 2½ years, demand of additional 2.5% of premium amount as penalty u/r. 7-A(2) – Legality of – Held: If surrender is made after possession is offered by competent authority, penalty @ 5% of the premium is leviable in terms of r. 7-A(2) – Thus, competent authority was empowered to demand balance penalty – However, demand having been raised after 2½ years of acceptance of surrender of site, was arbitrary exercise of power and violation of doctrine of fairness in State action – Thus, demand of additional penalty quashed and order of High

Court set aside.

*Daljit Singh and Ors. v. Union Territory
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*Mrs. Shilpa Aggarwal v. Mr. Aviral
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(1) O. 21, r.2.

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(2) O. 41 r. 3-A – Application under O. 41 r. 3A r/w s.5 of the Limitation Act, 1963 for condonation of delay.

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(3) O. 41, r. 33 – Power of appellate court.

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(1) Chapter VII-A, ss. 105-A to 105-C – Reciprocal arrangement for assistance in certain matters and procedure for attachment and forfeiture of property – Application by Police for initiating proceedings in respect of properties used in commission of offences or acquired from criminal activities – Held: Provisions of Chapter VII-A would be applicable only to offences which have international ramifications and not to local offences generally and the properties earned out of such offences.

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(2) s. 203 – First complaint dismissed on merits – Second complaint filed on same facts without disclosing fact of dismissal of first complaint – Maintainability of – Held: Order of dismissal u/s.203 is no bar for entertaining second complaint on the same facts but only in exceptional circumstances – On facts, core of both complaints was same – Second complaint not covered within exceptional circumstances, thus, was not

maintainable.

Poonam Chand Jain and Anr. v. Fazru 109

(3) s.227 – Discharge petition by a retired IPS officer aged 85 years charge-sheeted u/s.302/34 IPC for killing a naxalite in a fake encounter, on basis of confession of a constable – Rejection of, by courts below – Held: Does not call for interference – s. 227 confers special power on the judge to discharge accused if upon consideration of records and documents ‘there is no sufficient ground’ for proceeding against accused – On facts, trial court after evaluating the materials produced by prosecution and after considering the probability of the case, dismissed the discharge petition and High Court upheld the same – Penal Code, 1860 – s.302/34 – Evidence Act, 1872 – s. 30.

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(4) s. 378 – Appeal against acquittal – Scope of interference.

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(5) Applicability of the provisions of Cr.P.C. to contempt proceedings.

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(iii) Principle of federal supremacy.

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(2) Article 14 – State Government releasing land of similarly situated landowners from acquisition but rejected appellants' representation who were similarly placed – Violation of Article 14.

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(3) Articles 14 and 16(1).

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(4) (i) Articles 32 and 226 r/w Article 21 – Fundamental rights – Fair and impartial investigation – Judicial Review – Direction by Supreme Court/High Court to CBI to investigate a cognizable offence committed within territorial jurisdiction of a State without the consent of the State Government – Held: Will neither impinge upon the federal structure of the Constitution nor will it violate the doctrine of separation of powers, and shall be valid in law – However, this extraordinary power must be exercised sparingly, cautiously and in exceptional situations – Delhi Special Police Establishment Act, 1946 – Explained – ss. 3, 5 and 6 - Investigation.

(ii) Articles 13, 32, 142, 144 and 226 – Judicial Review – Nature and Scope of – Significance of and difference between power of Supreme Court under Articles 32, 142 and 144 and that of High Court under Article 226 – Explained – Doctrines – Separation of powers – Basic structure theory – Principle of constitutionality.

(iii) Articles 245 and 246 r/w Seventh Schedule, List I, Entries 2-A and 80 – List II, Entry 2, List III and Articles 32 and 226 – Legislative powers of Parliament and State Legislatures – Judicial

review of – Held: If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation – Doctrine of separation of powers.

State of West Bengal & Ors. v. The Committee for Protection of Democratic Rights, West Bengal & Ors. 979

(5) Part-IV – Articles 36 – 51 – Directive Principles of the State Policy.

(See under: Interpretation of Statutes) 162

(6) Article 136.

(See under: Education/Educational Institutions) 845

(7) Article 136 – Appeal against acquittal – Scope of interference – Allegation of murder of two and murderous assault on one – Two accused convicted u/s. 302/34 and sentenced to death, and other convicted u/s. 307 and sentenced to life imprisonment – Acquittal by High Court – Interference with – Held: Scope of interference under Article 136 in an appeal against acquittal is limited – View taken by High Court was plausible and possible one – The findings recorded by High Court does not warrant any interference – Penal Code, 1860 – ss. 302/34 and 307.

State of U.P. v. Guru Charan & Ors 1110

(8) (i) Article 136 – Appeal against interim order passed by High Court – Ordinarily Supreme Court would not interfere with an *ex parte* interim order

of High Court, as the respondent in a writ or contempt proceedings can appear and seek vacation, or discontinuance, or modification of such ex parte order – But where there are special and exceptional features or circumstances resulting in or leading to abuse of process of court, Supreme Court, may interfere.

(ii) Article 226 – Writ jurisdiction of High Court – Interim orders – Bank employee retired in accordance with Regulations – On the complaints by employee to Chief Commissioner for Persons with Disabilities, that his request for being relieved under 'Exit Policy Scheme' had not been accepted, show cause notice and interim directions issued to the Bank – In writ petition, High Court ordered the Bank to implement the interim directions passed by Deputy Chief Commissioner – Held: Mandatory interim orders are issued in exceptional cases, only where failure to do so will lead to an irreversible or irretrievable situation – In service matters relating to retirement, there is no such need to issue *ex-parte mandatory* directions – Order passed by High Court is unsustainable – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – State Bank of Patiala (Officers) Service Regulations, 1979 – Regulation 19.

(Also see under: Contempt of Court)

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(9) Article 136 – New Plea – Termination of dealership agreement – Writ petition by dealer – Allowed by High Court – Order challenged by Corporation – Plea raised by it that in view of a

specific clause in the dealership agreement, the dealer was barred from seeking remedy before the writ court (High Court) – Held: Petitioner ought to have raised the plea before High Court.

M/s. Hindustan Petroleum Corpn. Ltd. & Ors.
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(10) (i) Article 136 – Scope of – Application u/s 13-B(1) of Hindu Marriage Act for divorce by mutual consent pending before Family Court – Application to waive statutory period of six months rejected – Petition under Article 136 primarily on the ground that since relief could not be granted by any other Court, there was no occasion for petitioner to approach High Court – Held: Power under Article 136 cannot be used to short circuit the legal procedure prescribed in the overriding power – Such power is to be exercised taking into consideration the well established principles which govern the exercise of overriding constitutional powers – In the instant case, petition does not raise any question of general public importance – Petition dismissed.

(ii) Article 142 – Scope of – Petitions for divorce and divorce by mutual consent pending before Family Courts – Application to waive statutory period of six months rejected – In the petition under Article 136, prayer for exercise of jurisdiction under Article 142 made to grant divorce – Held: In exercise of power under Article 142, Supreme Court generally does not pass an order in contravention of or ignoring the statutory provisions nor the power is exercised merely on sympathy – In the instant case, none of contingencies, which may require the Court to exercise its extraordinary

jurisdiction under Article 142, has been brought out – Hindu Marriage Act, 1955 – ss. 12 and 13-B(1).

(Also see under: Administration of Justice)

Manish Goel v. Rohini Goel 414

(11) Articles 136 and 141 – Order refusing special leave to appeal – Effect of.

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(12) Article 226 – Writ petition challenging the order of Settlement Commission – Maintainability of.

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(13) Article 309, proviso.

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(14) Article 311(2).

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CONSUMER PROTECTION ACT, 1986:

(1) (i) ss. 2(1)(g) and 14(1)(d) – Deficiency in service – Complaint – Maintainability of – Contract of insurance – Consignment of goods – Damaged in transit – Compensation paid by insurer to consignor/assured – Execution of letter of subrogation-cum-special power of attorney by consignor in favour of insurer – Claim of compensation by consignor and insurer against carrier – Allowed by fora below – Held: Insurer, as subrogee, can file a complaint under the Act either in the name of assured (as his attorney holder) or in joint names of assured and insurer

for recovery of amount due from the service provider – It can request the assured to sue the wrong doer – Insurer cannot in its own name maintain a complaint, even if its right is traced to the terms of a Letter of Subrogation-cum-Assignment – Document whether subrogation simpliciter or subrogation-cum-assignment is not relevant for deciding the maintainability of a complaint – Presumption regarding negligence u/s. 9 was not rebutted – Loss of consignment by assured and settlement of claim by insurer established by evidence – Carriers Act, 1865 – s. 9.

(ii) Reconsideration of the decision in *Oberai Forwarding Agency v. New India Assurance Co. Ltd.* – Held: *Oberai's* case is not good law insofar as it construes a Letter of Subrogation-cum-Assignment, as a pure and simple assignment – But to the extent it holds that an insurer alone cannot file a complaint under the act, the decision was correct – Precedent – Judgment.

(iii) s. 2(d) (as amended by Amendment Act 62 of 2002) – Addition of words 'but does not include a person who avails of such services for any commercial purpose' in the definition of 'consumer' – Applicability of amendment to complaint filed before the amendment – Held: Not applicable.

Economic Transport Organization v. M/s. Charan Spinning Mills (P) Ltd. and Anr. 887

(2) Deficiency in service – Claim for compensation – Death of patient in hospital – Allegation of medical negligence in conducting surgery and post surgical care – Held: Doctor who performed the

operation had reasonable degree of skill and knowledge – National Commission rightly held him not guilty of negligence – Merely because the doctor chooses one course of action in preference to the other, he would not be liable if the course of action chosen by him was acceptable to the medical profession – Tort – Negligence.

(Also see under: Criminal Law)

*Kusum Sharma & Ors. v. Batra Hospital
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(1) (i) Alleged abduction and detention by police personnel – *Suo motu* contempt proceedings initiated by High Court – Conviction of accused – Held: Conviction not justified – Contempt proceedings were concluded without ensuring compliance of the mandatory provisions of the statutory Rules framed for the purpose (1952 Rules) – Accused were never informed as to what were the charges against them – Relevant documents on the basis of which High Court had taken a *prima facie* view while initiating *suo motu* contempt proceedings, were not made available to them – Notice itself was not only defective, but inaccurate and mis-leading – Principles of natural justice were not observed – Contempt of Courts Act, 1971 – s.23 – Allahabad High Court Rules, 1952 – rr. 5 and 6.

(ii) Contempt proceedings – Nature of – Safeguards provided to contemnor – Held: Contempt proceedings are quasi-criminal in nature – Contemnor is entitled to protection of all safeguards/rights provided in criminal jurisprudence, including the benefit of doubt –

Court not to punish contemnor merely on conjectures and surmises.

(iii) Contempt proceedings – Requirement of expeditious conclusion – Applicability of CrPC and Evidence Act – Held: In spite of the contempt proceedings being quasi-criminal in nature, provisions of CrPC and Evidence Act are not attracted thereto, since such proceedings have to be concluded expeditiously.

*Sahdeo @ Sahdeo Singh v. State of U.P.
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(2) Writ petition by Bank employee – On the grounds that he was denied benefit of 'Exit Policy Scheme' and interim directions passed by Deputy Chief Commissioner, New Delhi, for Persons with Disabilities were not implemented – Show cause notices issued by High Court returnable on 15.2.2007 – But on 13.2.2007, High Court issued contempt notice to Branch Manager of Bank – Held: Order retiring the respondent was not passed by Branch Manager and obviously he was not the officer who could implement the interim direction of the Deputy Chief Commissioner or High Court – Contempt petition was, therefore, premature – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – Constitution of India, 1950 – Article 226.

(Also see under: Contempt of Court)

*State Bank of Patiala & Ors. v. Vinesh
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CONTEMPT OF COURTS ACT, 1971:

(1) s.14 – Contempt petition alleging wilful and

deliberate violation of judgment of High Court – In an appeal arising out of a contract, High Court directing the Department to pay decretal amount to the contractor, along with interest – Officer concerned writing to contractor for settlement as regards interest component – High Court holding the officer concerned guilty of contempt of court and while accepting unconditional apology, imposing cost – Held: Right of judgment-debtor to make an attempt to adjust the decree is independent and cannot be treated as contempt of court – High Court, after accepting the unconditional apology tendered by officer, should not have imposed cost on him – Judgment impugned cannot be sustained and is set aside – Code of Civil Procedure, 1908 – O. 21, r.2.

P.K. Singh v. M/s. S.N. Kanungo and Ors. 1040

(2) s. 23.

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(1) Contract between parties to litigation with reference to their rights under a decree.

(See under: Contempt of Courts Act, 1971) 1040

(2) Dealership agreement for retail sale/supply of petrol and diesel – Termination of, by Corporation – On basis of findings of a sample laboratory test – Validity – Held: Corporation did not adhere to the relevant Guidelines inasmuch as dealer was not served upon with proper notice regarding such test – Test was conducted behind the back of respondent – This caused severe prejudice to it – Termination of dealership agreement was thus arbitrary, illegal and in violation of the principles

of natural justice – Natural justice.

M/s. Hindustan Petroleum Corpn. Ltd. & Ors.
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(3) Insurance contract.

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(2) Common intention.

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(3) Criminal negligence – Medical negligence –
 Purpose behind holding a professional liable for
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 professionals are not unnecessarily harassed

otherwise they will not be able to carry out their professional duties without fear – It is for the complainant to clearly make out a case of negligence before a medical practitioner is proceeded against criminally – A medical practitioner would be liable only where his conduct fell below that of standards of a reasonably competent practitioner in his field – A mere deviation from normal professional practice is not necessarily evidence of negligence – Guidelines laid down – Penal Code, 1860 – ss. 88 and 92.

Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre & Ors. 685

(4) Principle of parity – Applicability of – Held: Is applicable to the co-accused involved in the same crime and convicted in single trial – It is not applicable in a case where the other accused is convicted in a separate trial arising out of separately registered FIR.

Ajmer Singh v. State of Haryana 785

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ss. 127-B and 127-C – Settlement – Duty exemption notification – Suppression of facts by assessee – Demand of duty, penalty and interest – Assessee filed application for settlement – Settlement Commission confirmed demand but waived penalty and interest and also granted total immunity from prosecution – Still aggrieved, assessee filed writ petition and sought to urge additional ground – High Court did not permit assessee to urge additional ground and confirmed the order of Settlement Commission – Justification of – Held: Justified – Exemption Notification No. 211/83-Cus dated 23rd July, 1983, as amended

– Constitution of India, 1950 – Article 226.

(Also see under: Circulars/Government Orders/Notifications)

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DELHI HIGHER JUDICIAL SERVICE RULES, 1970:

(1) r. 10 – Fixation of minimum Bench Marks for interview by High Court – Permissibility of – Appointment of District Judges – Held: r. 10 does not provide for any particular procedure/criteria for holding the tests rather it enables High Court to prescribe the criteria – In absence of any statutory requirement of securing minimum marks in interview, High Court ought to have followed the principle to offer appointment to candidates who had secured the requisite marks in aggregate in written examination as well as interview, ignoring the requirement of securing minimum marks in interview – Out of the two petitioners one of them having secured more than the required marks in

aggregate, to be appointed – Judiciary – Service law.

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(2) Appointment of District Judges – Filling up vacancies over and above the number of vacancies advertised – Permissibility of – Held: Not permissible – It amounts to filling up of future vacancies – It is violative of Articles 14 and 16(1), thus, a nullity – In case vacancies notified stand filled up, process of selection comes to an end – Constitution of India, 1950 – Articles 14 and 16(1) – Judiciary – Service Law.

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(2) Doctrine of merger – Order refusing special leave to appeal does not stand substituted in place of order under challenge – Such order would not come within meaning of Article 141 – Doctrine of merger will not be attracted in such a case – Constitution of India, 1950 – Articles 136 and 141.

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(2) s. 27 – Scope and applicability of – Held: s. 27 reveals that a ‘person must be accused of any offence’ and that he must be ‘in the custody of a police officer’ and it is not essential that such an accused must be under formal arrest – Accused having been taken in custody day before the formal arrest and recoveries made when they were in custody, has no adverse effect on recoveries made on disclosure statement.

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(3) s. 30.

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(4) s.108 – Presumption under, of a person being

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(2) (i) s. 13(1)(i-a) – Divorce – On ground of cruelty – Standard required to establish cruelty – Held: It would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it – To establish cruelty it is not necessary that physical violence should be used – Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty.

(ii) ss. 10 and 13 – Petition of husband for divorce on ground of cruelty – Dismissed by trial court – Single Judge of High Court found both the parties to be at fault and granted decree of judicial separation instead of divorce – Wife challenged the decree of judicial separation – Division Bench re-appreciated the entire evidence and passed decree for divorce – Held: Husband had not challenged the decree passed by Single Judge,

yet the effect of the order passed by Division Bench was as if appeal of the husband against the decree of judicial separation was allowed – Also, not a case where it was necessary for Division Bench to correct any glaring and serious errors committed by court below which had resulted in miscarriage of justice – There was no compelling necessity, independently placed before Division Bench to justify reversal, of the decree of judicial separation – Order passed by Single Judge restored.

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(3) (i) s.28 – Power of High Court – Scope of – Held: While exercising power u/s. 28, High Court as the first court of appeal is both a court of law and also of facts – In exercise of its power, first appellate court can come to a finding different from one arrived at by trial court – Code of Civil Procedure, 1973 – O. 41 r. 33.

(ii) s.13(1)(ia) and (ib) – Divorce petition by husband on the ground of cruelty and desertion – Held: Evidence of daughter of parties was vital in the facts of the case – She clearly stated that her father used to beat her mother – Thus, wife had sufficient reason to live apart, and cannot be held guilty of either cruelty or desertion.

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(1) (i) ss. 80-P(2)(a)(i) and (iii) r/w ss. 56 and 2(24)(i) – Deduction in respect of income of co-operative societies – ‘Profit and gains from business’ – Co-operative Society providing credit facilities to its members and marketing their agricultural produce – Surplus funds invested by Society in short term deposits – Interest earned thereon – Held: Does not fall within the meaning of expression ‘profit and gains from business, but is ‘income from other sources’ liable to tax u/s. 56 and not entitled to deduction u/s. 80P(2)(a).

(ii) ss.148 and 151 – Issue of notice where income has escaped assessment – Sanction for – Held: Tribunal being the final fact finding authority under the Act, having recorded a finding of fact that approval/sanction for re-opening of assessment in terms of s.148 r/w s.151 existed even prior to 31.5.2001, though written communication of sanction was received by Assessing Officer on 8.6.2001, there is no reason to interfere with the said finding given by tribunal.

(iii) ss.56 and 57 – ‘Income from other sources’ – Deductions towards cost of funds and proportionate administrative and other expenses, in respect of income by way of interest on deposits held with Scheduled Banks, bonds and other securities – Held: Question involves applicability of ss. 56 and 57, but as it remained unanswered by authorities below, question remitted to High Court for consideration.

*M/s. The Totgars' Cooperative Sale Society
Limited v. Income Tax Officer, Karnataka*

(2) s.115-J – Book profit – Depreciation – Assessee claiming depreciation u/r.5 of Income Tax Rules – Assessing Officer allowing it as per Schedule XIV to the Companies Act – High Court upholding the same – But, similar view of High Court stood reversed by judgment of Supreme Court – Held: Section 115-J is a special provision relating only to certain companies – Once company falls within the ambit of its being MAT company, s.115-J applies and company would be required to prepare its profits and loss accounts only in terms of parts II and III of Schedule VI to Companies Act – s. 115J (1A) is needed to be read in strict sense – By legislative incorporation, only Parts II and III of Schedule VI to Companies Act have been incorporated legislatively into s.115-J – Therefore, the question of applicability of Parts II and III of Schedule VI to Companies Act does not arise – If the judgment of Supreme Court is to be accepted, then the very purpose of enacting s. 115J would stand defeated – Matter needs re-consideration by a larger Bench – Income Tax Rules, 1962 – r.5 – Companies Act, 1956 – Schedule VI, Parts II and III and Schedule XIV.

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(3) s.143(2) – Issuance of notice u/s.143(2) for block assessment proceedings – Requirement of – Held: Is mandatory.

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INDUSTRIAL DISPUTES ACT, 1947:

s. 25-F – Daily wage workers – Termination of – Claim for re-instatement – Dismissed by labour court on ground of failure of the workers to establish that they worked for more than 240 days continuously in one calendar year – Upheld by High Court – Held: Relevant documents and communications, though available with the workers, were not placed before the labour court and High Court – Matter remitted to labour court.

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(1) Mandatory/Prohibitory Injunction – Power of Authorities under the 1995 Act to issue.

(See under: Persons with Disabilities
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(2) Temporary injunction – Application for, filed in suit before trial court – Parties directed to maintain *status quo* – On defendants' bringing it to notice of court that the entire dispute was pending before Supreme Court, application for temporary injunction rejected – On the same ground appeal dismissed by High Court – Held: Since the matter pending before Supreme Court has been decided, orders passed by High Court and trial court set aside – Matter remitted to trial court.

S. Narahari Rao v. Sathyanarayana & Ors.

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SURANCE:

(1) (i) Difference between 'subrogation' and 'assignment' – Held: Equitable assignment of rights and remedies of assured in favour of insurer, implied in a contract of indemnity, is known as 'subrogation' – It occurs automatically, when insurer settles the claim under the policy, by reimbursing the entire loss suffered by assured – It need not be evidenced by any writing – Assignment refers to transfer of a right by instrument for consideration – When there is absolute assignment, assignor is left with no title or interest in the property or right, which is the subject matter of assignment.

(ii) Subrogation – Principles of – Explained.

(iii) Subrogation – Three categories – Subrogation by equitable assignment; subrogation by contract; and subrogation-cum-assignment – Explained.

(iv) Insurance contract – Settlement of claim – Execution of document by assured in favour of insurer, deed of Subrogation simpliciter or Subrogation-cum-Assignment – Held: Depends upon the intention of parties as evidenced by the wording of document – Title or caption of document, by itself, may not be conclusive – If intention was to have only a subrogation, use of words "assign, transfer and abandon in favour of" would in the context be construed as referring to subrogation only.

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INTEREST ACT, 1978:		
s. 3 – Interest – Compound interest or interest upon interest – Held: s. 3 does not deal with either <i>pendente lite</i> or future interest – Sub-section (3)(c) of s.3 makes it clear that nothing in the said section shall empower court or arbitrator to award interest upon interest – Interest unless otherwise specified, refers to simple interest, that is, interest paid only on the principal and not on any accrued interest – Compound interest can be awarded only if there is a specific contract, or authority under a Statute, for compounding of interest – There is no general discretion in courts or tribunals to award compound interest or interest upon interest – Arbitration and Conciliation Act, 1996 – s.31(7):		
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(2) Remedial/welfare/labour statutes – Interpretation of – Held: Such statutes should receive liberal construction having due regard to the Directive Principles of the State Policy, so as to secure the relief contemplated by the statute – Constitution of India, 1950.

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(2) Interpretation of – The observation in *Three Circles* case that *Mcdermott* case held that interest awarded on the principal amount upto the date of award becomes the principal amount and

therefore award of future interest therein does not amount to award of interest on interest – Is *per incuriam* due to an inadvertent erroneous assumption – Precedent.

(Also see under: Arbitration and Conciliation Act, 1996)

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s.11(3) – Eviction petition – On the ground of bonafide personal requirement – Dismissed by rent controller as also appellate authority – Order upheld by High Court – Meanwhile original owners died – Their LR's, i.e. three daughters sought eviction on basis of requirement pleaded by original owners – Held: Eviction proceedings could not be continued by LR's of deceased-owners – LR's of deceased-owners were married and settled in their respective matrimonial homes in different cities and at different places – Deceased-owners did not have any dependant family member for whose personal occupation they could have sought eviction – On the death of original owners, their right to seek eviction on the ground of

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(Also see under: Rent Control and Eviction)

Seshambal (Dead) Through LRs. v.

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(1) s.6, First proviso, Explanation I – Limitation for issuance of s.6 declaration – Computation of – Held: Where any order of stay is granted in favour of land owners, actual period covered by order of stay should be excluded while computing period of limitation for issuance of s.6 notification – Thereafter, if declaration is quashed by any Court, it would only enure to the benefit of those who had approached the Court – The benefit would certainly not extend to those who had not approached the Court – After a long lapse of time, it would not only be harsh but inequitable also to quash the notifications so as to grant liberty to appellants to challenge same – Delay/laches – Equity.

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(2) (i) ss. 18(2) and 54 – Acquisition of land – Award by Land Acquisition Collector – Application seeking reference u/s. 18 – Rejection of, by Collector since it was made beyond a period of six months from the date of award – Writ petition

dismissed on the ground that appeal maintainable u/s. 54 – Review petition also dismissed – Held: Award was not made in the presence of the land owners – Notice of award was issued but was not sent by post nor served on land owners – No evidence placed by Collector to show knowledge on the part of land owners – Thus, claim of land owners that they became aware that award was made only when notice was tendered to them is correct and application was filed in time – Collector directed to make reference u/s. 18 – Limitation.

(ii) ss. 54 and 18 – Appeals in proceedings before court – Order of Land Acquisition Collector refusing to make a reference to civil court for determination of compensation – Appeal thereagainst u/s 54 – Held: Not maintainable since s. 54 does not provide for appeals against the awards or orders of Land Acquisition Collector.

(iii) s. 18 – Application seeking reference under – Delay in filing of – Condonation of delay by Land Acquisition Collector – Held: Collector is not a civil court, provisions of s. 5 of the 1963 Act are not applicable to proceedings before the Collector – Collector cannot entertain any application for extension, nor extend the time for seeking reference, even if there are genuine and *bonafide* grounds for condoning delay – Limitation Act, 1963 – s. 5.

(iv) s. 18 (2) proviso (b) – Reference to court – Period of six months under clause (b) of proviso to s. 18 – Reckoning of, from the date of knowledge of the award of Collector or from the date of award itself – Held: Words 'date of the collector's award' in proviso (b) to s. 18 is to be

read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award – Limitation.

(v) s. 18 (2) proviso (b) – Interpretation of.

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(3) (i) s. 23 – Land acquisition – Compensation – Belting method – Held: Acquisition relates to a comparatively small extent of compact contiguous village land – The view of High Court that compensation should be awarded at an uniform rate does not call for interference – Guidelines for belting method when to be adopted, laid down.

(ii) s. 23 – Compensation – Enhancement on the basis of sale exemplar – Held: Compensation awarded on basis of the sale exemplar of more than one year prior to date of preliminary notification increased by 12%.

(iii) s. 23 – Compensation – Deduction towards development cost – Held: 25% deduction adopted by Collector, needs no alteration.

(iv) ss. 34 and 28 – Interest – Held: In regard to compensation that is offered by Land Acquisition Collector interest is payable u/s. 34 – With respect to increase in compensation allowed by reference court or appellate court, interest is awarded u/s 28 – ss. 34 and 28 do not duplicate the award of interest, but together cover the entire amount of compensation awarded.

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(4) ss. 48, 4 and 6 – Notification and declaration for acquisition of large tract of land for public purpose – Representation for release from acquisition – State Government releasing land of similarly situated landowners from acquisition but rejected appellants' representation who were similarly placed – Challenge to – Held: State Government did not consider representation of appellants by applying the same standards which were applied to other land owners – No uniform policy with regard to release of land from acquisition existed – Thus, action of State Government is violative of Article 14 and discriminatory – Constitution of India, 1950 – Article 14.

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(2) Occupancy rights.

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(2) Vicarious liability of Directors of a Company
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(1) Application for reference u/s. 18 of Land Acquisition Act, 1894 – Limitation.

(See under: Land Acquisition Act, 1894) 1145

(2) Cause of action – Land tribunal granted occupancy rights in respect of suit properties in 1975 – Suit filed in 2005 challenging the order granting occupancy rights – Held: Suit is barred by limitation as records show that predecessor of plaintiffs had knowledge of grant of occupancy rights.

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(1) s. 5 – Applicability of, to proceedings before Land Acquisition Collector.

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(2) s.5 – Condonation of delay – Appeal by Government Corporation against judgment and decree in civil suit – Also application for condonation of delay of 4 years – Allowed by Division Bench – Held: High Court committed grave error by condoning more than four years' delay in filing of appeal ignoring the judicially accepted parameters for exercise of discretion u/ s. 5 – Law Department of the Government Corporation did not approach High Court with

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41 r. 3-A.

*Oriental Aroma Chemical Industries Ltd. v.
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INAM ABOLITION ACT, 1954:

Abolition of Inams – During pendency of Inamdars’ application for registration as occupants, land granted to Sangha for construction of house – Conversion fine paid – Inamdars challenging the grant, but later settled the matter out of Court agreeing for an amount in addition to the amount towards the price of the land – Later, legal representatives of Inamdars challenging the order of grant – Held: Issue having attained finality, cannot be re-opened for fresh adjudication in subsequent challenge – Inamdars by entering into the agreement with the Sangha, waived their occupancy right – Inamdars were bound by the agreement – Grant in favour of Sangha not liable to be cancelled – Grant also not contrary to ss. 79-A, 79-B and 80 of Land Reforms Act as conversion fine paid u/s. 95 (2) and (7) of Land Revenue Act – Moreover, this issue not raised at initial stage – Karnataka Land Reforms Act, 1961 – ss. 79-A, 79-B and 80 – Karnataka Land Revenue Act, 1964 – s. 95 (2) and (7).

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(ii) s. 50 – Applicability of – In case of search and
recovery from bag, briefcase, container etc. – Held:
Such a case does not come within ambit of s. 50
– Provision is applicable only in a case of search
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(2) Charge under NDPS Act – Official witness –
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(1) Difference between 'negligence' and 'criminal
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ss. 138 and 141 – Vicarious liability of Directors
of accused Company – Held: A director of
accused Company who is not in-charge of and is

not responsible for the conduct of the business of the company would not be liable for a criminal offence u/s.138 – Complaint u/s.138 must spell out as to how and in what manner the accused-director was in-charge of or was responsible to the accused company for the conduct of its business – If averments made against accused-Directors are unspecific and general and no particular role is assigned to them, then vicarious liability in accordance with s.141 cannot be fastened on them – Companies Act, 1956 – s.291.

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(1) Issuance of contempt notice by High Court before the date, the show cause notices issued by High Court were returnable.

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ss. 4, 4(5), 5 and 14 – Denial of gratuity – To employees opting for pension in lieu of gratuity – Employer-Bank placing reliance on Awards and Bipartite Settlements – Held: Gratuity being a statutory right cannot be taken away except in accordance with provisions of the Act – Pension and gratuity are separate retiral benefits – Provisions of the Act prevail over other enactments, or instruments or contract so far as gratuity is concerned – Notwithstanding the Awards and Settlements, employees were entitled to gratuity – No exemption was granted to employer-Bank from operation of the provisions of the Act – Waiver to the claim of gratuity on the part of employees also not established – Service Law.

*Allahabad Bank & Anr. v. All India
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*Satni Bai v. State of M.P.
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(3) s. 302 – Murder – Dispute between the parties – Appellant firing gun shot at deceased resulting in his death – Conviction of appellant u/s. 302 and imposition of sentence of life imprisonment by courts below – Held: Appreciation of evidence by courts below neither perverse nor unreasonable – Homicidal death of deceased proved by testimony of the doctor – Testimony of eye-witnesses reliable – FIR filed promptly – Evidence.

Kirpal Singh v. State of U.P. 1133

(4) s.302/34.

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(5) s. 302/34 – Murder – Prosecution of appellants-accused with other co-accused – In the assault co-accused were armed while the appellants-accused were unarmed – Incident was result of a previous incident of misbehavior of deceased with womenfolk – Conviction of the appellants-accused u/s. 302 with aid of s. 34, by courts below – Sentenced to life imprisonment – Held: Common intention of appellants-accused with the co-accused to murder not proved – Conviction u/s. 302/34 not sustainable – Conviction altered to u/s. 304 (Part I) r/w s. 34 – Sentence of appellant No. 2 altered to two years RI – Appellant No. 1, since is a juvenile, his case referred to Juvenile Justice Board – Juvenile Justice (Care and Protection of Children) Act, 2000 – ss. 15 and 20.

Raju & Anr. v. State of Haryana 574

(6) ss. 302/34 and 307.

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(7) s. 302/120-B – Murder of deceased by fire shots – A-4 and A-5 engaged on payment by A-1, A-2, A-3 and A-6 for killing deceased – Conviction of A-4 and A-5 u/s. 302/120-B and ss. 25(1)(b)(a) and 27 and sentenced to death – Conviction of A-1, A-2, A-6 u/s. 302/120B and sentenced to life imprisonment – High Court upheld death sentence against A-4 and A-5 but acquitted A-1, A-2 and A-6 – Held: Circumstantial evidence against A-4 and A-5 did not constitute a complete chain as to be consistent with their guilt – Thus, order of High Court as regards A-4 and A-5 set aside and that of A-1, A-2 and A-6 upheld – Evidence – Arms Act, 1959 – ss. 25(1)(b)(a) and 27.

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(8) ss. 302/149, 365 and 148 – Abduction and murder for ransom – Eye-witnesses to the incident – Three of them injured in the incident – Prosecution case supported by medical evidence – Accused identified by two of the eye-witnesses in Test Identification Parade – Conviction and death sentence by courts below – Held: Conviction justified – In view of the socio-economic background of the convicts, death sentence altered to life imprisonment – Life sentence to extend to their full life, subject to remission by Government – Sentence/Sentencing.

(Also see under: Sentence/Sentencing)

Mulla & Anr. v. State of U.P.

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(9) ss. 302/323/34 – Murder – Acquittal by trial court – Conviction by High Court – Held: Trial court was not justified in acquitting the accused when

there was overwhelming evidence against him – Medical evidence corroborated evidence of eye-witnesses – Eye-witnesses categorically named appellant and attributed specific role to him – There was mis-reading of evidence and non-appreciation of law in proper perspective by trial court.

Abdul Mannan v. State of Assam 1030

(10) (i) ss. 302, 364-A, 201 and 120-B – Kidnapping for ransom – Young boy poisoned to death – Conviction u/ss. 302, 364-A, 201 and 120-B and award of death sentence by courts below – Propriety of – Held: Kidnapping must be dealt with in the harshest possible manner and obligation rests on courts too – Boy was not only kidnapped for ransom but was murdered in the process – On basis of the evidence on record, award of death sentence to two accused upheld – However, death sentence awarded to female accused, commuted to life imprisonment as she apparently acted under pressure of her husband.

(ii) s. 364-A – Kidnapping for ransom – Provision for death or life imprisonment – Purpose of amendment – Held: Is to act as a deterrent even in a case where kidnapping does not result in the death of the victim.

(Also see under: Evidence as also Sentence/ Sentencing)

Vikram Singh & Ors. v. State of Punjab 22

(11) s. 304-B – Dowry death – Death of bride by 95% burn injuries in her matrimonial home within 4 months of marriage – Husband convicted and in-laws and sisters-in-law of deceased acquitted

– Plea of husband that since prosecution case was disbelieved in respect of other accused, presumption u/s 113-B of Evidence Act stood rebutted and he was also entitled to acquittal – Held: Prosecution case fully proved by oral and medical evidence – It is for the defence to dispel the presumption u/s 113-B – In a case where prosecution evidence has been discarded with respect to four of the five accused, presumption u/s 113-B could to some extent be said to be dispelled, but in the instant case, on an over view the primary role and the weight of the evidence has been on the husband – Evidence Act, 1872 – s.113-B.

Sudhir Kumar v. State of Punjab

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(12) ss. 304-B and 498-A – Dowry death – Wife subjected to cruelty and harassment by husband demand for dowry – Wife committed suicide by hanging herself – Conviction and sentence u/ss. 304-B, 498-A and ss. 3 and 4 of 1961 Act – Conviction upheld by High Court and sentence partly modified – Held: Ingredients of s.304-B satisfied – It pointed towards guilt of husband – Husband failed to discharge presumption raised against him – Conviction u/s 304-B upheld but sentence reduced from life imprisonment to R.I. for 10 years while other conviction and sentence upheld – Evidence Act, 1872 – s.113-B – Dowry Prohibition Act, 1961 – ss. 3 and 4.

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(13) s.307 – Accused, armed with licensed gun of his brother, allegedly fired bullet shots at informant's brother and injured him – Trial court convicted accused u/s 307 and u/s 27 of Arms

Act – Appellate court held that the firing was accidental and acquitted accused – High Court convicted accused u/s.307 – Justification of – Held: Justified.

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(14) s. 376 – Allegation of commission of rape on victim by accused – Acquittal by trial court – Conviction u/s. 376 and sentence of rigorous imprisonment for ten years awarded by High Court – Held: Sustainable – Conviction by High Court based on evidence on record.

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PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

(i) Applicability of the Act – Bank employee, three days prior to his completing the age of retirement, filing application for being relieved under the 'Exit Policy Scheme' of the Bank – On the request not being accepted, employee filing complaints before the Commissioner for Persons with Disabilities, Dehradun and Chief Commissioner for Persons with Disabilities, New Delhi – Employee filing writ petition and contempt petition before Allahabad High Court – Held: Grievances and complaints of persons with disabilities have to be considered by courts and authorities with compassion, understanding and expedition – But the provisions of the Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of person – Issuing interim orders when not warranted,

merely because the petitioner is a person with disability, is as insidious as failing to issue interim orders when warranted – Administration of justice – Interim orders.

(ii) ss. 47, 58, 59, 61, 62 and 63 r/w r.42 – Power of authorities under the Act to issue mandatory/prohibitory injunction – Held: Neither the Chief Commissioner nor any Commissioner functioning under the Act has power to issue any mandatory or prohibitory injunction or other interim directions – In the instant case, the order of the Deputy Chief Commissioner, not to implement the order of retirement was illegal and without jurisdiction – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 – r.42 – State Bank of Patiala (Officers) Service Regulations, 1979 – Regulation 19 – Service Law.

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(ii) Computer increment, computer allowance – Grant of – Letter dated 6.01.2003 from Government of India to NABARD shows that grant of computer increment to employees/officers of RBBs was declined – Since the Government's decision denies benefit of computer increments, direction issued by High Court requiring the bank to grant the said benefit not sustainable.

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(Also see under: Kerala Buildings (Lease and Rent Control) Act, 1965)

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REPRESENTATION OF THE PEOPLE ACT, 1951:

ss. 101(b), 101(d)(ii), 101(d)(iv) and 123(3) – Lok Sabha Elections – Corrupt practice – Proof – Election of returned candidate challenged on the ground of communal appeal to electorate – Cassette stated to have contained the speeches, produced – Held: Heavy onus lies on election petitioner to prove the charge of corrupt practice in the same way as a criminal charge – On facts, no evidence led to prove that the cassette produced containing communal appeal to electorate was a true reproduction of original speeches by returned candidate or his agent – It has not been proved that returned candidate was guilty of indulging in corrupt practices – Evidence Act, 1872 – s.74.

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(2) Commutation of death sentence to life imprisonment.

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(ii) Misconduct – Disciplinary proceedings –
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Justification of – Held: Not justified – Order of
punishment was not vitiated since no prejudice
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(2) Suit by widow, for declaration of her ownership-
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husband – Plaintiff alleging that her earlier consent
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fraud – Defendants denying the allegation and
taking the plea that suit was time-barred – Suit
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Facts of the case prove that the consent decree
was result of fraud, and as such a nullity – Suit not
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(3) Suit – Subsequent development – Effect of –
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*Cantonment Board, Meerut & Anr. v.
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*Economic Transport Organization v.
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(i) r. 7(v) – Charges framed against delinquent officer – Non-supply of relevant documents to delinquent officer despite repeated request – Final order of removal passed by the authority, despite interim direction of High Court to consider the representation of delinquent – Held: Denial of supply of the relevant documents to the delinquent officer being in flagrant disregard of r. 7(v), the enquiry proceeding is vitiated – Enquiry proceeding also in violation of principles of natural justice and in disregard of the mandate under Article 311(2) of the Constitution – Administrative Law – Principles of natural justice – Constitution of India, 1950 – Article 311(2).

(ii) r. 7(x) – Departmental enquiry – Charge-sheet – Failure to reply the charge-sheet – Enquiry

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