A INBASEGARAN AND ANOTHER

v.

S. NATARAJAN (DEAD) THR. LRS.

(Civil Appeal Nos. 4215-4216 of 2007 etc.)

B OCTOBER 29, 2014

[M.Y. EQBAL AND SHIVA KIRTI SINGH, JJ.]

Code of Civil Procedure, 1908:

C *O.2, r.2 – Bar to second suit – Plaintiff filing a suit for permanent injunction seeking to restrain defendants from interfering with his possession – Second suit filed by plaintiff for specific performance of contract for sale in respect of the same property – The two suits and the cause of action* D *mentioned therein would show that the causes of action and reliefs sought for are quite distinct and are not same – Therefore, provisions of O.2, r.2 will not apply.*

'Cause of action' – Explained.

E *Precedent:*

Ratio of a decision – Must be understood in the background of the facts of that case.

Appeal:

F

First appeal – High Court, being the final court of facts in a first appeal, is required to decide all the points formulated by it – Matter remanded to High Court to decide the appeals by recording its finding on all points formulated by it.

G **Disposing of the appeals, the Court**

HELD: 1.1. The first suit was filed by the plaintiff-appellant for the grant of permanent injunction restraining

H

the defendant, his agents and servants from interfering with the possession and enjoyment of the suit property by the plaintiff either by attempting to trespass into it or in any other manner whatsoever. Besides other facts, it was pleaded that in pursuance of the sale agreement the plaintiff took possession of the suit plot from the defendant and began construction. The suit was filed mainly on the cause of action which arose when the defendant attempted to forcibly occupy the suit property by driving away plaintiff's workers and that the defendant was arranging to forcibly and unlawfully take possession of the suit property. [para 16] [1213-C, D, G, H]

1.2. In the subsequent suit filed by the plaintiff, a decree for specific performance of the agreement for sale was claimed on the ground inter alia that the defendant in the earlier suit took a defence that the sale agreement was allegedly given up or dropped by the plaintiff. The cause of action, as pleaded by the plaintiff in the subsequent suit, arose when defendant-respondent disclosed the transfer made by Housing Board in his favour and finally when the defendant was exhibiting an intention of not performing his part of the sale agreement and in reply to the lawyer's notice the defendant made a false allegation and denied to execute the sale deed as per the agreement. [para 17] [1214-B-C]

1.3. Thus, a perusal of the pleadings in the two suits and the causes of action mentioned therein would show that the causes of action and reliefs sought for are quite distinct and are not same. [para 18] [1214-D]

Virgo Industries (Eng.) (P) Ltd. vs. Venturetech Solutions (P) Ltd. **2012 (7) SCR 933 = (2013) 1 SCC 625 – held inapplicable**

1.4. It is well settled that the ratio of any decision must

A **be understood in the background of the facts of that case. [para 30] [1224-H]**

Bharat Petroleum Corpn. Ltd. and Another vs. N.R. Vairamani and another **2004 (4) Suppl. SCR 923 = (2004) 8 SCC 579 – relied on.**

B

1.5. Cause of action consists of a bundle of facts which will be necessary for the plaintiff to prove in order to get a relief from the Court. When the causes of action for the two suits are different and distinct and the C **evidences to support the relief in the two suits are also different then the provisions of O. 2, r.2 CPC will not apply. [para 19] [1214-E-F]**

Gurbux Singh vs. Bhooralal **1964 SCR 831 = AIR 1964** D **SC 1810 – followed.**

Kewal Singh vs. Lajwanti, **1980 (1) SCR 854 = (1980) 1 SCC 290;** *Deva Ram vs. Ishwar Chand,* **1995 (4) Suppl. SCR 369 = (1995) 6 SCC 733;** *Sidramappa vs. Rajashetty & Ors.* **1970 (3) SCR 319 =AIR (1970) SC 1059;** *State of M.P. v.* E *State of Maharashtra & Ors.* **1977 (2) SCR 555 = (1977) 2 SCC 288 – relied on.**

Mohd. Khalil Khan & Ors. vs. Mahbub Ali Mian & Ors. **AIR (36) 1949 Privy Council 78 – referred to.**

F

2.1. The High Court, being the final court of facts in a first appeal, is required to decide all the points formulated by it. In the instant case, the High Court, although formulated various points for consideration and decision but has not considered other points in its right G **perspective. In view of the same, the matter needs to be remanded back to the High Court to consider and decide other points formulated by it. [para 34] [1226-C-D]**

2.2. The decision arrived at by the High Court against

H

point no.4 holding that the suit was barred under O. 2, r. 2 of the CPC is set aside. The matter is remanded back to the High Court to decide the appeals by recording its finding on other points formulated by it. [para 35] [1126-E]

Lakshmi alias Bhagyalakshmi and another vs. E. Jayaram (dead) by Lr. **2013 (1) SCR 794 = (2013) 9 SCC 311 – cited.**

Case Law Reference:

(1964) 7 SCR 831	**followed**	**para 13**
1980 (1) SCR 854	**relied on**	**para 13**
2013 (1) SCR 794	**cited**	**Para 13**
2012 (7) SCR 933	**held inapplicable**	**Para 14**
AIR (36) 1949 Privy Council 78	**referred to**	**Para 20**
1995 (4) Suppl. SCR 369	**relied on**	**para 23**
1970 (3) SCR 319	**relied on**	**para 24**
1977 (2) SCR 555	**relied on**	**para 25**
2004 (4) Suppl. SCR 923	**relied on**	**para 31**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4215-4216 of 2007.

From the Judgment & Order dated 30.04.2004 of the High Court of Judicature at Madras in A.S. Nos. 666 of 2001.

WITH

C.A. Nos. 4217-4218 & 4219 of 2007.

K. Parasaran, R. Balasubramanian, Ambhoj Kumar Singh,

A Ashwarya Singh, Senthil Jagadeesan, Shruti Iyer Kanchana for the appearing parties.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. These appeals are directed against
B the common judgment and order dated 30.4.2004 passed by the High Court of Judicature at Madras in A.S. Nos.665 and 666 of 2001, whereby the appeals preferred by S. Natarajan were allowed. This matter pertains to a property bearing S.No.159/10 and 11, Plot No.436, Tallakulam Village, Madurai
C City, measuring 6980 sq.ft., which was allotted to one S. Natarajan on lease-cum-sale agreement by the Housing Board. S. Natarajan, original defendant in O.S. Nos.445/85 & 252/86 and plaintiff in O.S. No.3/86 alleged to have entered into a sale agreement with respect to the suit property with one
D Inbasegaran. Therefore, for the sake of convenience S. Natarajan and Inbasegaran are hereinafter respectively referred to as 'defendant' and 'plaintiff'.

2. The facts giving rise to the present appeals are that the
E plaintiff filed a suit being O.S. No.252 of 1986 for specific performance of the agreement for sale dated 19.1.1984 with respect to aforesaid suit schedule property. According to him, the said land was allotted to the defendant on lease-cum-sale agreement on 4.7.1975 by the Tamil Nadu Housing Board (in short, 'Housing Board'). Since the defendant had not
F constructed building on the said site for the purpose of getting sale deed as contemplated under the lease-cum-sale agreement, the Board did not execute the sale deed in favour of the defendant. Hence, he entered into a sale agreement on 19.1.1984 with the plaintiff. In the said agreement, he agreed
G to sell the suit house site to the plaintiff for a total consideration of Rs.3,84,220/- and received a sum of Rs.1,00,000/- as advance in cash towards part of the sale consideration. It is alleged that the defendant agreed that after a sale deed executed in his favour from the Housing Board he will execute

H

and register the sale deed in favour of the plaintiff or his family members after receiving the balance sale consideration. Time for performance of the agreement was tentatively fixed as four months and the same was extended until the defendant got the sale deed executed from the Housing Board. The parties agreed that the plaintiff shall prepare a plan for construction of a building in the said property and the defendant will sign the building plan and get the plan approved and the plaintiff thereafter shall construct the building in the suit housing plot at his own expenses.

3. Pursuant to the sale agreement, the plaintiff took possession of the suit property and completed the construction. According to the plaintiff, the defendant had been representing to the plaintiff that he has not yet got the sale deed executed in his favour from the Housing Board but attempted to forcibly take possession of the building constructed on the suit property by the plaintiff. So the plaintiff filed a suit being O.S. No.445/1985 on 11.9.1985 for permanent injunction restraining the defendant herein from taking forcible possession of the building constructed in the suit property. Pending the aforesaid suit, few days after, the plaintiff on 25.4.1986 filed aforesaid suit for specific performance being O.S. No.252 of 1986.

4. The defendant pleaded in his written statement that the agreement dated 19.1.1984 is not a valid document and the plaintiff cannot maintain the suit as he had relinquished his right. It is also stated that the agreement was executed when the defendant was not the owner of the site and any sale by the defendant was prohibited as per the terms and conditions of the lease-cum-sale agreement entered into with the Housing Board and so the agreement in question is void, inoperative and opposed to law. The defendant also denied the payment of Rs.1,00,000/- in cash as advance as alleged by the plaintiff. Even with respect to the averment in the plaint that the plaintiff was permitted to put up construction in the suit site, the same is denied. The defendant also denied that the plaintiff put up

A construction at his own cost. The defendant further denied that the plaintiff was given possession of the suit property and claimed that he never handed over possession of the property to the plaintiff at any point of time. It is alleged that the plaintiff is not entitled to a decree for specific performance because B the agreement dated 19.1.1984 no longer subsists. It is further alleged that the subsequent suit being O.S. No.252/1986 for specific performance is barred under Order 2, Rule 2 of the Code of Civil Procedure because the plaintiff who instituted the earlier suit O.S. No.445/1985, should have included the relief C for specific performance and, in any event, could not have filed O.S. No.252/1986 without any leave of the Court.

5. The defendant also filed a suit being O.S. No.3/1986 seeking a decree for injunction restraining the purchaser (defendants therein) from interfering with his possession and D enjoyment of the suit property. The trial court tried all the three suits together and dismissed the suits filed by the plaintiff and defendant for injunction in O.S. Nos.445/1985 and 3/1986 and decreed the suit in O.S. No.252/1986 preferred by the plaintiff for specific performance with the direction to the defendant to E execute and register the sale document in favour of the plaintiff.

6. Aggrieved by the judgment and decree of the trial court, the defendant S. Natarajan preferred appeals before the High Court being A.S. Nos.665 and 666 of 2001.

F 7. High Court held that the causes of action in both the suits filed by the appellant are identical, arose from the same transaction and that is why the trial court also had a common trial and decided the case by a common judgment. The plaintiff has not come forward with the suit in O.S. 252/1986 on the G basis of the fact that the sale deed with respect to the suit property was obtained only on 18.2.1985 by the defendant from the Housing Board and the defendant failed to execute the sale deed in favour of the plaintiff pursuant to Ex.A1 agreement and so the prayer sought for in the said suit could have been sought

H

for even in the Original Suit No.445/1985 as the pleading set out in the plaint in O.S. 252/1986 was available even on the date when O.S. No.445/1985 was filed. Since the plaintiff omitted to seek such a relief and did not obtain the leave of the Court to file the subsequent suit, it amounts to relinquishment of his rights which is sought for in O.S. 252/1986 and he cannot sustain the subsequent suit in O.S. 252/1986 for the relief sought for in that suit in view of Order 2, Rule 2 of the Code.

8. The High Court formulated as many as following six points for consideration to decide the appeals:

(1) Whether Ex.A1 is enforceable in law?

(2) Whether the suit in O.S. No.252/1986 is maintainable on the basis of Ex.A1 in view of variations made in Exs.B7 and B9?

(3) Whether the respondent/plaintiff was ready and willing to perform his part of the contact?

(4) Whether the suit in O.S. 252/1986 is maintainable in view of Order 2, Rule 2 of the Code of Civil Procedure?

(5) Whether the relief for the specific performance of the agreement suit in O.S. 252/1986 can be rejected on the ground that the respondent/plaintiff has not come to court with clean hands?

9. However, instead of deciding all the points, the High Court took up only Point no.4 and 5 and decided the appeal in following three paragraphs:

"13. Further, in the present case, the parties and the court felt that in view of common issue, the said suit was to be dealt with and so the trial court in a common judgment dated 28.7.2000 disposed of the same. The trial court though framed the issue, simply rejected that it is not

barred by Order 2, Rule 2 of the Code on assumption that there is a change of cause of action. So the said findings of the trial court cannot be sustained in law. So we can safely conclude that the suit in O.S. No. 252/1986 is barred under Order 2, Rule 2 of the Code and so it has to be rejected.

14. Even with respect to Point No.5, it has to be held that the respondent/plaintiff has come to court by filing O.S. 252/1986 with unclean hands. Though in the plaint filed in O.S. No.3/1986 which was filed on 5.9.1985, it is specifically stated that conditional sale deed dated 18.2.1985 was executed in favour of the appellant/defendant by the Tamil Nadu Housing Board. In O.S. No.252/1986 which was filed on 5.4.1986, the respondent/plaintiff has come forward with the false plea that the appellant/defendant had been representing to the plaintiff that he had not yet got the sale deed executed in his favour by the Tamil Nadu Housing Board, which is contrary to the averment made in the earlier suit. Learned counsel for the respondent/plaintiff also tried to submit that the respondent has no knowledge about the said document so as to enable him to file the suit for specific performance of the Agreement on that basis. The said plea is nothing but false in view of the specific averment made in the plaint in O.S. No.3/1986. The said plea that the sale deed is yet to be got by the appellant/defendant from the Tamil Nadu Housing Board is a material fact to enforce the right and got the sale deed by the respondent/plaintiff arose only after getting the sale deed by the appellant/defendant from the Tamil Nadu Housing Board as contemplated under Ex.A1. The respondent/plaintiff suppressed the said material fact. Hence, even on that ground the suit in O.S. 252/1986 has to be rejected holding that the respondent/plaintiff is not entitled to equitable relief of specific performance of the Agreement in view of the above said fact.

15. In view of the findings given above with respect to point Nos.4 and 5, we are; not inclined to deal with the other points." A

10. By impugned order dated 30.4.2004, the High Court allowed the appeals preferred by the defendant based on Order 2 Rule 2 with a direction to the defendant to pay the cost of construction (Rs.8,00,000/-) to the plaintiff and on such deposit, the plaintiff would hand over the suit property with building to the defendant and after handing over the same, he can withdraw the aforesaid amount along with the money already deposited, if any. Hence, present cross appeals by both sides. The High Court further held that no other points need to considered and decided. B C

11. Mr. K. Parasaran, learned senior counsel appearing for the appellants-plaintiff, assailed the impugned judgment passed by the High Court as being erroneous in law as also in facts. Learned counsel firstly drew our attention to the agreement to sell dated 19.1.1984 and submitted that the defendant-respondent put a condition in the said agreement that the sale deed shall be executed by the defendant in favour of the plaintiff only after getting transfer of the lease hold plot in his favour by the Housing Board. However, pending transfer of the property by the Housing Board in favour of the defendant-respondent, the rowdy elements of the defendant threatened the appellant-plaintiff to dispossess him from the building constructed by the plaintiff. In order to restrain and prevent the defendant, the appellant filed a suit for injunction being O.S. No.445 of 1985 seeking the prohibitory order restraining the respondent from dispossession of the plaintiff. D E F

12. Simultaneously, before the trial court, the defendant-respondent also filed a suit being O.S. No.3/1986 (13/1985) making similar prayer for injunction against the appellant. In the written statement of the said suit, for the first time the defendant of the suit (appellant herein) disclosed in paragraph 4 that the sale deed was executed by the Housing Board in his favour G H

A and now the plaintiff of the suit (respondent herein) is the absolute owner of the property. Having come to know about the transfer of the property by the Housing Board in favour of the plaintiff, legal notices were given by the appellant to the respondent and a regular suit for specific performance was
B filed.

13. Mr. Parasaran submitted that from bare reading of the plaints in two suits, it would be apparently clear that cause of action of each of the two suits by the plaintiff was quite different and distinct and the same would not attract the provisions of
C Order 2, Rule 2 CPC. Mr. Parasaran further submitted that the trial court had categorically held that the provisions of Order 2, Rule 2 shall have no application in the facts and circumstances of the case. Mr. Parasaran then drew our attention to the agreement dated 19.1.1984 and the codicil sale agreement
D dated 31.4.1984 to show that the period of sale agreement between the plaintiff-appellant and the defendant-respondent was further extended in anticipation of the transfer of the property by the Housing Board in favour of the defendant. Lastly, it was contended that the provision of Order 2 Rule 2,
E CPC does not apply where the two suits are filed on different cause of action and the counsel relied upon the decision of this Court in the cases of *Gurbux Singh vs. Bhooralal,* (1964) 7 SCR 831; *Kewal Singh vs. Lajwanti,* (1980) 1 SCC 290 and in the case of *Lakshmi alias Bhagyalakshmi and another vs.*
F *E. Jayaram (dead) by Lr.*, (2013) 9 SCC 311.

14. Mr. R. Balasubramanian, learned senior counsel appearing for the respondent-defendant, firstly submitted that if the allegations made in the plaint filed by the plaintiff-appellant are read together it would be clear that the plaintiff had
G knowledge about the sale deed executed by the Housing Board in favour of the defendant. It was only because of that the plaintiff in the plaint categorically stated that he reserves his right to file a suit for specific performance. According to the learned counsel, the causes of action in both the suits filed by
H

the plaintiff are identical, and therefore, the subsequent suit for specific performance is not maintainable being barred under Order 2 Rule 2 CPC. Learned counsel put heavy reliance on the decision of this Court in the case of *Virgo Industries (Eng.) (P) Ltd. vs. Venturetech Solutions (P) Ltd.*, (2013) 1 SCC 625.

15. We have heard learned counsel appearing for the parties, perused the pleading and findings recorded by the trial court as also by the first Appellate Court.

16. Admittedly, the first suit being O.S. No.445 of 1985 was filed by the plaintiff-appellant for the grant of permanent injunction restraining the defendant, his agents and servants from interfering with the possession and enjoyment of the suit property by the plaintiffs either by attempting to trespass into it or in any other manner whatsoever. Besides other facts, it was pleaded that in pursuance of the sale agreement the plaintiff took possession of the suit plot from the defendant and began construction of *Kalyana Mahal*. It was alleged by the plaintiff that the defendant with an ulterior malafide motive and intention of extracting more money was representing to the plaintiffs that he would execute the sale deed after getting the sale deed from the Housing Board and after completion of the construction of the building. With that ulterior motive, the defendant tried to forcibly take possession of the building constructed by the plaintiffs and threatened the plaintiffs' worker to remove them from the building. The plaintiffs then gave complaint to the police and in response, the police immediately rushed to the suit property and warned the rowdies not to enter into the building. The plaintiffs, therefore, pleaded that the defendant was again arranging to gather unruly elements and to forcibly and unlawfully take possession of the suit property from the plaintiffs. With that apprehension, the suit was filed mainly on the cause of action which arose when the defendant attempted to forcibly occupy the suit property by driving away plaintiffs' workers and that the defendant was arranging to forcibly and unlawfully take possession of the suit property. The defendant, in his written statement, denied each and every allegation and stated that

A building was constructed by him and in fact the plaintiffs attempted to forcibly take possession of the building.

17. In the subsequent suit filed by the plaintiff being O.S. No.252 of 1986, a decree for specific performance of the agreement was claimed on the ground inter alia that the B defendant in the earlier suit took a defence that the sale agreement was allegedly given up or dropped by the plaintiff. The cause of action, as pleaded by the plaintiff in the subsequent suit, arose when defendant-respondent disclosed the transfer made by Housing Board in his favour and finally C when the defendant was exhibiting an intention of not performing his part of the sale agreement and in reply to the lawyer's notice the defendant made a false allegation and denied to execute the sale deed as per the agreement.

18. A perusal of the pleadings in the two suits and the D cause of action mentioned therein would show that the cause of action and reliefs sought for are quite distinct and are not same.

19. Indisputably, cause of action consists of a bundle of E facts which will be necessary for the plaintiff to prove in order to get a relief from the Court. However, because the causes of action for the two suits are different and distinct and the evidences to support the relief in the two suits are also different then the provisions of Order 2 Rule 2 CPC will not apply.

F 20. The provision has been well discussed by the Privy Council in the case of *Mohd. Khalil Khan & Ors. vs. Mahbub Ali Mian & Ors.*, AIR (36) 1949 Privy Council 78, held as under:-

"61 The principles laid down in the cases thus far discussed may be thus summarised:- G

(1) The correct test in cases falling under Order 2, Rule 2, is "whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit." Moonshee Buzloor Ruheem H v. Shumsunnissa Begum (1867-11) M.I.A. 551.

(2) The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. Read v. Brown (1889-22) Q.B.P. 128.. A

(3) If the evidence to support the two claims is different, then the causes of action are also different. Brunsden v. Humphrey (1884-14) Q.B.D. 141 . B

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. Brunsden v. Humphrey (1884-14) Q.B.D. 141. C

(5) The cause of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers...to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. Muss. D Chand kour v. Partab Singh (15 I.A. 156 : Cal.98 P.C.). This observation was made by Lort Watson in a case under Section 43 of the Act of 1882 (corresponding to Order 2, Rule 2), where plaintiff made various claims in the same suit." E

21. The Constitution Bench of this Court, considering the scope and applicability of Order 2 Rule 2 of the CPC, in the case of *Gurbux Singh vs. Bhooralal,* (supra) AIR 1964 SC 1810, held as under:

F

"6. In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (*i*) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in G respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that H

A the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be
B no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed
C merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the
D cause of action in the two suits. It is common ground that the pleadings in CS 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action
E should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit
F being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable.

xxxxx

It was his submission that from this passage we should
G infer that the parties had, by agreement, consented to make the pleadings in the earlier suit part of the record in the present suit. We are unable to agree with this interpretation of these observations. The statement of the learned Judge. "The two courts have, however, freely cited

H

from the record of the earlier suit" is obviously inaccurate as the learned District Judge specifically pointed out that the pleadings in the earlier suit were not part of the record and on that very ground had rejected the plea of the bar under Order 2 Rule 2 of the Civil Procedure Code. Nor can we find any basis for the suggestion that the learned Judge had admitted these documents at the second appeal stage under Order 41 Rule 27 of the Civil Procedure Code by consent of parties. There is nothing on the record to suggest such an agreement or such an order, assuming that additional evidence could legitimately be admitted in a second appeal under Order 41 Rule 27 of the Civil Procedure Code. We can therefore proceed only on the basis that the pleadings in the earlier suit were not part of the record in the present suit."

22. In the case of of *Kewal Singh vs. Lajwanti* (supra), while considering the applicability of Order 2 Rule 2 CPC, this Court observed that:-

"5. So far as the first two contentions are concerned, we are of the opinion that they do not merit any serious consideration. Regarding the question of the applicability of Order 2 Rule 2 CPC the argument of the learned Counsel for the appellant is based on serious misconception of law. Order 2 Rule 2 CPC runs thus:

> "2(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.
>
> (2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."

A perusal of Order 2 Rule 2 would clearly reveal that this

A provision applies to cases where a plaintiff omits to sue a portion of the cause of action on which the suit is based either by relinquishing the cause of action or by omitting a part of it. The provision has, therefore, no application to cases where the plaintiff bases his suit on separate and B distinct causes of action and chooses to relinquish one or the other of them. In such cases, it is always open to the plaintiff to file a fresh suit on the basis of a distinct cause of action which he may have relinquished.

6. In the case of *Mohammad Khalil Khan* v. *Mahbub Ali* C *Mian,* AIR 1949 PC 78, the Privy Council observed as follows:

"That the right and its infringement, and not the ground or origin of the right and its infringement, constitute the cause of action, but the cause of action for the Oudh suit (8 of D 1928) so far as the Mahbub brothers are concerned was only a denial of title by them as that suit was mainly against Abadi Begam for possession of the Oudh property; whilst in the present suit the cause of action was wrongful possession by the Mahbub brothers of the Shahjahanpur E property, and that the two causes of action were thus different.

7. Applying the aforesaid principles laid down by the Privy Council we find that none of the conditions mentioned by F the Privy Council are applicable in this case. The plaintiff had first based her suit on three distinct causes of action but later confined the suit only to the first cause of action, namely, the one mentioned in Section 14-A(1) of the Act and gave up the cause of action relating to Section 14(1)(*e*) G and (*f*). Subsequently, by virtue of an amendment she relinquished the first cause of action arising out of Section 14-A(1) and sought to revive her cause of action based on Section 14(1)(*e*). At the time when the plaintiff relinquished the cause of action arising out of Section 14(1)(*e*) the defendant was not in the picture at all. H

Therefore, it was not open to the defendant to raise any objection to the amendment sought by the plaintiff. For these reasons, we are satisfied that the second amendment application was not barred by the principles of Order 2 Rule 2 CPC and the contention of the learned counsel for the appellant must fail." A B

23. In the case of *Deva Ram vs. Ishwar Chand,* (1995) 6 SCC 733, this Court, considering its various earlier decisions, observed as under:-

"14. What the rule, therefore, requires is the unity of all claims based on the same cause of action in one suit. It does not contemplate unity of distinct and separate causes of action. If, therefore, the subsequent suit is based on a different cause of action, the rule will not operate as a bar. (See *Arjun Lal Gupta* v. *Mriganka Mohan Sur*, (1974) 2 SCC 586; *State of M.P.* v. *State of Maharashtra*, (1977) 2 SCC 288; *Kewal Singh* v. *B. Lajwanti*, (1980) 1 SCC 290). C D

15. In *Sidramappa* v. *Rajashetty*, (1970) 1 SCC 186, it was laid down that if the cause of action on the basis of which the previous suit was brought, does not form the foundation of the subsequent suit and in the earlier suit the plaintiff could not have claimed the relief which he sought in the subsequent suit, the latter namely, the subsequent suit, will not be barred by the rule contained in Order 2 Rule 2, CPC." E F

24. In the case of *Sidramappa vs. Rajashetty & Ors.,* AIR (1970) SC 1059, this Court held:

"7. The High Court and the trial court proceeded on the erroneous basis that the former suit was a suit for a declaration of the plaintiff's title to the lands mentioned in Schedule I of the plaint. The requirement of Order II Rule 2, Code of Civil Procedure is that every suit should include the whole of the claim which the plaintiff is entitled to make G H

A in respect of a cause of action. "Cause of action" means the "cause of action for which the suit was brought". It cannot be said that the cause of action on which the present suit was brought is the same as that in the previous suit. Cause of action is a cause of action which
B gives occasion for and forms the foundation of the suit. If that cause of action enables a person to ask for a larger and wider relief than that to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings. — see *Mohd. Hqfiz* v. *Mohd.*
C *Zakaria* AIR(1922) PC 23."

8. As seen earlier the cause of action on the basis of which the previous suit was brought does not form the foundation of the present suit. The cause of action mentioned in the earlier suit, assuming the same afforded a basis for a valid
D claim, did not enable the plaintiff to ask for any relief other than those he prayed for in that suit. In that suit he could not have claimed the relief which he seeks in this suit. Hence the trial court and the High Court were not right in holding that the plaintiff's suit is barred by Order II, Rule 2,
E Code of Civil Procedure."

25. In the case *State of M.P. v. State of Maharashtra & Ors.*, (1977) 2 SCC 288, at page 295 this Court observed as under: -

F "24. This Court in *State of Bihar* v. *Abdul Majid, AIR 1954) SC 245,* stated that a government servant could ask for arrears of salary. Counsel for Madhya Pradesh said that the decision of this Court in *Abdul Majid case* declared what the existing law has been, and, therefore, the plaintiff
G could not contend that it was not open to him to ask for arrears of salary in the 1949 suit. It is in that background that Madhya Pradesh contends that the plaintiff not having asked for relief under Order 2 Rule 2 of the Code of Civil Procedure would not be entitled to claim salary in the 1956 suit.
H

25. The contention of Madhya Pradesh cannot be accepted. The plaintiff will be barred under Order 2 Rule 2 of the Code of Civil Procedure only when he omits to sue for or relinquishes the claim in a suit with knowledge that he has a right to sue for that relief. It will not be correct to say that while the decision of the Judicial Committee in *Lall case*[1] was holding the field the plaintiff could be said to know that he was yet entitled to make a claim for arrears of salary. On the contrary, it will be correct to say that he knew that he was not entitled to make such a claim. If at the date of the former suit the plaintiff is not aware of the right on which he insists in the latter suit the plaintiff cannot be said to be disentitled to the relief in the latter suit. The reason is that at the date of the former suit the plaintiff is not aware of the right on which he insists in the subsequent suit. A right which a litigant does not know that he possesses or a right which is not in existence at the time of the first suit can hardly be regarded as a "portion of his claim" within the meaning of Order 2 Rule 2 of the Code of Civil Procedure. See *Amant Bibi* v. *Imdad Husain, (1885) 15 Ind App 106 at pg.112 (PC)*. The crux of the matter is presence or lack of awareness of the right at the time of first suit.

27. The appellant Madhya Pradesh is, therefore, not right in contending that the plaintiff is barred by provisions contained in Order 2 Rule 2 of the Code of Civil Procedure from asking for arrears of salary in the 1956 suit. The plaintiff could not have asked for arrears of salary under the law as it then stood. The plaintiff did not know of or possess any such right. The plaintiff, therefore, cannot be said to have omitted to sue for any right."

26. In the light of the principles discussed and the law laid down by the Constitution Bench as also other decisions of this Court, we are of the firm view that if the two suits and the relief claimed therein are based on the same cause of action then only the subsequent suit will become barred under Order 2, Rule

A 2 of the CPC. However, when the precise cause of action upon which the previous suit for injunction was filed because of imminent threat from the side of the defendant of dispossession from the suit property then the subsequent suit for specific performance on the strength and on the basis of the sale
B agreement cannot be held to be the same cause of action. In the instant case, from the pleading of both the parties in the suits, particularly the cause of action as alleged by the plaintiff in the first suit for permanent injunction and the cause of action alleged in the suit for specific performance, it is clear that they
C are not the same and identical.

27. Besides the above, on reading of the plaint of the suit for injunction filed by the plaintiff, there is nothing to show that the plaintiff intentionally relinquished any portion of his claim for the reason that the suit was for only injunction because of the
D threat from the side of the defendant to dispossess him from the suit property. It was only after the defendant in his suit for injunction disclosed the transfer of the suit property by the Housing Board to the defendant and thereafter denial by the defendant in response to the legal notice by the plaintiff, the
E cause of action arose for filing the suit for specific performance.

29. Mr. R. Balasubramanian, learned senior counsel appearing for the respondents put reliance on the decision of this Court in the case of Virgo Industries (Eng.) Private Limited (supra). After going through the decision given in the said case,
F we are of the view that the facts of that case were different from the facts of the instant case. In the case of Virgo Industries (supra) two sale agreements were executed by the defendant in favour of the plaintiff in respect of the two plots. In the suit filed by the plaintiff for injunction it was pleaded that the
G defendant is attempting to frustrate the agreement on the pretext that restriction to transfer of land may be issued by the Excise Department on account of pending revenue demand. Further, the defendant was trying to frustrate the agreement by alienating and transferring the suit property to third parties. On
H these facts, the Court observed :-

"5. While the matter was so situated the defendant in both the suits i.e. the present petitioner, moved the Madras High Court by filing two separate applications under Article 227 of the Constitution to strike off the plaints in OSs Nos. 202 and 203 of 2007 on the ground that the provisions contained in Order 2 Rule 2 of the Civil Procedure Code, 1908 (for short "CPC") is a bar to the maintainability of both the suits. Before the High Court the defendant had contended that the cause of action for both sets of suits was the same, namely, the refusal or reluctance of the defendant to execute the sale deeds in terms of the agreements dated 27-7-2005. Therefore, at the time of filing of the first set of suits i.e. CSs Nos. 831 and 833 of 2005, it was open for the plaintiff to claim the relief of specific performance. The plaintiff did not seek the said relief nor was leave granted by the Madras High Court. In such circumstances, according to the defendant-petitioner, the suits filed by the plaintiff for specific performance i.e. OSs Nos. 202 and 203 were barred under the provisions of Order 2 Rule 2(3) CPC.

xxxxxxxx

13. A reading of the plaints filed in CSs Nos. 831 and 833 of 2005 show clear averments to the effect that after execution of the agreements of sale dated 27-7-2005 the plaintiff received a letter dated 1-8-2005 from the defendant conveying the information that the Central Excise Department was contemplating issuance of a notice restraining alienation of the property. The advance amounts paid by the plaintiff to the defendant by cheques were also returned. According to the plaintiff it was surprised by the aforesaid stand of the defendant who had earlier represented that it had clear and marketable title to the property. In Para 5 of the plaint, it is stated that the encumbrance certificate dated 22-8-2005 made available to the plaintiff did not inspire confidence of the plaintiff as the same contained an entry dated 1-10-2004. The plaintiff,

A therefore, seriously doubted the claim made by the defendant regarding the proceedings initiated by the Central Excise Department. In the aforesaid paragraph of the plaint it was averred by the plaintiff that the defendant is "*finding an excuse to cancel the sale agreement and* B *sell the property to some other third party*". In the aforesaid paragraph of the plaint, it was further stated that "*in this background, the plaintiff submits that the defendant is attempting to frustrate the agreement entered into between the parties*".

C 14. The averments made by the plaintiff in CSs Nos. 831 and 833 of 2005, particularly the pleadings extracted above, leave no room for doubt that on the dates when CSs Nos. 831 and 833 of 2005 were instituted, namely, 28-8-2005 and 9-9-2005, the plaintiff itself had claimed that D facts and events have occurred which entitled it to contend that the defendant had no intention to honour the agreements dated 27-7-2005. In the aforesaid situation it was open for the plaintiff to incorporate the relief of specific performance along with the relief of permanent injunction E that formed the subject-matter of the above two suits. The foundation for the relief of permanent injunction claimed in the two suits furnished a complete cause of action to the plaintiff in CSs Nos. 831 and 833 to also sue for the relief of specific performance. Yet, the said relief was omitted F and no leave in this regard was obtained or granted by the Court."

29. In the instant case, as discussed above, suit for injunction was filed since there was threat given from the side of the defendant to dispossess him from the suit property. The G plaintiff did not allege that the defendant is threatening to alienate or transfer the property to a third party in order to frustrate the agreement.

30. It is well settled that the ratio of any decision must be understood in the background of the facts of that case. The H

following words of Lord Denning in the matter of applying precedence have been *locus classicus.* A

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive." B C

31. In the case of *Bharat Petroleum Corpn. Ltd. and Another vs. N.R. Vairamani and another*, (2004) 8 SCC 579 at page 584, this Court observed :-

> "9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd.* v. *Horton 1951 AC 737*-(AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D) D E F G
>
> "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually H

A used by that most distinguished judge,..."

32. Having regard to the facts and evidence of the instant case, we are of the view that the issue decided in *Virgo Industries* (supra) is not applicable in this case.

B 33. Further, taking into consideration all these facts, we are of the considered opinion that the conclusion arrived at by the High Court that the suit is barred under Order 2 Rule 2 CPC cannot be sustained in law.

34. As noticed above, the High Court, although formulated C various points for consideration and decision, as quoted hereinabove, but has not considered other points in its right perspective. The High Court, being the final court of facts in a first appeal, is required to decide all the points formulated by it. In view of the same, the matter needs to be remanded back D to the High Court to consider and decide other points formulated by it.

35. For the aforesaid reason, Civil Appeal Nos.4215-4216 of 2007 are allowed in part and the decision arrived at by the High Court against point no.4 holding that the suit was barred E under Order 2 Rule 2 of the CPC is set aside. The matter is remanded back to the High Court to decide the appeals by recording its finding on other points formulated by it. Consequently, other connected appeals, filed by the defendant against the plaintiff, stand disposed of with a direction to F maintain status quo with regard to possession of the suit property till further orders of the High Court in this regard.

Rajendra Prasad Appeals disposed of.

P.S.C. 4 X 2014 (4)
500

Annual Subscription for 2014
(For 12 Volumes, each Volume consisting of
4 Parts and an Index)
In Indian Rupees : 4,620/-
In UK £ : 140
In US $: 192

Each Additional Volume:
In Indian Rupees : 385/-
In UK £ : 12
In US $: 16
(Individual Volumes or Parts not available for Sale)

To Subscribe please Contact :

Assistant Controller of Publications (Periodicals)
Department of Publication, Govt. of India,
Civil Lines, Delhi-110054
Tel. : 011-23817823, 23813761-62, 64, 65 Fax : 91-011-23817846

Regd. No. D-(D)155.

Printed by : J.R. Computers,
477/7, Moonga Nagar, Karawal Nagar Road, Delhi.

SUBJECT NDEX

ADMINISTRATION OF JUSTICE:

(1) Abuse of process of court.
(See under: Negotiable Instruments Act, 1881) 1117

(2) Criminal justice – 'Speedy trial' and 'fair trial' – Explained.
(Also see under: Code of Criminal Procedure, 1973)
J.V. Baharuni & Anr. v. State of Gujarat & Anr. 1061

(3) Duty of court and prosecution – Emphasised.
Patel Maheshbhai Ranchodbhai and others v. State of Gujarat 678

ADMINISTRATIVE LAW:

Subordinate Legislation – Development Control Regulations or amendment thereof are legislative functions – G.O. dated 3.2.2007 issued u/s 154 is contrary to clear intent behind DCR N-2.4.17 and, as such, cannot override DCR N-2.4.17 – Maharashtra Regional and Town Planning Act, 1966 – s.154.
Pune Municipal Corporation & Anr. v. Kausarbag Coop. Housing Society Ltd. & Anr. 843

ANDHRA PRADESH (TELANGANA AREA) ABOLITION OF INAMS ACT, 1955:
(See under: Partition) 641

APPEAL:

(1) First Appeal.
(See under: Code of Civil Procedure, 1908) 1050

(2) First appeal – High Court, being the final court of facts in a first appeal, is required to decide all the points formulated by it – Matter remanded to High Court to decide the appeals by recording its finding on all points formulated by it.
Inbasegaran and Another v. S. Natarajan (Dead) Thr. LRs. 1202

(3) Appeal against acquittal – Held: In appeal against the acquittal, if a possible view has been taken, no interference is required, but if the view taken is not legally sustainable, the Court has ample powers to interfere with the order of acquittal.
State of Karnataka v. Smt. Suvarnamma & Anr. 778

(4) (See under: Code of Civil Procedure, 1908) 971

(5) (See under: Court Fees Act, 1870) 527

ARBITRATION ACT, 1940:

Arbitration Award passed in favour of the appellant-company set aside by High Court on the ground that the expression "finding" appearing in Clause 70 of the General Conditions of Contract implies something more than the mere recording of a conclusion by the Arbitrator and the Arbitrator failed to give the findings – High Court remitted the

matter back to the Arbitrator for a fresh determination of the disputes – Held: Arbitrator's award was admittedly unsupported by any reason – High Court rightly set aside the award – Arbitration and Conciliation Act, 1996 – s.31(3).
M/s. Anand Brothers P. Ltd. TR. M.D. v. Union of India & Ors. 382

ARBITRATION AND CONCILIATION ACT, 1996:
(1) s.31(3).
(See under: Arbitration Act, 1940) 382

(2) (i) ss.34 and 42 – Which Court will have the jurisdiction to entertain and decide an application u/s.34 of the Act – Held: The "Court" would be the High Court and not the District Court.
(ii) s.42 – Applicability of – Held: The expression "with respect to an arbitration agreement" makes it clear that s.42 will apply to all applications made whether before or during arbitral proceedings or after an award is pronounced under Part-I of the Act.
(iii) s.42 – Court – Meaning of.
State of West Bengal & Ors. v. Associated Contractors 426

(3) (i) s.34 – Setting aside of arbitral award – Power of court to set aside the award would be exercised only in cases where court finds that arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act – Arbitrator is the final judge of facts – The finding of facts recorded by him cannot be interfered with on the ground that the terms of contract were not correctly interpreted by him.

(ii) s.34(2)(b)(ii) – Arbitral award challenged as opposed to public policy – Court is precluded from re-appreciating the evidence and to arrive at different conclusion by holding that the arbitral award is against the public policy.
Swan Gold Mining Ltd. v. Hindustan Copper Ltd. 559

BAIL:

Cancellation of bail – High Court cancelling the bail granted by it earlier – Held: An order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court – Code of Criminal Procedure, 1973 – ss.167(2), 439(2) and 352.
Abdul Basit @ Raju & Ors. Etc. v. Md. Abdul Kadir Chaudhary & Anr. 571

CENTRAL EXCISE ACT, 1944:

(See under: Constitution (Forty-second Amendment) Act, 1976) 1

CIRCULAR/GOVERNMENT ORDERS/NOTIFICATION:

G.O. dated 3.2.2007 issued under s.154 of MRTP Act, 1966.
(See under: Administrative Law) 843

CODE OF CIVIL PROCEDURE, 1908:

(1) s.35.
(See under: Land Acquisition Act, 1894) 1153

(2) s.96 r/w Or.41, r.31 – Scope and powers of the first appellate court.
Vinod Kumar v. Gangadhar 1050

(3) s.100 – Scope of – Held: Superior courts alone are vested with the power to decide questions of law – Substantial questions of law which relate to taxation would also involve many areas of civil and criminal law – It is, therefore, not correct to say that taxation, being a specialized subject, can be dealt with by a tribunal.
(Also see under: Constitution of India, 1950)
Madras Bar Association v. Union of India and another 1

(4) s.115.
(See under: Constitution of India, 1950) 1004

(5) Or.1, r 8.
(See under: Labour laws) 587

(6) (i) O.2, r.2 – Bar to second suit – Plaintiff filing a suit for permanent injunction seeking to restrain defendants from interfering with his possession – Second suit filed by plaintiff for specific performance of contract for sale in respect of the same property – The two suits and the cause of action mentioned therein would show that the causes of action and reliefs sought for are quite distinct and are not same – Therefore, provisions of O.2, r.2 will not apply.
(ii) 'Cause of action' – Meaning of.
Inbasegaran and Another v. S. Natarajan (Dead) Thr. LRs. 1202

(7) Or.2, r.2 – Counter claim – Dismissal of, as barred by principles of Or.2, r.2 – Held: Can be

challenged by preferring an appeal and not by filing revision.
Rajni Rani & Anr. v. Khairati Lal & Ors. 971

(8) O. 21, rr. 99 to 103 – Execution of ex-parte decree – Power of executing court – Application filed by stranger claiming right, title and interest in the property subject matter of execution – Execution court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties – It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property.
Sameer Singh and Another v. Abdul Rab and Others 1004

(9) Or. 41, r.27 – Suit for specific performance – Necessary documents not filed by plaintiff despite reminders – Application by plaintiff for filing additional documents rejected by trial court which is upheld by High Court in exercise of supervisory jurisdiction – After dismissal of suit, in appeal by plaintiff, application filed u/Or.XLI, r.27 for production of pass books and statement of bank accounts as additional evidence – Application allowed by trial court and said decision upheld by the High Court – Held: Or. XLI, r.27(1)(b) is not attracted in the present case – Therefore, the appellate court has erred in taking recourse to the said clause and allowing the application for taking additional evidence.
Surjit Singh & Ors. v. Gurwant Kaur & Ors...... 355

CODE OF CRIMINAL PROCEDURE, 1973:
(1) ss.167(2), 439(2) and 352.
(See under: Bail) 571

(2) ss.197 and 482 – Quashing of proceedings – Tender invited by Electricity Board – Tender application of respondent rejected after obtaining performance report/certificate issued by appellant No.2, the Chief Engineer – Suit against the Electricity Board challenging rejection of application – Suit withdrawn – Respondent filed writ petition which was also dismissed and SLP there against also dismissed – Respondent filed complaint u/ss.120B, 468, 420 and 500 IPC against appellants that certificate was false and forged – Issuance of summons – High Court refusing to quash the proceedings on the ground that though the appellants are public servants, the alleged offences committed by them were not in discharge of their normal duties and hence s.197 was not attracted – Held: Rejection of tender was in furtherance of and in discharge of the official duties by the appellant – Action of the respondent in filing the criminal complaint was not bonafide and amounted to misuse and abuse of the process of law – The allegations of fabricating the records were mischievously made as an afterthought just to give colour of criminality to a civil case – High Court ought to have quashed the proceedings in exercise of its inherent powers u/s. 482.
Rajib Ranjan & Ors. v. R. Vijaykumar 982

(3) s.313 – Held: Where the accused gives evasive answers in his cross-examination u/s.313, an adverse inference can be drawn against him – But such inference cannot be a substitute for the evidence which the prosecution must adduce to bring home the offence of the accused.
Edmund S Lyngdoh v. State of Meghalaya 458

(4) s.313 – Statement of accused – When requisite questions have not been put to accused, it has caused immense prejudice to him, more so, when there is no evidence to establish his complicity in the alleged abduction.
(Also see under: Penal Code, 1860)
Sukhjit Singh v. State of Punjab 608

(5) s.326(3) r/w s.143 of NI Act – *De novo* trial in cases arising out of s.138, NI Act – A de novo trial should be the last resort and that too only when such a course becomes so desperately indispensable – It should be limited to the extreme exigency to avert "a failure of justice" – Any omission or even illegality in the procedure which does not affect the core of the case is not a ground for ordering a de novo trial – The ratio in Nitinbhai case must not be followed mechanically to remand matters to trial courts for de novo trial – There should be proper application of judicial mind and evidence on record must be thoroughly perused before arriving at any conclusion with regard to mode of trial – Directions issued for courts seized off with similar cases – Administration of criminal justice.
(Also see under: Negotiable Instruments Act, 1881)
J.V. Baharuni & Anr. v. State of Gujarat & Anr. 1061

(6) s.354 (3).
(See under: Sentence/Sentencing) 812

(7) s.362 – Bail granted by High Court subsequently cancelled by it – Legality of – Held: The order for bail in the bail application preferred by the accused-petitioners finally disposes of the issue in consideration and grants relief of bail to the applicants – Since, no express provision for review of order granting bail exists under the Code, High Court becomes functus officio and s.362 applies barring the review of judgment and order of the Court granting bail to the accused-petitioners – Even in the light of fact of misrepresentation by accused-petitioners during the grant of bail, High Court could not have entertained respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition – Judgment and order passed by the High Court is set aside.
Abdul Basit @ Raju & Ors. Etc. v. Md. Abdul Kadir Chaudhary & Anr. 571

(8) s.433 – Power of appropriate government to commute sentence – Held: When the appropriate Government commutes the sentence, it does so in exercise of its sovereign powers – The court cannot direct the appropriate Government to exercise its sovereign powers – Court can merely give a direction to the appropriate Government to consider the case for commutation of sentence and nothing more – In the instant case, the benefit of s.433 was not given and the convict was released from jail after serving the sentence imposed on him – Since no steps were taken by

the concerned authorities to give the respondent benefit u/s.433, the appeal has actually become infructuous – The casual manner in which Public Prosecutor made concession in High Court condemned – Judicial deprecation.
State of Rajasthan v. Mohammad Muslim Tagala 902

(9) s.482 – Exercise of power by High Court to quash criminal proceedings u/s 138 r/w s.141 of Negotiable Instrument Act against Directors of accused company – Principles culled out.
(Also see under: Negotiable Instruments Act, 1881).
Gunmala Sales Private Ltd. v. Anu Mehta & Ors. 1117

(10) s.482 – Quashing of criminal proceedings by High Court – FIR for offences punishable u/ss 147, 342, 395 and 450 IPC – An investigation should not be shut out at the threshold, if the allegations have some substance – Power u/s 482 has to be exercised sparingly and cautiously to prevent the abuse of process of court and to secure the ends of justice – An overall perusal of the materials placed in the instant case, makes out a prima facie case against accused which requires to be decided by conducting a proper trial – Penal Code, 1860 – ss.147, 342, 395 and 450.
N. Soundaram v. P.K. Pounraj & Anr. 1108

(11) s.482 – Quashing of proceedings – Letter of credits issued by the banks in favour of fictitious companies propped up by the accused and use of said LCs to siphon the funds from these

banks – Chargesheet for offence u/ss.420, 406 IPC – Settlement of dispute by payment of debts – High Court quashed the proceedings – Held: The alleged offence was social wrong having immense societal impact – Quashment would neither help to secure the ends of justice nor prevent abuse of process of court nor can it be also said that as there is settlement no evidence would come on record and there would be remote chance of conviction – High Court's order is wholly indefensible – Penal Code, 1860 – ss.420, 406.
State of Maharashtra Through CBI v. Vikram Anantrai Doshi and Others 506

CONSTITUTION (FORTY-SECOND AMENDMENT) ACT, 1976:
Constitutional validity of, assailed on the ground that the same violates the basic structure of the Constitution of India, by impinging on the power of "judicial review" vested in the High Court – Discussed – Income Tax Act – Customs Act, 1962 – Central Excise Act, 1944.
Madras Bar Association v. Union of India and another 1

CONSTITUTION OF INDIA, 1950:
(1) Art. 14.
(See under: Town Planning) 704

(2) Arts. 21 and 39(b) and (c) r/w Art. 126 – Allocation of public land to private entity – Held: Requires fair, transparent and non arbitrary exercise of power in the light of mandate of Art. 14 read with Art. 39 (b) and (c) – Once it is found that beneficiary of such allotment has abused its

position to its advantage and to the disadvantage of the public, Supreme Court cannot interfere with the fair order passed by a competent authority resuming the land.
(Also see under: Land Acquisition).
Raunaq Education Foundation v. State of Haryana & Ors. 1036

(3) Arts. 48A, 51A(g) and 77.
(See under: Environment Protection Act, 1986) 536

(4) Art. 136 – Interference with concurrent findings recorded by courts below – Such an exercise would be justified by the court for the purpose of satisfying itself that the grave injustice had not resulted in the case – Principles culled out.
Ananda Poojary v. State of Karnataka 929

(5) Art.136 – Scope of.
(See under: Service law) 447

(6) Art. 227 – Scope of – Order of executing court holding the application under O.21, rr.97 and 99 and 101 CPC as not maintainable on the ground that the said court had become functus officio – The said order cannot earn the status of a decree as there has been no adjudication – If a subordinate court exercises its jurisdiction not vested in it by law or fails to exercise the jurisdiction so vested, such an order is revisable u/s 115 CPC and after amendment w.e.f. 1.7.2002, the said power is exercised under Art. 227 – Appellants had rightly invoked the jurisdiction of High Court under Art. 227 assailing the order

passed by executing court on the foundation that it had failed to exercise the jurisdiction vested in it – Code of Civil Procedure, 1908 – s.115.
Sameer Singh and Another v. Abdul Rab and Others 1004

(7) (i)Basic structure – Does the NTT Act violate the "basic structure" of the Constitution – Held: Jurisdiction transferred by the NTT Act was with regard to specified subjects under tax related statutes – That was permissible – However, the NTT Act has not transferred power vested in courts by the Constitution – The power of "judicial review" vested in the High Court u/Articles 226 and 227 of the Constitution, has remained intact – Since the above jurisdiction of the High Court has not been ousted, the NTT will be deemed to be discharging a supplemental role, rather than a substitutional role – The Parliament has the power to enact legislation, and to vest adjudicatory functions, earlier vested in the High Court, with an alternative court/tribunal – Exercise of such power by the Parliament would not per se violate the "basic structure" of the Constitution – National Tax Tribunal Act, 2005.
(ii) Arts 129, 131, 132 to 134A, 136, 141, 145, 214, 215, 225, 226, 227 and 368 – Powers of High Courts and Supreme Court – Scope of.
(iii) Art.227 – Scope of – Held: The superintending power of the High Courts under Art. 227 is to keep courts and tribunals within the bounds of the law – Hence, errors of law that are apparent on the face of the record are liable to be corrected – In correcting such errors, High Court has necessarily to state what the law is by deciding questions of

law, which bind subordinate courts and tribunals in future cases – Code of Civil Procedure, 1908 – s.100.
(Also see under: National Tax Tribunal Act, 2005).
Madras Bar Association v. Union of India and another 1

CONSUMER PROTECTION ACT, 1986:
Compensation – Purchase of National Saving Certificate (NSC) by a proprietorship concern – On maturity, matured amount not paid by respondent authorities on the ground that an NSC could only be issued in the name of an individual, and that, the NSC taken in the name of proprietorship concern was not valid – Held: The irregularity committed while issuing NSC in the name of proprietor concern could have been easily corrected by authorities by substituting the name of the proprietor – Authorities ought to have devised means to regularize the irregularity – District Forum was right in directing the authorities to pay the maturity amount with 12% interest and Rs.5,000/- as compensation, and also cost of Rs.2,000/-, to the proprietorship concern.
M/s. Bhagwati Vanaspati Traders v. Senior Superintendent of Post Offices, Meerut 762

COURT FEES ACT, 1870:
(i) s.6(2) and s.6(3), proviso – Payment of court fee at appellate stage – Plaint amended adding to valuation of suit – No orders made by trial court to make up the deficit court fee – Objection raised by defendants in first appeal – Time must be granted by court for payment of court fee – In absence of such specific order, sub-ss. (2) and (3)

would not come into operation – An appeal is continuation of suit and power of appellate court is co-extensive with that of trial court.
(ii) s.12(ii) – Decision as to valuation of suit – The provision empowers appellate court to direct a party to make up deficit court fee in plaint at appellate stage.
Sardar Tajender Singh Ghambhir and Another v. Sardar Gurpreet Singh & Others 527

CRIME AGAINST WOMEN:
Dowry death.
(See under: Penal Code, 1860) 678, 742, 778

CRIMINAL LAW:
Unlawful assembly.
(See under: Penal Code, 1860) 689

CRIMINAL TRIAL:
(1) False plea by accused – Held: Can be taken as additional circumstance against the accused.
State of Karnataka v. Smt. Suvarnamma & Anr. 778

(2) Sessions trial – Case u/s 301, r/w s.114 and s.498-A IPC – Disposed of the trial court within a period of 9 days – Held: High Court has rightly held that in the instant case, prime duty of trial court to appreciate the evidence for search of truth is abandoned and in a hurry to dispose of the case or for some other reason, Sessions Judge disposed of the trial and acquitted the accused.
Patel Maheshbhai Ranchodbhai and others v. State of Gujarat 678

CUSTOMS ACT, 1962:
(See under: Constitution (Forty-second Amendment) Act, 1976) 1

CUSTOMS:
Legislation in India – Historical background – Discussed.
Madras Bar Association v. Union of India and another 1

DECREE:
(See under: Constitution of India, 1950) 1004

DELAY/LACHES:
Delay in lodging FIR – Held: In continuing offence, no duration of time can be fixed for lodging FIR.
Edmund S Lyngdoh v. State of Meghalaya 458

DELHI MUNICIPAL CORPORATION HEALTH SERVICE RECRUITMENT REGULATIONS, 1982:
(See under: Service Law) 372

DOWRY PROHIBITION ACT, 1961:
ss.3, 4 and 6.
(See under: Penal Code, 1860) 778, 1021

ENVIRONMENT PROTECTION ACT, 1986:
ss.3 and 6 – Construction within 500 meters of High Tide Line (HTL) – Appellants are owners of Hotels, Beach resorts and Beach bungalows in Goa – Relying on certain guidelines, authorities ordered for demolition of allegedly illegal constructions raised by the appellants – Case of

authorities that as per guidelines in force, constructions within 500 meters of High Tide Line (HTL) are prohibited – High Court held that such constructions were in derogation of the environment guidelines in force – Held: The construction was not illegal or without permission of the competent authority – Admittedly the guidelines relied on by authorities were not gazetted – In the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent an expression of opinion – Guidelines – Constitution of India, 1950 – Articles 48A, 51A(g) and 77.
Gulf Goans Hotels Co. Ltd. & Anr. v. Union of India & Ors. 536

ESTOPPEL:

Applicability of – Held: Where two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be estopped against the other.
M/s. Bhagwati Vanaspati Traders v. Senior Superintendent of Post Offices, Meerut 762

EVIDENCE:

(1) Execution of 'mahazar' in respect of recovery of money – Held: Merely because the "mahazar" was attested by two independent witnesses would not lead credibility to the same – Such credibility would attach to the "mahazar" only if the said two independent witnesses were produced as witnesses, and the appellant was afforded an opportunity to cross-examine them – Such a procedure was not adopted in the instant case –

Besides, the said 'Mahazar is insufficient to establish violation of s.9(1)(b) of the 1973 Act – Thus, the execution of 'mahazar' is inconsequential for the determination of guilt of appellant.
A. Tajudeen v. Union of India 864

(2) Expert opinion – Opinion of post-mortem doctor – The opinion of expert witness on technical aspects has relevance but the opinion has to be based upon specialized knowledge and the data on which it is based has to be found acceptable by the court.
Sultan Singh v. State of Haryana 742

EVIDENCE ACT, 1872:
(1) ss.113A and 113B.
(See under: Penal Code, 1860) 1021

(2) s.113-B – Dowry death – Presumption – Under s.113-B, presumption is attracted only in case of suicidal or homicidal death and not in case of an accidental death.
Sultan Singh v. State of Haryana 742

EXCISE LAWS:
Central excise – Legislation in India – Historical background – Discussed.
Madras Bar Association v. Union of India and another 1

FOREIGN EXCHANGE REGULATION ACT, 1973:
(i) ss.9(1)(b) and 50 – Proceedings initiated against appellant for violation of provisions of

s.9(1)(b) – Authorities relying upon a statement alleged to have been made by appellant before officers of Enforcement Directorate – Held: No reliance was placed on the said statement in the impugned memorandum – Per se, therefore, it was not open to the authorities to place reliance on the said statement, while proceeding to take penal action against appellant, in furtherance of the impugned memorandum – Besides, as appellant had refuted having executed any such statement, it was imperative for Enforcement Directorate to establish through cogent evidence that appellant had made such a statement, and having failed to do so, it was not open to them to place reliance on the alleged statement, for establishing charges against appellant in impugned memorandum.

(ii) ss.9(1)(b) and 50 – Proceedings initiated against appellant for violation of provisions of s.9(1)(b) – Statements of appellant and his wife recorded by officers of Enforcement Directorate – Held: The said statements are not to be referred to as corroborative pieces of evidence, but as primary evidence to establish the guilt of appellant – In the absence of any independent corroborative evidence, the said statements of appellant and his wife recorded during the raid and while appellant was under detention, which, immediately, on release, were retracted, could not constitute the exclusive basis to determine the culpability of appellant – The entire action taken by Enforcement Directorate against appellant in furtherance of the impugned memorandum is set aside.

A. Tajudeen v. Union of India 864

GUIDELINES:
Government guidelines – Not gazetted – Binding effect of.
(See under: Environment Protection Act, 1986) 536

HIGH COURT:
(See under: National Tax Tribunal Act, 2005)..... 1

INAM LAND:
(See under: Partition) 641

INCOME TAX:
Legislation in India – Historical background – Discussed.
(Also see under: Constitution (Forty-second Amendment) Act, 1976)
Madras Bar Association v. Union of India and Another 1

INDUSTRIAL DISPUTES RULES:
r.40(1)(i)(c). 587

INVESTIGATION:
Faulty investigation – Held: Suppression or unfair conduct of the investigating agency would not absolve the Court of its duty to find out the truth.
State of Karnataka v. Smt. Suvarnamma & Anr. 778

JUDICIAL DEPRECATION:
(See under: Code of Criminal Procedure, 1973) 902

JURISDICTION:

(See under: Arbitration and Conciliation Act, 1996) 426

LABOUR LAWS:

(i) Representation of workers before Industrial Tribunal – Whether s.6-I of the U.P. Industrial Disputes Act, and r.40 of the U.P. Industrial Disputes Rules, would be applicable in a situation where the workmen choose to present their case before the Industrial Tribunal, by themselves or by choosing a few amongst themselves on behalf of themselves – Held: s.6-I and Rule 40 would be applicable, only in a situation where the workmen choose to be represented through a third party before the Industrial Tribunal – These provisions would be inapplicable, when the workmen choose to present their own case by themselves – Uttar Pradesh Industrial Disputes Act, 1947 – s.6-I – Industrial Disputes Rules – r.40 (1)(i)(c).

(ii) Representation of workers before Industrial Tribunal – Held: In case where more than one persons are involved collectively on the same side, it is open to them to choose one of more amongst themselves, to represent all of them – Such provision is also found incorporated under Or. 1, r. VIII of the CPC – Code of Civil Procedure, 1908 – Or.I, r. 8.

India Yamaha Motor Pvt. Ltd. v. Dharam Singh & Anr. 587

LAND ACQUISITION:

Resumption of acquired land – Land acquired and handed over to petitioner for opening a school – No construction made for a long time –

Resumption order – Held: Petitioner took prime land of State and failed to comply with the conditions on which the land was allotted, for a long time – Accordingly, the land stands resumed by State Government and as per order of High Court, the land stands re-vested in Gram Panchayat – Besides, the land was a forest land and there is nothing to show that the requisite permission was taken for converting forest land for non-forest purposes – However, still, 7 acres of land has been allowed to be retained by the petitioner – If petitioner wants to serve poor and under-privileged children as proposed, it is free to do so on this part of the land – Constitution of India – Arts. 21 and 39.

Raunaq Education Foundation v. State of Haryana & Ors. 1036

LAND ACQUISITION ACT, 1894:

(1) (i) s.23 – Acquisition of land – Market Value – Determination of.

(ii) s.23 – Acquisition of land – Market Value – Comparable sales method for valuation of land – Held: Comparable sales method of valuation is preferred rather than methods of valuation of land such as capitalization of net income method or expert opinion method, because it furnishes the evidence for determination of the market value of the acquired land at which the willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issuance of notification u/s.4.

(iii) s.23 – Determination of Market Value on the basis of average price paid under sale transactions – Scope – Legal position – Discussed.

(iv) s. 23 – Gap between "leasehold" price and "freehold" price – Held: 'Freehold land' and 'leasehold land' are conceptually different – If a property subject to a lease and in possession of a lessee is offered for sale by the owner to a prospective private purchaser, the purchaser being aware that on purchase he will get only title and not possession and that the sale in his favour will be subject to encumbrance namely, the lease, he will offer a price taking note of the encumbrances – Naturally, such a price would be less than the price of a property without any encumbrance – But when a land is acquired free from encumbrances, the market value of the same will certainly be higher.
(v) s. 23 – Determination of Market Value – Auction sales of commercial / residential plots – If a true index – Deduction towards competitive bidding – Held: The general rule that the sale prices of the comparable sales should be relied upon for calculating the market value will not apply when the sale transactions relied upon are auction sales.
(vi) s. 23 – Determination of Market Value – Deductions made for development – Essential components of.
(vii) ss. 28 and 34 – Award of compensation – Payment of interest.
(viii) s.27 – Award of compensation – Payment of proportionate costs.
Maj. Gen. Kapil Mehra & Ors. v. Union of India & Anr. 1153

(2) (See under: Maharashtra Regional and Town Planning Act, 1966) 843

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966:

(1) (i)s.154.

(ii) Transferable Development Rights (TDR) under Development Control Regulations (DCR) N-24 – Land shown by Housing Society as 'reserved for garden' in lay out plan submitted by it – Land acquired under Land Acquisition Act – Municipal Corporation resisting the claim stating that the land was not reserved for public purpose – Grant of TDR cannot be confined only to lands which have been reserved in the development plan and not to lands acquired under Land Acquisition Act which land eventually becomes a part of the finally approved and sanctioned development plan – Rejection of the claim of respondent Society to TDR under MRTP Act read with DCR N-2.4.17 is seriously flawed – The same is, therefore, set aside – Land Acquisition Act, 1894.

(Also see under: Administrative Law)

Pune Municipal Corporation & Anr. v. Kausarbag Coop. Housing Society Ltd. & Anr. 843

(2) (See under: Town Planning) 704

MOHAMMEDAN LAW:

'Khula' – Explained.

Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and Anr. 479

NATIONAL TAX TRIBUNAL ACT, 2005:

(i) History of promulgation of NTT Act – Discussed.

(ii) Whether High Courts which discharge judicial functions, can be substituted by an extra-judicial body such as NTT and whether the NTT in the

manner of its constitution undermines a process of independence and fairness, which are sine qua non of an adjudicatory authority – Held: It was impermissible for the legislature to abrogate/divest the core judicial appellate functions traditionally vested with the High Court, and to confer/vest the same, with an independent quasi-judicial authority, which did not even have the basic ingredients of a superior Court, like the High Court (whose jurisdiction is sought to be transferred).

(iii) Whether while transferring jurisdiction to a newly created court/tribunal, it is essential to maintain the standards and the stature of the court replaced – Held: Parliament was not precluded from establishing a court under a new name, to exercise the jurisdiction that was being exercised by members of the higher judiciary, at the time when the constitution came into force – But when that was done, it was critical to ensure, that the persons appointed to be members of such a court/ tribunal, should be appointed in the same manner, and should be entitled to the same security of tenure, as the holder of the judicial office, at the time when the constitution came into force – High Court.

(iv) Whether the transfer of adjudicatory functions vested in the High Court to the NTT violates recognized constitutional conventions – Held: Recognized constitutional conventions pertaining to the Westminster model, do not debar the legislating authority from enacting legislation to vest adjudicatory functions, earlier vested in a superior court, with an alternative court/tribunal – Exercise of such power by the Parliament would per se not violate any constitutional convention.

(v) s.5 – Validity of – Clause that NTT would ordinarily have its sittings in the National Capital Territory of Delhi – Role of the Central Government in determining the sitting of benches of the NTT – Held: It is not appropriate to allow the Central Government to play any role, with reference to the places where the benches would be set up, the areas over which the benches would exercise jurisdiction, the composition and the constitution of the benches, as also, the transfer of the Members from one bench to another – Sub-sections (2), (3), (4) and (5) of s.5 are unconstitutional.

(vi) s.6 – Validity of – Clause that a person would be qualified for appointment as a Member, if he is or has been a Member of the Income Tax Appellate Tribunal or of the Customs, Excise and Service Tax Appellate Tribunal for at least 5 years – Held: Only a person possessing professional qualification in law, with substantial experience in the practice of law, will be in a position to handle the onerous responsibilities which a Chairperson and Members of the NTT will have to shoulder – Accountant Members and Technical Members cannot said to have the stature and qualification possessed by judges of High Courts – s.6 is declared unconstitutional.

(vii) s.7 – Validity of – Appointment of Chairperson and other Members by Central Government – Held: NTT has been constituted as a replacement of High Courts – The manner of appointment of Chairperson/Members to the NTT will have to be by the same procedure (or by a similar procedure) to that which is prevalent for appointment of judges of High Courts – s.7 cannot be considered to be constitutionally valid, since it involves participation

of Secretaries of Departments of the Central Government in the process of selection and appointment of the Chairperson and Members of the NTT – s.7 is declared as unconstitutional.

(viii) s.8 – Validity of – Appointment of Chairperson/Member to the NTT, in the first instance, for a duration of 5 years and reappointment, for a further period of 5 years – Held: A provision for reappointment would itself have the effect of undermining the independence of the Chairperson/Members of the NTT – Every Chairperson/Member appointed to the NTT, would be constrained to decide matters, in a manner that would ensure his reappointment in terms of s.8 of the Act – His decisions may or may not be based on his independent understanding – s.8 is declared as unconstitutional.

(ix) s.13(1) – Whether s.13(1) insofar as it allows Accountants to represent a party to an appeal before the NTT is valid – Held: Chartered Accountants at best would be specialist in understanding and explaining issues pertaining to accounts – Allowing them to appear on behalf of a party before NTT would be unacceptable – s.13 insofar it allows Chartered Accountant to represent a party to an appeal before the NTT is declared unconstitutional.

(x) s.15 – Whether Company Secretaries should be allowed to appear before the NTT to represent a party to an appeal in the same fashion, and on parity with, Accountants – Held: Keeping in mind the fact, that in terms of s.15, the NTT would hear appeals from the Income Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) only on "substantial

questions of law", it is difficult to appreciate the propriety of representation, on behalf of a party to an appeal, through either Chartered Accountants or Company Secretaries, before the NTT – The Company Secretaries cannot be allowed to represent a party to an appeal before the NTT – The claim of Company Secretaries, to represent a party before the NTT is rejected.

(xi) ss.5, 6, 7, 8 and 13 – Since these provisions of the NTT Act have been held to be illegal and unconstitutional, the remaining provisions have been rendered otiose and worthless, and as such, the provisions of the NTT Act, as a whole, are set aside – Since the said provisions, constitute the edifice of the NTT Act, and without these provisions the remaining provisions are rendered ineffective and inconsequential, the entire enactment is declared unconstitutional.

(Also see under: Constitution of India, 1950)

Madras Bar Association v. Union of India and another 1

NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) s.138 r/w s.141 – Complaints against Directors of Company on dishonour of cheques – Averments made in complaints that Directors were in-charge and responsible for day-to-day business of accused company – Complaints quashed by High Court holding that mere bald assertion was not sufficient to maintain the complaints – In petitions filed by Directors, no clear case was made out that at the material time Directors were not in-charge of and were not responsible for the conduct of business of the company by referring to or producing any incontrovertible or unimpeachable

evidence which is beyond suspicion or doubt – Order of High Court quashing complaints against Directors set aside, except in respect of an old lady of 70 years of age, as making her stand the trial, would be an abuse of process of court – Code of Criminal Procedure, 1973 – s.482.
Gunmala Sales Private Ltd. v. Anu Mehta & Ors. 1117

(2) s.138 r/w s.143 – Acquittal by Magistrate – High Court remanding the cases to Magistrate for de novo trial, as evidence was recorded by one Magistrate and conviction was recorded by his successor – A case u/s 138 of N.I. Act, which requires to be tried in a summary way as contemplated u/s 143, when in fact, was tried as regular summons case, it would not come within the purview of s.326 (3) of Cr.P.C. and, as such, it need not be heard de novo and the succeeding Magistrate can follow the procedure contemplated u/s 326 (1) of the Code – High Court gravely erred in remanding them to trial court for a de novo trial – Impugned judgments of High Court are set aside and matters remanded to it for consideration on merits.
(Also see under: Code of Criminal Procedure, 1973)
J.V. Baharuni & Anr. v. State of Gujarat & Anr. 1061

NEW BOMBAY DISPOSAL OF LANDS REGULATIONS, 1975:
(See under: Town Planning) 704

NEW BOMBAY ROAD DISPOSAL RULES, 1975:
(See under: Town Planning) 704

PARTITION:
(i) Possession of a co-heir – Held: Is treated as possession of all the co-heirs.
(ii) Suit for partition – Maintainability of – Whether a suit for partition for division of respective shares amongst the members of a joint family is maintainable, when in respect of some of the lands, occupancy right has been granted in favour of one of them in terms of the provisions of the Act of 1955 – Held: Inam lands granted in favour of one of the heir upon abolition of the inam under the Act of 1955 are partiable among the co-heirs – Suit for partition is maintainable – Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955.
N. Padmamma & Ors. v. S. Ramakrishna Reddy & Ors. 641

PENAL CODE, 1860:
(1) ss.147, 342, 395 and 450.
(See under: Code of Criminal Procedure, 1973) 1108

(2) ss.302 and 201 – Appellant alleged to have murdered the lady who had bequeathed all her properties to him – Conviction by courts below based on circumstantial evidence – Set aside – Having regard to the seriousness of the nature of imputation, viz. that of murder, coupled with the fact that findings of the courts below are the result of ignoring vital material and unsustainable

inferences, interference with the judgments of courts below is permissible under the law.
Ananda Poojary v. State of Karnataka 929

(3) ss.302/149 – Previous enmity between two factions – Mob of about 300-400 persons led by appellant no.1 and other accused attacked ruthlessly persons of other faction killing 14 persons, burning 47 houses and injuring large number of persons – Conviction u/ss.302/149 – Held: Evidence of eye witnesses was trustworthy and inspired confidence – There was no denial on part of accused as to their participation in the atrocities – Appellants were part of the unlawful assembly sharing the common object of the offence committed – Once it is established that unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act rather they can be convicted u/s.149 – No interference with the conviction order.
Anup Lal Yadav & Anr. v. State of Bihar 689

(4) ss.304-B and 498-A – Dowry death – Woman died of burn injuries in matrimonial home within 5 years of marriage – Evidence of dowry demand continuing soon before death – Conviction by courts below — There is no ground to interfere with the concurrent finding recorded by the courts below that it was not a case of accidental death but a death taking place in circumstances other than normal – Thus, the presumption u/s 113B of the Evidence Act has been rightly invoked and the offence against the appellant has been proved –

There is no tangible circumstance to rebut the presumption.
Sultan Singh v. State of Haryana 742

(5) s.306 – Abetment of suicide – Bride committing suicide in her matrimonial home within 4 months of marriage – No evidence regarding demand of dowry or harassment in that regard – Acquittal of appellant and all other accused persons of charges u/ss 498-A and 304-B – Conviction of appellant u/s 306 – Evidence adduced as against appellant does not establish the case u/s 306 and, as such, her conviction is set aside.
Kuldeep Kaur v. State of Uttarakhand 1100

(6) ss. 306 r/w s.114 and s.498-A – Suicide by married woman in her matrimonial home within three years of her marriage – Dying declaration alleging harassment and severe beatings – Conviction of husband and sentence of the period already undergone – Acquittal of other accused – Sentence of husband enhanced to 7 years by High Court in suo motu revision – Acquittal of two other accused reversed and sentence of 7 years RI imposed – Held: High Court has correctly appreciated the evidence and reversed the acquittal – Besides, the dying declaration, there was evidence on record to prove the factum of cruelty and death of deceased – Revision.
Patel Maheshbhai Ranchodbhai and others v. State of Gujarat 678

(7) s.364 – Conviction under and sentence of 10 years RI to accused-husband – The evidence shows that the victim-wife remained in jail – None

of the witnesses have stated anything about abduction – Judgment of courts below set aside – Code of Criminal Procedure, 1973 – s.313.
Sukhjit Singh v. State of Punjab 608

(8) ss.420, 120B – A-1, the Chief Engineer of North Eastern Hill University (NEHU) – Allegation that A-1 along with other officials of NEHU formed a Purchase Committee – All of them colluded together for procurement of cement at exorbitant rates from A-4 and A-5 during period 1982 to 1985 – The exorbitant rates were accepted without conducting any survey for ascertaining the then prevalent market rate of cement – Conviction of A-1 u/ ss.420, 120B IPC and s.5(2) of 1947 Act and of A-4 u/s.420 r/w s.120B IPC challenged – Held: There was ample evidence that the Purchase Committee was misled by A-1 to approve the quotation of A-4 at inflated rate – Based on oral and documentary evidence, courts below recorded concurrent findings of fact that the Purchase Committee consisted of the non-technical members and A-1 being a Technical Member played a dominant role in inducing the Purchase Committee to purchase cement at an inflated rate – A-1 was rightly convicted by the courts below – As regards A-4, being the dealer, he quoted inflated price in order to make wrongful gain to himself and to cause wrongful loss to NEHU and, therefore, he was rightly convicted u/ s.420 r/w s.120-B – However, in view of age of A-4 and duration of pendency of matter, sentence of A-4 modified to period already undergone – Prevention of Corruption Act, 1947 – s.5(2) .
Edmund S Lyngdoh v. State of Meghalaya 458

(9) ss.420 and 406.
(See under: Code of Criminal Procedure, 1973) 506

(10) ss. 498-A and 304-B – Dowry death caused by burn injuries – Allegation that victim-deceased was harassed by accused husband and in-laws on account of dowry – Mother-in-law poured kerosene on the deceased and ignited the fire – Deceased was taken to hospital by the mother-in-law – Trial Court convicted the accused rejecting the plea that prosecution had withheld the dying declaration that the deceased had caught fire accidentally – High Court reversed the decision of trial court – Appeal against acquittal – Held: Death of the deceased was within 7 years of marriage and she was subjected to harassment for dowry soon before her death – The death was in circumstances other than natural – Mere lapse of investigating agency could not be enough to throw out overwhelming evidence clearly establishing the case of the prosecution – Inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies upon the prosecution and there is no duty at all on an accused to offer any explanation – Case against accused stood established – Dowry Prohibition Act – ss.3, 4 and 6.
State of Karnataka v. Smt. Suvarnamma & Anr. 778

(11) ss.498-A and 304-B IPC and ss. 3, 4 and 6 of Dowry Prohibition Act – Suicide by bride in matrimonial home within one year of marriage – Acquittal by trial court – Conviction by High Court –

Evidence on record establishing dowry demand and harassment of bride – High Court has correctly recorded the finding based on evidence and found appellant guilty – Evidence Act, 1872 – ss.113A and 113B – Dowry Prohibition Act, 1961 – ss.3, 4 and 6.
A K Devaiah v. State of Karnataka 1021

PRECEDENT:
Ratio of a decision – Must be understood in the background of the facts of that case.
Inbasegaran and Another v. S. Natarajan (Dead) Thr. Lrs. 1202

PREVENTION OF CORRUPTION ACT, 1947:
s. 5(2).
(See under: Penal Code, 1860) 458

PREVENTION OF CORRUPTION ACT, 1988:
ss. 7 and 13(1) (d) r/w s.13(2) – Demand and acceptance of illegal gratification – Conviction and sentence of 1 year and 2 years under the two counts respectively – Prosecution has established the demand and the acceptance of the amount by accused as illegal gratification – Conviction needs no interference – However, sentences reduced to RI for six months u/s 7 and 1 year u/s. 13(1) (d) r/w s.13(2) – Sentence/Sentencing.
Somabhai Gopalbhai Patel v. State of Gujarat 668

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:
(i) ss.2 (a) and (f) – Expressions 'aggrieved person', and 'domestic relationship' – Explained.

(ii) s.12 r/w ss.18 to 23 – Monetary relief to 'person aggrieved'(wife) – An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act – Even if it is accepted that the appellant during the pendency of SLP has obtained ex parte Khula (divorce) under Muslim Personal Law from the Mufti, the petition u/s.12 of the Domestic Violence Act, 2005 is maintainable. *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and Anr.* 479

RAILWAY ESTABLISHMENT MANUAL:
Rule 2831.
(See under: Service law) 447

RAJASTHAN HOUSING BOARD EMPLOYEES CONDITIONS OF RECRUITMENT AND PROMOTION REGULATIONS, 1976:
(See under: Service Law) 397

REVIEW:
Review of order granting bail.
(See under: Code of Criminal Procedure, 1973) 571

REVISION:
(See under: Code of Civil Procedure, 1908) 971

SENTENCE/SENTENCING:
(1) (i) Murder – Accused persons committing murders of 8 persons of their family – Death

sentence by courts below – Held: The time, place and manner of the commission of crime are indicative of the motive of the accused-appellants – They have ruthlessly and successively butchered their own kith and kin for obtaining possession of certain pass-book, money and immovable property without any provocation – Being armed with sharp edged weapons, the quick succession with which the accused-appellants proceeded to slaughter the eight members of their family classifies their act as pre-planned and reflects the cold-blooded fashion with which the callous design was executed – Keeping in view the principle of proportionality of sentence or what it termed as "just-desert" for the vile act of slaughtering eight lives including four innocent minors and a physically infirm child whereby an entire family is exterminated, the depravity of the appellant's offence would attract no lesser sentence than the death penalty.

(ii) Murder – Sentencing policy – Held: The most significant aspect of sentencing policy is independent consideration of each case by the Court and extricating a sentence which is the most appropriate and proportional to the culpability of the accused – Aggregating circumstances and mitigating circumstances, culled out – The doctrine of "rarest of rare" does not classify murders into categories of heinous or less heinous – Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct – It serves a three-fold purpose-punitive,

deterrent and protective – It is not only the victims of crime that require soothing balm, but also the incidental victims like the family, the co-sufferers and to a relatively large extent the society too – The judiciary has a paramount duty to safeguard the rights of the victims as diligently as those of the perpetrators – Code of Criminal Procedure, 1973 – s.354(3).
Mofil Khan & Anr. v. State of Jharkhand 812

(2) (See under: Code of Criminal Procedure, 1973) 902

(3) (See under: Prevention of Corruption Act, 1988) 668

SERVICE LAW:

(1) Appointment/Selection – Post of General Duty Medical Officers (GDMO) governed by the Delhi Municipal Corporation Health Service Recruitment Regulations, 1982 – Under said Regulations, appointment to be made through the UPSC – Between 1982 and 1986 (Phase-I), 82 GDMOs appointed on ad hoc basis – Between 1986 and 1989 (Phase II), another 69 GDMOs appointed on ad hoc basis on terms similar to the appointments made in Phase I – Both set of appointments not through the UPSC but made on the basis of a selection held by a Selection Committee – Regularization of Phase-I GDMOs made with effect from the date of recommendation of the UPSC – Claim of Phase-II GDMOs for regularization from date of initial appointment – Held: Similar circumstanced employees have to

be treated equally and evenly for the purpose of regularization – Phase II GDMOs are similarly circumstanced as Phase I GDMOs and, therefore, have to be treated similarly and therefore their claim to regularization with effect from the date of their initial appointments cannot be countenanced.
Vireshwar Singh & Ors. v. Municipal Corporation of Delhi & Ors. 372

(2) Promotion – Cancellation of – Respondent, on promotion, not joining at the place of transfer and returning the promotion order – Promotion cancelled – High Court setting aside the cancellation order on the ground that no departmental proceedings were pending against respondent – Cancellation did not come because of the reason of pendency of any alleged departmental inquiry against the respondent – Respondent was not interested in joining the duties at the place of transfer and cancelling the promotion for that reason cannot be treated as illegal or arbitrary.
State of Madhya Pradesh & Ors. v. Ramanand Pandey 892

(3) Promotion.
(See under: Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004) 1190

(4) Regularisation – Claim by canteen workers engaged by Mess/Canteen run in the S&T Training Centre, Railways that they be treated as railway employees and regularized in conformity with the

statutory provisions as applicable to non-statutory canteens of the Railway administration – Held: Tribunal is the final fact-finding authority – Tribunal held that the petitioners were working in a non-statutory non-recognised canteen – There is no reason to interfere with the said finding – Petitioners failed to place on record any documents before the Tribunal to support the fact that sanction was granted by the Railway Board, recognising the Mess being run at the S&T Training Centre, as a non-statutory recognised canteen – Therefore, such a sanction cannot be assumed – Railway Establishment Manual – Rule 2831 – Constitution of India, 1950 – Art.136.
Shri Krishan and Ors. v. Union of India and Ors. 447

(5)(i)Seniority list – Preparing two separate seniority lists for Diploma Holders and Degree Holders for the purpose of promotion in their respective quotas – Held: Board can legitimately prepare separate eligibility lists of Project Engineer (Jr) holding degree and those holding diploma – However, such eligibility list could not be mistaken for seniority list which must remain common based upon merit assessed at the time of selection for recruitment – Rajasthan Housing Board Employees Conditions of Recruitment and Promotion Regulations, 1976.
(ii) Promotion – Seniority list – Dispute between diploma holder and degree holder engineers – Entitlement of Diploma Holder Project Engineers (Jr.) upon acquiring degree/qualification of 'AMIE' to count their experience of service prior to acquisition of such qualification for the purpose of

eligibility of 3 years total experience of service for promotion to the post of Project Engineer (Sr.) in the quota fixed for Degree Holders – Held: Not entitled – In order to claim promotion against such quota 3 years experience of service must be acquired after obtaining the qualification/degree of AMIE.
K.K. Dixit & Ors. etc. v. Rajasthan Housing Board & Anr. Etc. 397

SUIT:

(1) Bar to second suit.
(See under: Code of Civil Procedure, 1908) 1202

(2) Valuation of suit.
(See under: Court Fees Act, 1870) 527

TOWN PLANNING:

Government action – Allotment of government land by the State or its agencies – Requirement of fairness and equity – Three plots of Government land allotted by appellant-CIDCO (City and Industrial Development Corporation) – Cancellation of the allotment – Validity – Held: Authorities of CIDCO showed undue favour and managed to allot the Government land in favour of one person knowing fully well that the proprietor of the Company, in different capacity and in dummy names, sought allotments of plots – Arbitrariness had a role to play in the matter –Action on the part of CIDCO was nothing but favouritism based on nepotism and was irrational and unreasonable and functioning in a discriminatory manner – Order passed by the CIDCO cancelling the allotments made in favour of the respondents accordingly

upheld – Maharashtra Regional and Town Planning Act, 1966 – New Bombay Disposal of lands Regulations, 1975 – New Bombay Road Disposal Rules, 1975 – Constitution of India, 1950 – Art. 14. City Industrial Development Thr. its Managing *Director v. Platinum Entertainment and others* 704

TRANSFER OF PROPERTY ACT, 1882:
s.111 r/w ss. 72 and 76 – Determination of lease executed by mortgagees – Redemption of mortgage – Mortgagees were entitled to create tenancies by virtue of mortgage deed – However, there is nothing in mortgage deed to indicate that tenancies created by mortgagees would be binding on mortgagors.
Dr. Thakar Singh (D) by LRs. & Anr. v. Sh. Mula Singh (D) Thr. Lr. & Ors. 953

UTTAR PRADESH AVAS EVAM VIKAS PARISHAD ADHINIYAM, 1965:
s.95(1) – Power of Vikas Parishad to make Regulations – Implementation of Pension/Family Pension and Gratuity Scheme by Vikas Parishad for its employees – Vikas Parishad is vested with the right to make regulations so as to extend to its employees such a scheme.
State of Uttar Pradesh v. Preetam Singh and Others 910

UTTAR PRADESH INDUSTRIAL DISPUTES ACT, 1947:
s.6-l.
(See under: Labour laws) 587

UTTAR PRADESH INDUSTRIAL DISPUTES RULES, 1957:
r.40 (1)(i)(c).
(See under: Labour laws) 587

UTTAR PRADESH PHARMACISTS SERVICE RULES, 1980:
rr.15 and 16 – Appointment – Post of Pharmacist – Direction passed in Santosh Kumar Mishra case that benefit for appointment for the post of Pharmacist should be extended to similarly placed persons – This implied that those who responded to the advertisement invited for filling up the post of Pharmacists, were to be considered only by following the procedure prescribed u/rr.14 and 15 of the Rules – Without following the relevant Rules and the requirements contained in the advertisement, no candidate can be considered for appointment – If they had not responded to the said advertisement by filing the appropriate applications, they cannot subsequently be heard to say that they were all similarly placed.
Donesh Rajput & Ors. v. Pradeep Kumar Shukla & Ors. 617

UTTAR PRADESH PUBLIC MONEYS (RECOVERY OF DUES) ACT, 1972:
s.4(2) r/w s.3 – Guarantor claiming that recovery proceedings cannot be initiated against him unless properties mortgaged by principal borrower remain to be sold for payment of outstanding dues – The protection referred to in s.4(2) has no application to guarantor, and the same is confined only to the principal debtor who has charged his

properties in the manner indicated – Pawan Kumar Jain and Ashok Mahajan, overruled.
Sobran Singh v. State of U.P. & Ors. 657

UTTAR PRADESH STATE CONTROL OVER PUBLIC CORPORATIONS ACT, 1975:
s.2(1) – Directions by State Government in regard to 'questions of policies' of Vikas Parishad having regard to "discharge of its functions" – Conditions of service of employees do not constitute the functions of Vikas Parishad, and directions contemplated u/s 2(1) do not extend to the directions issued by State Government restraining the Vikas Parishad from implementing the Pension/Family Pension and Gratuity Scheme.
State of Uttar Pradesh v. Preetam Singh and others 910

UTTARANCHAL GOVERNMENT SERVANTS (CRITERION FOR RECRUITMENT BY PROMOTION) RULES, 2004:
(i) r.1(3) – Promotion from Group 'D' post to Group 'C' post – Held: Promotional posts under consideration do not require consultation with Public Service Commission and, as such, the 2004 Rules would apply to promotional avenues under consideration.
(ii) r.2 – Overriding effect – Held: Rule 2 of the 2004 Rules leaves no room for any doubt that the 2004 Rules have an overriding effect, notwithstanding anything to the contrary contained, in any other Service Rules promulgated under Art. 309 of the Constitution of India – All the other Rules brought to the notice of the Court had been notified prior

to the Notification of the 2004 Rules (notified on 15.06.2014) – Thus viewed, 2004 Rules have an overriding effect on other Rules.
(iii) r.1(3) and 4 – Promotion from Group 'D' post to Group 'C' post – Criterion – 'Seniority to the rejection of unfit' – Government Orders dated 17.7.2004 and 8.11.2004 set aside by High Court holding the same as violative of Rule 4 – Held: Inter se merit is inconsequential for promotions under Rule 4 of the 2004 Rules, insofar as promotions from Group `D' service to the lowest ranks of ministerial posts in Group `C' service, are concerned — Rule 4 postulates seniority as the basis for promotion, but it also provides that promotions would be made subject to the "rejection of unfit" – If the G.Os. dated 17.7.2004 and 8.11.2004 were the basis of determining the fitness of employees concerned, for onward promotion and for adopting measures for 'rejection of the unfit' then the two G.Os. would squarely fall within the purview of r. 4 of 2004 Rules – G.Os. dated 17.07.2004 and 08.11.2004 are upheld – Service Law.
State of Uttaranchal & Ors. V. C.S.R.K.S. Medical Health Services, Uttaranchal 1190

WORDS AND PHRASES:
'Findings' – Meaning of.
Anand Brothers P. Ltd. TR. M.D. v. Union of India & Ors. 382

*****