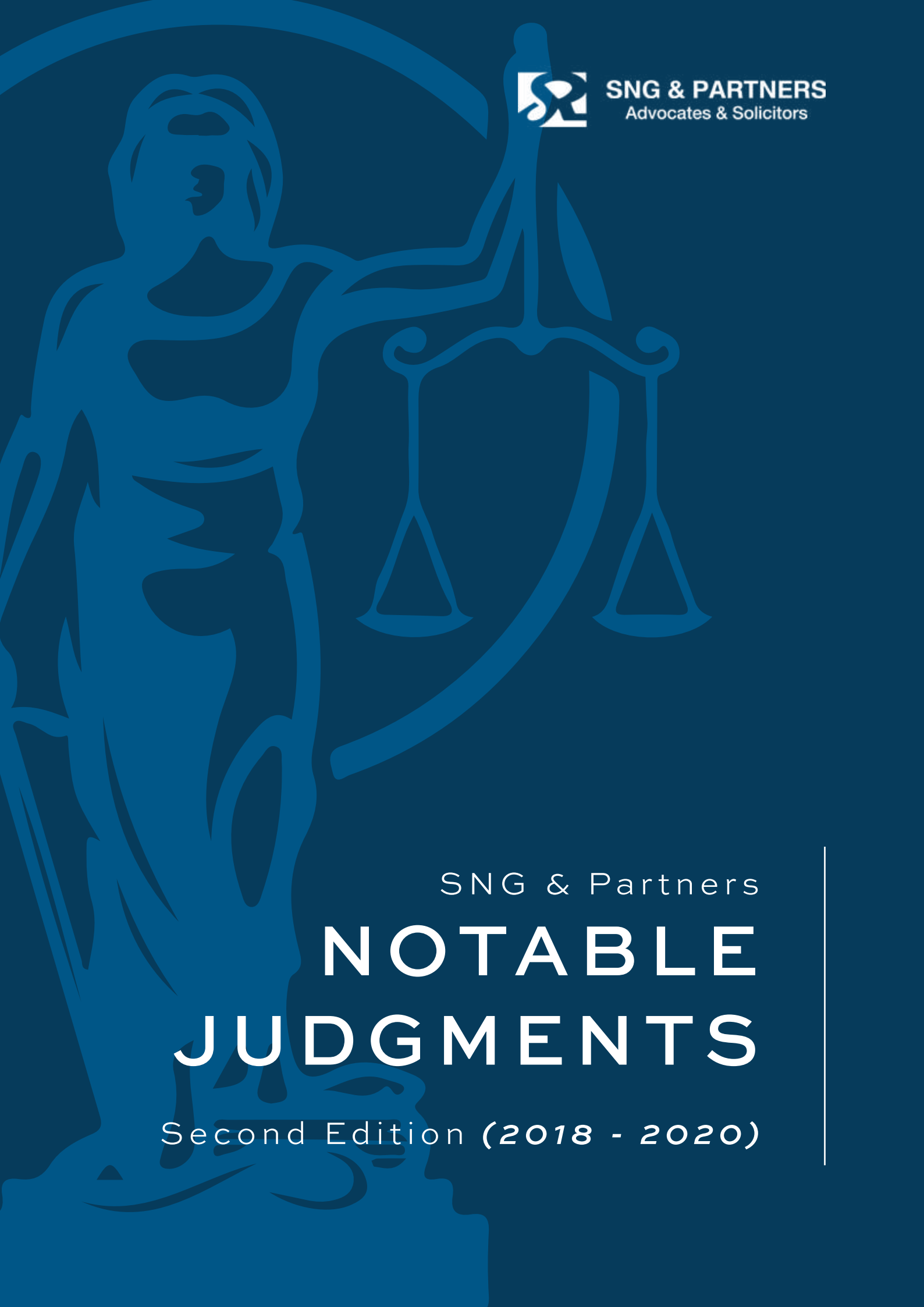

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NOTABLE JUDGMENTS

Second Edition *(2018 - 2020)*

31st August, 2020

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PREFACE

In India, the Supreme Court and various High Courts have exercised their suo motu jurisdictions on multiple fronts. Laws such as the Disaster Management Act, 2005, and the Indian Epidemics Act, 1897 have been relied on by both Government and Judiciary alike – and the pandemic has been officially declared a "notified disaster".

The Government has taken steps toward stimulating the economy in the period of downturn caused by the nationwide lockdown enforced due to the COVID-19 pandemic.

The Judiciary has also played a significant role in adapting its mechanisms to ensure its support to all parties in the legal system: litigants and lawyers alike.

Cases have been heard virtually during the nationwide lockdown, and Courts have also taken steps towards mitigating difficulties faced by individuals and enterprises alike, by providing various ad interim and interim protections to companies on the brink of default, if they can make out a prima facie case for protection on account of the pandemic.

This second edition of our compendium on landmark judgments of the Indian Supreme Court, High Courts, and Tribunals has been divided into two parts:

In **Part I**, we highlight and touch upon various new laws, enactments, rules, regulations, schemes, notifications, and cases related to COVID-19.

Part II builds upon our previous edition, with updates and new developments from the spheres of Arbitration & Conciliation, Information Technology, Succession Laws, Company Law, and the Insolvency & Bankruptcy Code.

In addition to these updates, we also cover landmark cases under the Black Money Act, Benami Transactions (Prohibition) Act, Limitation Act, the Prohibition of Money Laundering Act, Environmental Laws, Public Trusts, and more.

We would like to express our gratitude towards the motivating response and wishes we received regarding the first edition of Notable Judgments.

The First Edition can be accessed through our website, or by clicking here.

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PART I: THE CORONAVIRUS AND THE LEGAL SYSTEM

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I. EMERGING LAWS & REGULATIONS IN THE BACKDROP OF COVID-19 & THE INDIA STIMULUS PROGRAM (1)

In India, various High Courts and the Supreme Court have acted in several matters by exercising suo moto jurisdictions on various fronts. The Latin maxim "Salus populi suprema lex esto" (the health / safety of the people should be supreme law) has been heavily relied upon. The government and the judiciary have actively put to use laws like the Disaster Management Act, 2005, and the Indian Epidemics Act, 1897. By declaring Covid as a "notified disaster", the States are expected to have access to the "State Disaster Relief Fund". The Essential Commodities Act, 1955, has been invoked.

This article touches upon and highlights the various new laws, enactments, rules and regulations which relate to Covid period and which are mentioned below:

1 GOVERNMENT ACTIONS ON FORCE MAJEURE:

A. Ministry of Finance, Department of Expenditure Procurement Policy Division, Government of India (**"MOF"**) on February 19, 2020 has clarified that the disruption of the supply chains due to spread of coronavirus in China or any other country should be considered as a case of natural calamity and Force Majeure Clause may be invoked, wherever considered appropriate, following the due procedure.

   Subsequently, various ministries including Ministry of New and Renewable Energy, Ministry of Shipping, Ministry of Railways, Ministry of Environment, Forest & Climate Change, Ministry of Road Transport and Highways had granted appropriate time-extension, or provided exemptions/ remission of charges for any delay caused due to COVID-19 pandemic, or has issued general directions as to how the same was to be treated contractually in public sector contracts.

B. Even the Foreign Trade Policy 2015-2020 has been extended by the Ministry of Commerce and Industry up to March 31, 2021. Further, Ministry of Housing & Urban Affairs issued advisory for extension of registration of real estate projects due to

'Force Majeure' under the provisions of Real Estate (Regulation and Development) Act, 2016.

C. Finance Ministry has announced relaxations on the due dates for payment of Income Tax, payment of TDS, reductions in TDS, etc to partially address the stress.

D. By means of Ordinance dated June 5, 2020 GOI has suspended Sections 7, 9 and 10 of the IBC for six months.

ACTIONS BY REGULATORS:

A. **Reserve Bank of India ('RBI')** vide several notifications:
   i. Issued detailed instructions to ensure the continuity of viable businesses, such as:
      a) Moratorium / Deferment for term loans and working capital loans extended till August 31, 2020;
      b) Easing of Working Capital Financing; and
      c) Asset Classification as NPA and SMA and Revised Resolution Timelines.
   ii. Reviewed resolution timelines under the Prudential Framework on Resolution of Stressed Assets specified in the circular dated June 7, 2019.
   iii. Reviewed the asset classification and provisioning under Prudential Norms on Income Recognition, Asset Classification.

B. **Ministry of Corporate Affairs ('MCA') vide several notifications:**
   i. Allowed companies to hold board meetings through video conferencing till June 2020.
   ii. Certain provisions of the Companies Act,2013 as well as the Limited Liability Partnership Act, 2008 have been relaxed-
      a) independent director's unable to hold one meeting in FY19-20 in compliance with Schedule 4 of the Companies Act will not be held in violation;
      b) the Companies (Auditor's Report) Order, 2020 will be applicable from FY20-21;
      c) no additional fees for late filing during April 1 to September 30, 2020, etc.
   iii. Specified Rs. 1 crore as the new minimum amount of default under Insolvency & Bankruptcy Code, 2016.
   iv. If the companies whose financial year has ended on 31st December, 2019, hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same will not be viewed as a violation.
   v. Allowed companies to conduct their AGMs through video conferencing; or other audio-visual means, during the calendar year 2020.

C. **Securities Exchange Bureau of India ('SEBI') vide Press Release and Circulars:**
   i. has decided to grant certain temporary relaxations from the regulatory provisions related to rights/ public issuances by listed entities in order to further facilitate fund raising from capital markets in the backdrop of COVID-19 pandemic,
   ii. relaxed the timelines for top 100 listed entities by market capitalization whose financial year ended on December 31, 2019 for holding the AGM within a period of nine (9) months from the closure of the financial year.
   iii. relaxed action for non-compliance with minimum public shareholding requirements during the period March 1, 2020 to August 31, 2020.
   iv. issued an advisory on disclosure of material impact of COVID-19 pandemic on listed entities under SEBI.

D. **Insolvency and Bankruptcy Board of India (IBBI) vide several notifications stated that:** Period of lockdown to be excluded from timeline under IBC if activity in relation to CIRP could not be completed due to the lockdown.

E. **MOF vide several notifications:**
   i. Amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.
   ii Issued Non – Debt Instrument Rules to curb opportunistic takeovers.
   iii. Introduced the Insolvency & Bankruptcy Code (Amendment) Ordinance, 2020 to implement the changes as announced by MOF.

F. **RERA:** Several RERA authorities have extended projects' completion deadlines and the time limits for all statutory compliances.

SELF-RELIANT INDIA PACKAGES

Key takeaways from the Finance Minister's announcements on Self-Reliant India:

A. Major Steps for Micro Small and Medium Enterprises ('MSMEs') was announced such new definition of MSMEs; Rs. 3 lakh crores collateral free automatic loans for business, including MSME; Rs. 20,000 crores Subordinate Debt for MSMEs; Rs. 50,000 crores equity infusion through MSME Fund of Funds and global tenders to be disallowed upto Rs. 200 crores.
B. Other interventions for MSMEs;
C. Rs. 2500 crores EPF support for Businesses and Organised Workers extended by three (3) more months and EPF Contribution to be reduced from 12% to 10% for Employers and Employees for three (3) months;
D. Rs. 30,000 crores liquidity facility for NBFC/HCs/MFIs under Special Liquidity Scheme, through RBI;
E. Rs. 45,000 crores partial credit guarantee scheme 2.0 for NBFC;

F. Rs. 90,000 crores liquidity injection for DISCOMs;
G. As a relief to contractors, extension of up to six (6) months (without costs to contractor) to be provided by all Central Agencies;
H. Extension of Registration and Completion Date of Real Estate Projects under RERA due to 'Force Majeure' event;
I. Rs. 50,000 crore liquidity through TDS/TCS reductions;
J. Other Direct Tax Measures (such as reductions in the existing rates of TDS, extension of due date for filing all IT returns for FY 2019-20 and immediate issue of pending Tax refunds);
K. Reliefs for Farmers, Rural Economy, Migrants, Urban Poor, Small Businesses and Street Vendors;
L. Extension of credit linked subsidy scheme for middle income group up to 31st March 2020;
M. Policy reforms to fast track investment; and
O. Structural reforms in coal, mineral, defence, civil aviation, power, social infrastructure, space and atomic energy sectors.

There has been plethora of laws and regulations which have come up during these challenging times. Unfortunately, it is not clear as to how much benefit has been actually passed on to the people.

II. EMERGING LAWS & REGULATIONS IN THE BACKDROP OF COVID-19 & THE INDIA STIMULUS PROGRAM (2)

This article touches upon and highlights of the further new laws, enactments, rules and regulations during this continuing Covid period and the same are enumerated below:

1 ACTIONS BY REGULATORS:

A. **Reserve Bank of India ('RBI'):**
   i. issued a circular on August 6, 2020 on 'Resolution Framework for COVID-19 related Stress', providing for a resolution window under the existing RBI (Prudential Framework for Resolution of Stressed Assets) Directions 2019, dated June 7, 2019, with a view to mitigate the financial stress faced by borrowers on account of the economic fallout of the COVID-19 pandemic, to enable the lenders to implement a resolution plan, in respect of eligible corporate borrowers without change in ownership while continuing the account status as standard, subject to specified condition.
   ii. continued with the availability of benefit of 2% interest subvention and 3% prompt repayment incentive to farmers for the extended period of repayment upto August 31, 2020 or date of repayment, whichever is earlier, on all short-term loans for agriculture and animal husbandry, dairy and fisheries.
   iii. has accepted the Expert Committee on Resolution Framework for Covid-19 related Stress Report's recommendations – which include financial as well as non-financial parameters that are to be considered for the Resolution Plan, as well as eligibility and the approach to be followed.

   The press release is accessible here.

B. **Ministry of Corporate Affairs ('MCA') vide several circulars:**
   i. announced that inability to dispatch the notice through registered post or courier by listed companies for rights issue, opening upto December 31, 2020 will not be viewed as violation of Section 62(2) of the Companies Act 2013 (**"Act"**).

ii. allowed companies to conduct their EGMs through video conferencing or other audio-visual means or transact items through postal ballot till September 30, 2020 in accordance with the framework provided in previous circulars.
iii. introduction of a scheme for condoning the delay in filing of e-Forms related to creation / modification of charges under the Act.
iv. extended the time for creation of deposit repayment reserve of 20% under Section 73 (2)(C) of the Act and to invest or deposit 15% of the amount of debentures under Rule 18 of the Companies (Share capital and Debentures) Rules 2014, till September 30, 2020.
v. extended the time period for corporates to hold board meetings through video conference and other audio-visual means for the restricted matters referred to in sub-rule (1) of Rule 4 of the Companies (Meetings of Board and its Powers) Rules till September 30, 2020.
vi. extended the time limit for filing of Form NFRA-2, for the reporting period FY 2018-19, to 270 days from the date of deployment of the form on the website of National Financial Reporting Authority.

C. **Securities and Exchange Board of India ('SEBI') vide several circulars:**

i. extended the relaxation provided in the circular dated March 23, 2020 for issuers who propose to list their NCDs /Non-Convertible Redeemable Preference Share /CPs for disclosure of financial results for another one month.
ii. extended relaxation in processing of documents pertaining to FPIs till August 31, 2020.
iii. extended the timeline till September 15, 2020 for (a) submission of financial results under Regulation 33 of the LODR Regulations for the quarter and the year ending March 31, 2020, and (b) submission of half yearly and/or annual financial results under Regulation 52 of the LODR for the period ending March 31, 2020 for entities that have listed NCDs, NCRPS', CPs, MDS'.
iv. extended timeline for submission of Annual Secretarial Compliance Report by listed entities till July 31, 2020.
v. extended further relaxation of maximum time gap between two board / Audit Committee meetings of listed entities till July 31, 2020.
vi. further extended the due date for regulatory filings and compliances for Real estate Investment Trusts and Infrastructure Investment Trust for the period ending March 31, 2020 by a month over and above the extended timelines specified vide the circular dated March 23, 2020.
vii. extended the timelines for submission of investor grievance report, financial results and Accounts maintained by issuers under SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 till July 31, 2020.
viii. extended the timelines for submission of financial results for the quarter/half year/annual financial year ending March 31, 2020 by permitting listed issuers who have issued NCDs/NCRPS/CPs, on or after July 01, 2020 and propose to list such issued NCDs/NCRPS/CPs, on or before July 31, 2020 to use available financials as on December 31, 2019.
ix. Extended relaxations for procedural matters relating to takeovers and buy-back till December 31, 2020.
x. allowed authentication / certification of any filing / submission made to stock exchanges using digital signature certifications till December 31, 2020.

FURTHER ANNOUNCEMENTS RELATING TO SELF-RELIANT INDIA PACKAGES

Key takeaways from the various announcements:

A. Ministry of MSME has notified the revised criteria for classifying the enterprises as micro, small and medium enterprises and specified the form and procedure for registering the MSMEs with effect from July 1, 2020.
B. RBI has decided to permit the banks to reckon the funds infused by the promoters

in their MSME units through loans availed under the Credit Guarantee Scheme for Subordinate Debt for stressed MSMEs, as equity/quasi equity from the promoters for debt-equity computation.

C. Ministry of Finance issued the details of the special liquidity scheme for NBFCs and HFCs specifying the eligibility criteria and the details for availing the scheme as part of the implementation process.

D. World Bank and Government of India sign $750 million agreement on July 6, 2020 for the MSME Emergency Response Programme to support increased flow of finance into the hands of MSMEs, severely impacted by the COVID-19 crisis.

E. Approved the proposal to extend the EPF contribution 24% (12% employees share and 12% employers share) till August 2020.

F. Approved developing affordable rental housing complexes for urban migrants / poor.

G. Approved extension of Pradhan Mantri Garib Kalyan Anna Yojana i.e. allocation of additional foodgrain till November 2020.

H. Launched the implementation guidelines for Animal Husbandry Infrastructure Development Fund.

I. Ministry of Housing and Urban Affairs launched the mobile application of PM Street Vendor's Atmanirbhar Nidhi to bring microcredit facility for street vendors at their doorsteps.

J. Extended relief to gems and jewellery sector by relaxing the requirement of re-import of cut and polished diamonds, which have been sent abroad for certification and grading, by 3 months.

K. RBI has extended the previous MSME sector – Restructuring of Advances scheme whereby existing loans to MSMEs classified as 'standard' may be restructured without a downgrade in the asset classification, subject to the conditions as specified in the circular below.

L. Modification to the operational guidelines for the emergency credit line guarantee scheme to expand the scope to include the individual loans, increase being in the upper ceiling of loans and increase in the annual turnover ceiling.

M. The Department of Food & Public Distribution has enabled the integration of these 4 States/UT with existing 20 States/ UTs for the national portability under One Nation One Ration Card from August 01, 2020.

N. Proposals for the construction of nearly 10.28 Lakh houses approved under Pradhan Mantri Awas Yojna (Urban).

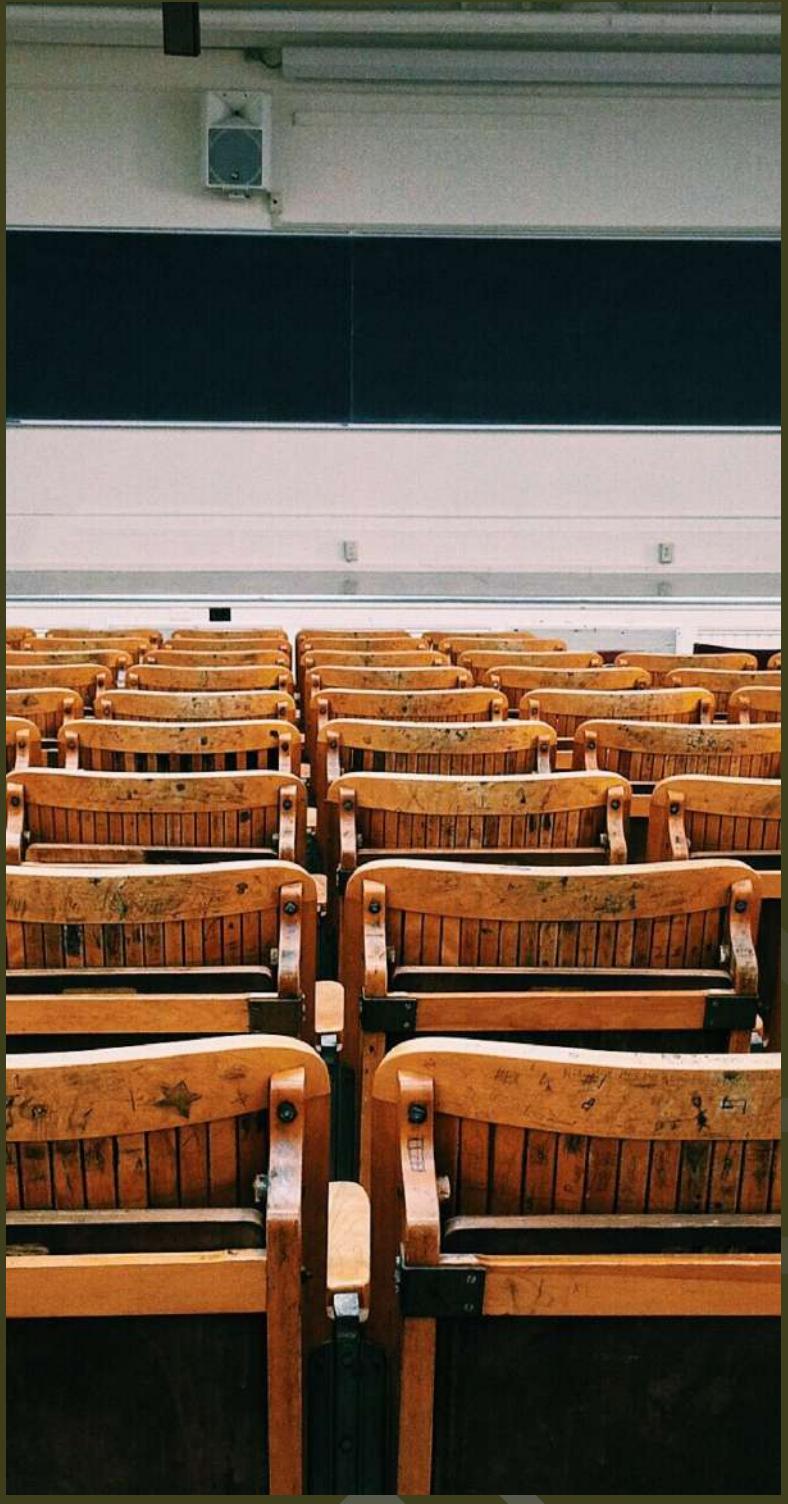
O. A new Central Sector Scheme of financing facility under the Agriculture Infrastructure Fund of Rs. 1 Lakh Crore has been launched to support farmers, PACS, FPOs, Agri-entrepreneurs, etc. in building community farming assets and post-harvest agriculture infrastructure.

P. Platform of transparent taxation - Honouring the Honest, has been launched to meet the requirements of the 21st century taxation system which includes major reforms like faceless assessment, faceless appeal, and taxpayers charter.

Q. Amended the General Financial Rules 2017 to enable imposition of restrictions on bidders from certain countries which share a land border with India on grounds of defence of India, or matters directly or indirectly related thereto including national security.

R. Launch of Naval Innovation and Indigenisation Organisation for self-reliance in defence sector.

Though the RBI has provided the resolution framework for stressed assets, however, in our view resolution within 180 days is a challenging task (considering the past precedence of JLF frameworks) and keeping in view the flexibility required for structuring the plan within overall parameters, which are yet to be notified and the thrust on arriving at a consensus among lenders through ICA execution and related penal provisioning.



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JUDICIAL DEVELOPMENTS IN THE PANDEMIC

A. LABOUR LAW

1

FICUS PAX PVT. LTD. V UNION OF INDIA

Similar to :
i. Ludhiana Hand Tools Association v Union of India
ii. Twin City Industrial Employers Association v Union of India

Date : 12.06.2020

Citation : Supreme Court of India [WP(Civil) Diary No. 10983 of 2020]

SYNOPSIS

The interests of both, Employers and Employees must be balanced, in light of the situation posed by the lockdown measures introduced in response to the COVID-19 pandemic.

FACTS

The Ministry of Home Affairs, Government of India, issued an order on 29.03.2020 directing all employers to pay full salary to employees and workers (both permanent and contract), and prohibiting their termination for the duration of the nationwide lockdown (**"MHA Order"**). Non-compliance with the MHA Order was said to potentially carry legal action under the Disaster Management Act, 2005, under which the Order had been issued.

Several petitions were filed before the Supreme Court, on various grounds, alleging, *inter alia*, that the MHA Order was:

A. Beyond the scope of powers granted to the government under the Disaster Management Act;
B. Discriminatory and violative of the right to equality under Article 14 of the Constitution, in effectively only upholds the rights of employees while ignoring the rights of employers, whereas the economic rights of both groups have been affected by the pandemic;
C. Violative of the constitutional right to trade under Article 19(1)(g), by forcing employers into insolvency, given their excessive financial burden; and
D. In contravention of the Industrial Disputes Act, 1947, which specifically contemplates the right to layoff workmen due to natural calamity upon following the required procedure.

ISSUES

Whether the MHA Order was *ultra vires* the Constitution?

HELD

The Supreme Court did not answer the primary contention of the petitioners, but opted to use a more conciliatory approach:

The Supreme Court first clarified that the dispute relates only to the intervening period between the imposition of the MHA Order, and when it was withdrawn: a period of 50 days. The Court then acknowledged that it was undisputable that the lockdown measures enforced by the Government of India under the Disaster Management Act, 2005 had had equally adverse effects on both employers as well as employees across the nation.

Acknowledging that no industry or establishment can survive without employees/ labourers, and vice versa, the Court was of the opinion that it would be necessary to strike a balance between these competing claims, and to find a medium for settling the disputes in respect of the period of 50 days.

Towards this end, the Court directed that efforts be made by Employers and Employees to try to negotiate and settle between themselves any differences/disputes regarding payment of wages accrued during the 50 days, either in the case of businesses that were closed or operating at limited capacity during lockdown.

The Court lastly directed the following interim measures, which can be availed by all private establishment, industries, factories, and workers Trade Unions/ Employees Associations etc. which may be facilitated by the State Authorities:

A. That private establishments, industries, and employers who are willing to enter into negotiation and settlement with their workers/employees regarding payment of wages for 50 days or for any other period as applicable in any particular State

during which their industrial establishment was closed down due to lockdown, may initiate a process of negotiation with their employees organization and enter into a settlement with them. If they are unable to settle by themselves, they may submit a request to the concerned labour authorities who are entrusted with the obligation under the different statute to conciliate the dispute between the parties. In the event a settlement is arrived at, it may be acted upon by the employers and workers irrespective of the order dated 29.03.2020 issued by the Government of India, Ministry of Home Affairs.

B. Those employers whose establishments, industries, factories which were working during the lockdown period, although not to their capacity, are also permitted take steps as indicated above.

C. That private establishments, industries, and factories shall permit such workers/ employees to work in their establishment who are willing to work, which may be without prejudice to rights of the workers/ employees regarding unpaid wages of above 50 days.

The private establishments, factories who proceed to take steps as per directions (i) and (ii) above, and shall publicise and communicate such steps to workers and employees for their response/participation. The settlement, if any, as indicated above shall be without prejudice to the rights of employers and employees which is pending adjudication in these writ petitions.

D. The Central Government, all the States/ UTs through their Ministry of Labour shall circulate and publicise this order for the benefit of all private establishment, employers, factories, and workers/ employees.

RASHTRIYA SHRAMIK AGHADI V. THE STATE OF MAHARASHTRA AND ORS.

Date : 12.05.2020

Citation : Bombay High Court [Writ Petition No.4013 of 2020]

SYNOPSIS

The principle of "no work- no wages" is not applicable in the present extraordinary situation [COVID-19 pandemic].

FACTS

A Temple Trust's contract workers' union raised the grievance that workers, despite offering their services as security personnel, or presenting themselves for other duties at the temple, they were not allotted any work on account of the COVID-19 lockdown.

ISSUES

Whether willing and able employees/workers presenting themselves for work are entitled to be paid, despite not having been allotted work due to the COVID-19 lockdown?

HELD

The Bombay High Court observed that the workers appeared to have been paid a measly amount for the month of April, and that they had been paid less than the gross salary in March.

Taking note of the circumstances prevalent, wherein able-bodied persons who were willing and desirous of offering their services in deference to their employment, but were not allotted any work given that all the temples and places of worship across the nation were shut on account of the nation-wide lockdown, the Court stated that it cannot "turn a Nelson's eye" to the plight of the workers.

Noting also that even the principal employer was unable to allot any work to such employees in light of the situation, the Court, said that these are 'extraordinary circumstances', wherein the principle of "no work-no wages" cannot be applied – stating that the Court cannot be insensitive to the plight of such workers, which has befallen them on account of the pandemic.

The Court accordingly directed the Temple Trust to ensure that full wages, save and except food allowance and conveyance allowance for the months of March, April, and May are paid to the workers, and that the principle of "no work- no wages" is not invoked until further orders.

ALIGN COMPONENTS PRIVATE LIMITED & ANOTHER VS. UNION OF INDIA

Date : 30.04.2020

Citation : Bombay High Court [Writ Petition 10569 of 2020]

SYNOPSIS

Where workers choose to remain voluntarily absent, even after the lifting of the lockdown in the relevant industrial area within the State of Maharashtra, their employers are at liberty to deduct wages subject to procedures laid down under the law.

FACTS

A plea was brought before the Court challenging the Government of India Ministry of Home Affairs' Order against wage deduction. The petitioners sought an exemption from paying their workers during this time, given that manufacturing activities had been restricted.

All the same, it was submitted that the petitioners were willing to pay 50% of the gross wages or the minimum rates of wages prescribed under the Minimum Wages Act, whichever is higher.

ISSUES

Whether the employers were entitled to deduct the pay of absentee workers, in contravention to the Ministry of Home Affairs' Order against wage deductions?

HELD

The High Court declined to interfere with the Order passed by the Ministry of Home Affairs, – noting that a similar matter was pending before the Supreme Court (*Ficus Pax Pvt Ltd v Union of India*).

The learned Single Judge did however state that he "*would expect the petitioners to pay the gross monthly wages to the employees, save and except conveyance allowance and food allowance, if being paid on month to month basis in the cases of those workers who are not required to report for duties.*"

However, he also clarified that where restrictions had been partially lifted, the wages of absentee workers could be deducted in industrial areas where the State of Maharashtra had partially lifted the lockdown.

B. EXTENSION OF TIMELINES AND LIMITATION PERIOD

IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION - SC, MAY 6,2020

Date : 23.03.2020

Citation : Supreme Court of India [Writ Petition (Civil) No. 3/2020]

SYNOPSIS

In recognition of the difficulties posed by the nationwide lockdown imposed due to the COVID-19 pandemic, all periods of limitation prescribed under both general, and special laws, whether condonable or not, stand extended with effect from 15.03.2020.

FACTS

The Supreme Court of India, in consideration of the effects of COVID-19, took *suo motu* cognizance of the resultant difficulties that may be faced by litigants and their lawyers across the country in filing their petitions/ applications/suits/appeals, and other proceedings within the requisite period of limitation.

HELD

The Supreme Court, in exercise of its powers under Article 141 and 142 of the Constitution of India, extended all periods of limitation prescribed under both general law, and special laws, whether condonable or not, with effect from 15.03.2020 until further orders.

The Court further declared that this order was a binding order within the meaning of Article

141, on all Courts/Tribunals and authorities.

[**Note**: *In a follow-up order dated 06.05.2020 in the same proceedings, upon an interlocutory application filed seeking directions qua the Arbitration Act, and section 138 of the Negotiable Instruments Act, the Supreme Court clarified that in case the limitation for any particular proceeding expired after 15.03.2020, the period from then until the date on which the lockdown is lifted in the jurisdictional area where the dispute lies, or where the cause of action arises, would be extended for a period of 15 days after the lifting of lockdown.*]

SUO MOTU - COMPANY APPEAL (AT) (INSOLVENCY) NO. 01 OF 2020

Date : 30.03.2020

Citation : NCLAT [Company Appeal (AT) (Insolvency) No. 01 of 2020]

SYNOPSIS

The period of lockdown, including the period as extended either in whole or part of the country, shall be excluded for the purpose of counting the period for completion of the Resolution Process under the Insolvency and Bankruptcy Code. Further, all interim and stay orders passed by NCLAT under the IBC will continue until the date of next hearing.

HELD

The National Company Law Appellate Tribunal, taking *suo motu* cognizance of the unprecedented situation arising out of the spread of COVID-19, held:

A. That the period of lockdown ordered by the Central and State governments, including the period as may be extended either in whole or part of the country, where the registered office of the corporate debtor may be located, shall be excluded for the purpose of counting of the period for completion of the Resolution Process under the Insolvency and Bankruptcy Code, 2016, in all cases where the Corporate Insolvency Resolution Process has been initiated and is pending before any bench of the National Company Law Tribunal, or in appeal before it.

B. That any interim order or stay order passed by the National Company Law Appellate Tribunal in any appeal under the Insolvency and Bankruptcy Code would continue until the next date of hearing, as may be notified in the future.

SUO MOTU - COMPANY APPEAL (AT) NO. 01 OF 2020

Date : 30.03.2020

Citation : NCLAT [Company Appeal (AT) No. 01 of 2020]

SYNOPSIS

All interim and stay orders passed by NCLAT under the Companies Act, 2013 will continue until the date of next hearing.

HELD

The National Company Law Appellate Tribunal, in exercise of its powers conferred under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, ordered that any interim order/stay order passed by the National Company Law Appellate Tribunal in any appeal under the Companies Act, 2013, would continue until the next date of hearing, as may be notified in the future

SUO MOTU - COMPETITION APPEAL (AT) NO. 01 OF 2020

Date : 30.03.2020

Citation : NCLAT [Competition Appeal (AT) No. 01 of 2020]

SYNOPSIS

All interim and stay orders passed by NCLAT in all competition appeals will continue until the date of next hearing. Further, in the event of expiry of Fixed Deposits, the concerned bank is mandated to renew the same for a further period of six months.

HELD

The National Company Law Appellate Tribunal, taking *suo motu* cognizance of the unprecedented situation arising out of the spread of COVID-19, ordered that:

A. Interim direction/ stay order passed in all competition appeals would continue until further order.

B. In the event of expiry of period of Fixed Deposits, the concerned bank shall renew the same for a further period of six months.

C. INFORMATION TECHNOLOGY AND EVIDENCE

IN RE: GUIDELINES FOR COURT FUNCTIONING THROUGH VIDEO CONFERENCING DURING COVID-19 PANDEMIC

Date : 06.04.2020

Citation : Supreme Court of India [Suo Motu Writ (Civil) No. 5 of 2020]

SYNOPSIS

The Supreme Court, in exercise of its powers under Article 142 of the Constitution of India, introduced temporary measures to enable virtual hearings of cases by way of videoconferencing, so as to better achieve justice during the nationwide lockdown.

FACTS

In view of the increasing need to use video conferencing as a means for conducting hearings during the COVID-19 pandemic, the Supreme Court took suo motu cognizance of the matter.

HELD

The Supreme Court, in exercise of the powers conferred on the Supreme Court of India by Article 142 of the Constitution of India to make such orders as are necessary for doing complete justice, introduced temporary measures to enable virtual hearings over videoconferencing.

The Court made mention of the fact that the use of technology has previously found judicial recognition in precedent of the Supreme Court in *State of Maharashtra v Praful Desai (2003)*. In said case, the Supreme Court had held that the term 'evidence' includes electronic evidence and that video conferencing may be used to record evidence.

The Supreme Court also observed that developments in technology have opened up the possibility of virtual courts which are similar to physical courts, and recognizing the need for balance, declared that all measures taken thus far, including future measures undertaken in view of social distancing guidelines, and best public health practices, shall be deemed to be lawful.

High Court were also authorized to adopt any necessary measures that are consistent with the peculiarities of the judicial system in every state, and the developing public health situation.

D. ARBITRATION AND CONCILIATION

STEEL AUTHORITY OF INDIA LTD., INDIA V TATA PROJECTS LTD., INDIA & ANR

Date : 01.06.2020

Citation : High Court of Delhi [OMP(COMM) 418/2020, IA 3983/2020]

SYNOPSIS

The court exercised its discretion in accordance with established principles, and directed that part-deposit be made of the arbitral award amount, given the COVID-19 situation, and the financial distress of the Petitioner.

FACTS

The petitioner sought a 100% exemption from depositing the amount of the arbitral award, citing the economic impact of the COVID-19 pandemic. Additionally, it was pleaded that the impugned award be stayed, and that the respondent be permitted to encash Bank Guarantees to secure its interests for the amount awarded in the impugned award.

It was the case of the respondents that the award was not challenged on public policy or patent illegality grounds, and thus no case of interference from the courts was made out by the petitioners. It was also alleged by the respondents that securing interests through a deposit was the norm, and that securing the same through a bank guarantee was an exception to the norm.

ISSUES

Whether the arbitral award could be stayed, and the amount of the award recovered via bank guarantees, instead of deposits, in light of the financial distress cited by the petitioners?

HELD

The High Court held that the economic impact of COVID-19 cannot be ignored, but the same would have impacted both parties – and that the Respondent could not be deprived of the money in the prevailing situation.

In exercise of the Court's discretion, the petitioners were directed to deposit 50% of the awarded amount with the Court, and to furnish a bank guarantee for the remaining 50% in favour of the Registrar General within three weeks. The stay on the award dated November 20, 2019 was to be made effective upon the deposit of 50% of the award amount.

RASHMI CEMENTS LIMITED V WORLD METALS & ALLOYS (FZC) AND ORS.

Date : 18.06.2020

Citation : Delhi High Court [O.M.P. (I) (COMM) 117]

SYNOPSIS

Private parties cannot merely resort to government circulars issued during the COVID-19 pandemic to invoke the Force Majeure clause in the event of non-performance of their contractual obligations.

FACTS

Petition filed under Section 9 of the Arbitration Act by Rashmi Cements, seeking a direction the Respondents agent, to forthwith release its cargo comprising of Manganese Ore Lumpy without claiming any demurrage.

ISSUES

Whether Force Majeure clauses can be invoked by private parties, with sole reliance on the Government circulars, in the event of non-performance of contractual obligations?

HELD

The Delhi High Court, having heard arguments from both sides, concluded that even though the petitioner might have a plausible defence, the respondent's pleas that the demurrage would still be payable under the terms of the contract cannot be brushed aside.

Further, the Court observed that the applicability of a Force Majeure clause is largely a well-settled point of law: going on to state that the applicability of such a clause cannot be decided in abstract. Rather, its applicability can only be decided upon an examination of the facts and circumstances of each case, on its own merits.

The Court also held that a mere difficulty in the performance of contractual obligations could not be grounds for the invocation of a Force Majeure clause. It was further observed that private parties could not merely rely on government circulars that recognize COVID-19 as a force majeure event – and that such circulars are to be read restrictively, having a specific economic objective.

Such circulars can only assist in Force Majeure claims, but it still has to be demonstrated that the event in question had a material impact on the very purpose of the contract.

In the absence of such a showing, it was concluded that it is not possible for a force majeure clause to be invoked merely at the request of a party.

The Court also refused the petitioner's contention that as a result of COVID-19 and the consequent lockdown, the Force Majeure clause in the contract was squarely applicable – holding that this question is one to be determined in the arbitration proceedings after considering the stand of both sides, keeping in view the well settled principle enumerated above: that a Force Majeure clause cannot be applied at the mere request of a party.

E. MORATORIUM

11

IDEAL TOLL & INFRASTRUCTURE PVT. LTD. AND ANR. V ICICI HOME FINANCE CO. LTD. & ANR.

Date : 07.04.2020

Citation : Bombay High Court [Commercial Suit No. LD-VC-7 of 2020, along with IA No. LD-VC-7(IA) of 2020]

SYNOPSIS

The grant of moratorium of three months does not apply to instalments which were due prior to 1 March 2020, and that during the pandemic, steps must be taken to protect the rights of both parties.

FACTS

Defendant No.1, ICICI Home Finance (**"ICICI"**) had sanctioned a term loan for a sum of Rs. 5 crores for a period of 12 months with an option to renew the same on the terms set out in the Sanction Order. The Plaintiff had pledged 14 lakh shares of MEP Infrastructure Development Limited (**"MEPIDL"**) (**"suit shares"**) which constituted the security for the suit term loan.

ICICI claimed that the Plaintiffs were liable to pay it a sum of Rs. 4.72 crores as of 20th January 2020 (1.71 crore from the first term loan, outstanding on 20.01.2020, and 3.01 crore from another, outstanding on 25.03.2020).

The shares, when pledged, were listed at close to INR 350 per share and fell to below INR 100 thereby severely breaching the security cover agreed with the lender causing the lender to invoke and sell the pledged shares; and in relation to this default, the Plaintiff was duly notified that the security would be invoked, and the shares would be liquidated.

Upon the failure of the Plaintiffs to pay their dues, 1,52,413 shares were sold in two tranches in March 2020 by ICICI.

The Plaintiffs filed an application before the Court seeking to restrain the Lenders from selling further shares, arguing that that the invocation of the pledged shares of MEPIDL was invalid, and that ICICI had failed to account for the fall in the BSE Sensex by 9878.71 points in March which had led to a steep drop in share prices.

The sharp decline, the Plaintiff argued, was caused by the effect of the lockdown announced throughout the country, as a result of which road traffic came to a standstill and the only source of income of the Plaintiff and MEPIDL also were badly affected.

In support of their case, the Plaintiff referred to the Reserve Bank of India Press Release dated March 27, 2020, declaring "Statement on Developmental and Regulatory Policies" to mitigate the financial crisis caused by Covid-19. It was argued that the policy, inter alia, provided that the repayment schedule of subsequent due dates be shifted to three months. Further, it was argued that the RBI "Covid-19-Regulatory Package", that prohibited the sale of shares.

ISSUES

Whether the invocation of pledge during the Moratorium Period, for a default which occurred prior to 1st March 2020 was valid?

HELD

The High Court, balancing the rights of the defendants and the plaintiffs, and considering the present situation of the market and COVID-19, granted ad-interim protection to the Plaintiffs till next date of hearing, and restrained ICICI from selling the suit shares, subject to the Plaintiffs' compliance with a payment schedule ordered by it.

The court perused the RBI policies in question, and opined that the RBI's 'Statement on Developmental and Regulatory Policies' and the 'Covid-19-Regulatory Package' would apply in respect of payment of instalments of terms loans outstanding "as of 01.03.2020".

Therefore, the amount (1.71 crores) which was admittedly due as of January 2020 would not be covered by the moratorium, and accordingly, it was held that the plaintiffs were liable to pay Rs.1.71 crores to ICICI, given that ICICI had a vested right to sell the pledged shares. Such repayment was directed to be made in three instalments, and any further sale of pledged shares of MEPIDL by ICICI was stayed. Additionally, the Court ordered that until a default was committed, the term loan could not be declared an NPA.

With respect to the second term loan, the Court extended the protection offered by RBI as the moratorium covered amounts pertaining to March, 2020. The Court ordered that the pledged shares of MEPIDL during the three-month moratorium contemplated by the RBI, could not be sold, subject to payment of amount due after March 1 as per the rescheduled timeline.

It was also clarified that for any default in payment of any of the amounts which became due in January, the Defendant was permitted to sell the pledged shares in the second term loan, to recover the balance due as on the date of default.

It was therefore made clear by the Court that the grant of the moratorium of three months would apply to payment of all instalments that fell due between 01.03.2020 and 31.03.2020.

The moratorium would only cover the amount of 3.01 crore due and claimed as part of the second term loan.

PART II: NOTABLE JUDGMENTS OF INDIAN COURTS & TRIBUNALS

(2018-2020)

SNG & PARTNERS
Advocates & Solicitors

ARBITRATION & CONCILIATION ACT

1996

SOUTH EAST ASIA MARINE ENGINEERING AND CONSTRUCTIONS LTD. (SEAMEC LTD) V OIL INDIA LIMITED

Date : 11.05.2020

Citation : Supreme Court Civil Appeal No. 673 of 2012

SYNOPSIS

The interpretation of the contract given by the arbitral tribunal is not possible, and hence the award is set aside as being perverse.

FACTS

The appellant was awarded the work order floated by the respondent for the drilling of well and other auxiliary operations. During the subsistence of the contract, the prices of High-Speed Diesel, one of the essential materials, increased.

Appellant claimed the increase in price triggered the 'change in law' clause under the contract and the respondent is liable to reimburse the increase in prices. The arbitral tribunal held the circular issued is not 'law' in the literal sense but has the 'force of law' and thus within the ambit of the 'change in law' clause.

ISSUES

Whether the interpretation provided to the contract in the award of the Tribunal was reasonable and fair so that the same passes the muster under Section 34 of the Arbitration and Conciliation Act, 1996?

HELD

It is a settled position that a Court can set aside the award only on the grounds as provided in the Act. The Court needs to be cognizant of the fact that arbitral awards should not be interfered with a casual and cavalier manner unless it comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award.

Section 34 cannot be equated with a normal appellate jurisdiction. It also held where two views are possible; the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning.

The Court is not required to examine the merits of the interpretation provided in the award if it comes to the conclusion that such an interpretation was reasonably possible. The Tribunal held that the 'change in law' must be liberally construed and any circular of the Government of India would amount to a change in law. The Tribunal identifies the clause to be a 'Habendum Clause', wherein the rights granted to the appellant are required to be construed broadly.

The wide interpretation of Clause 23 of the Contract by the Tribunal cannot be accepted, as the thumb rule of interpretation is that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. In the present, the basic rule was ignored by the Tribunal.

The contract was based on a fixed rate and limit the risks of price variations; hence the interpretation placed by the Tribunal cannot be said to be correct, as it would completely defeat the explicit wordings and purpose of the contract. Other contractual terms, such as Item 1 of List II of Exhibit C, indicates that fuel would be supplied by the contractor, at his expense. Hence, the interpretation of the clause by the Tribunal is perverse, and the award is set aside.

CENTROTRADE MINERALS AND METALS INC V HINDUSTAN COPPER LTD.

Date : 02.06.2020

Citation : Supreme Court Civil Appeal No. 2562 of 2006

SYNOPSIS

A party who chooses not to appear before the arbitrator and chooses not to submit documents and legal submissions cannot claim benefit under Section 48(1)(b).

FACTS

The appellant is a U.S. Corporation who had entered into a contract for the sale of 15,5000 DMT of copper concentrate to be delivered at

Kandla Port, for the respondent. Clause 14 of the agreement contained a two-tier arbitration agreement. The first arbitrator in India passed a Nil award, thereupon, the second part of the arbitration took place in London where an award in favour of the appellant was made.

This matter came to the Division Bench of this Court to decide whether a two-tier arbitration clause is valid. The two Judges could agree on that issue, and hence the matter got referred to a 3 Judge Bench which addressed only the limited issue of the validity of the two-tier arbitration procedure. The matter has been listed again for consideration of the second question, which relates to enforcement of the London award.

ISSUES

Whether enforcement of the foreign award needs to be set aside under Section 48(1)(b) of the Arbitration and Conciliation Act, 1996?

HELD

A good working test for determining whether a party has been unable to present its case is to see whether factors outside the party's control have combined to deny the party a fair hearing. The party must show he was unable to present its case outside his control and not because of his own failure to take advantage of an opportunity.

If a party, after being given proper notice, chooses not to appear, then the proceedings may properly continue in his absence. The expression 'otherwise' is susceptible to two meaning; it is clear that the narrower meaning has been preferred, which is in consonance with the pro-enforcement bias. The word 'otherwise' would be read as *ejusdem generis* with words that precede it.

On, the facts and the sequence of events, the Court found that the respondent had a large number of opportunities to file documents and legal submissions which it failed to do. At the last minute, when the arbitrator indicated he was going to pass an award that the respondent woke up and started asking for time to present their response. The arbitrator has made no fault whatsoever with the conduct of the arbitral proceedings. The arbitrator is in control of the arbitral proceedings and procedural orders which give time limits must strictly be adhered to. The arbitrator's refusal to adjourn the proceedings at the behest of one party cannot be said to be perverse, keeping in mind the object of a speedy resolution. Hence, the award can be enforced, and the application to set aside the order is dismissed.

RASHID RAZA V SADAF AKHTAR

Date : 04.09.2019
Citation : (2019) 8 SCC 710

SYNOPSIS

Simple allegations of fraud are arbitrable, and two working tests laid down to determine the same.

FACTS

The case arises out of a partnership dispute in which an FIR was lodged by one of the partners alleging siphoning of funds and various other business improprieties that were committed. An arbitration petition dated 2-1-2018 was filed by the appellant before the High Court under Section 11 of the Act seeking appointment of an arbitrator under the arbitration clause which is to be found in the partnership deed between the parties dated 30-1-2015.

ISSUES

Whether allegations of fraud are arbitrable?

HELD

The Court made a reference to *A. Ayyasamy* case and held that the principles of law laid down makes a distinction between serious allegations of forgery/ fabrication in support of the plea of fraud as opposed to simple allegations. There are two working tests laid down: (i) does the plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (ii) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain. Applying these two tests, Court held it is a clear case of simple allegations as there is no allegation of fraud which would vitiate the partnership deed

as a whole or, the arbitration clause. Secondly, the allegations made pertain to the affairs of the partnership and siphoning off of funds and not to any matter in the public domain. Hence, the Section 11 application under the Act was maintainable, and with the consent of the parties, a sole arbitrator was appointed.

CANARA NIDHI LIMITED V M. SHASHIKALA AND OTHERS

Date : 23.09.2019

Citation : (2019) 9 SCC 462

SYNOPSIS

Section 34 application will not ordinarily require anything beyond the record and cross-examination should not be allowed unless absolutely necessary.

FACTS

The Appellant advanced a loan of Rs. 50 lakhs to Respondent 1 and Respondents 2, 4 and 5 to 8 were the guarantors in respect of such loan. The Respondent failed to discharge the liabilities arising out of the transaction.

The dispute was referred to arbitration, and the arbitrator passed an award directing the respondents to pay an amount of Rs. 63,82,802 with interest and cost of Rs. 52,959. High Court of Karnataka under a Section 34 application permitted Respondents 1 and 2 to file affidavits of their witnesses and also permitting cross-examination of the witnesses. The said decision of the High Court is challenged before the Court.

ISSUES

Whether the parties can adduce evidence to prove the specified grounds in Section 34(2) of the Act?

HELD

The proceeding under Section 34 of the Act are summary in nature and not in the nature of a regular suit. The scope of enquiry in the proceedings is restricted to consider whether any grounds under Section 34(2) or Section 13(5) or Section 16(6) are made out. It is imperative for expeditious disposal of cases that the arbitration cases under Section 34 of the Act should be decided only with reference to the pleadings and the evidence placed before the Arbitral Tribunal. The legal position after the 2019 Amendment to Section 34 and *Emkay Global Financial Services Ltd v Girdhar Sonhi* is that Section 34 application will not ordinarily require anything beyond the record that was before the arbitrator. The cross-examination of persons swearing into the affidavits should not be allowed unless absolutely necessary. No ground was made out as to the necessity of adducing evidence and what was the nature of the evidence sought to be led.

AVITEL POST STUDIOZ LIMITED & ORS. V HSBC PI HOLDING (MAURITIUS) LIMITED

Date : 19.08.2020

Citation : Civil Appeal No. 5145 of 2016

SYNOPSIS

There is a strong prima facie case for the deciding the Section 9 petition, along with the balance of convenience and irreparable loss to grant interim relief.

FACTS

The Appeal is against the interlocutory judgement and order passed under Section 9 of the Act. Parties entered into a Share Subscription Agreement and a Shareholders' Agreement containing an identical arbitration clause. The respondents discovered that a few representations given by the appellants were false and non-existent, and the investment amount has been siphoned off.

The Respondents filed Arbitration Petition under Section 9 inter alia seeking directions to call upon the Appellants to deposit a security amount to the extent of the Respondent's claim in the arbitration proceedings. The Learned Single Judge passed an interim order inter alia directing Appellants to maintain a balance of USD 60 million in their account as the respondents had a good chance of success.

An appeal against the order of the Learned Single Judge was disposed of by order of the Division Bench holding that measure of

damages that may ultimately be awarded may not be the amount of loss sustained by the Respondent, but at best the difference between the price paid in acquiring the shares of the Appellants and the price the Respondents would receive had it resold the said shares in the market. It further held a mandatory interim injunction is in the nature of equitable relief, the Division Bench directed the Appellants to maintain half of the claim of the respondents, that is USD 30 million, in their bank account.

ISSUES

A. The extent to which the respondents under Section 9 could be said to have strong prima facie case in the enforcement proceedings under Section 48 pending before the High Court.
B. If so, whether irreparable prejudice would be caused to the respondents if the protective orders were not issued in its favour and whether the balance of convenience tilts in its favour and to what extent?

HELD

The Court held that a prima facie case would necessarily depend upon the substantive law in India qua arbitrability when allegations of fraud are raised by one of the parties to the arbitration agreement. The decision in *N. Radhakrishnan v. Maestro Engineers* lacks in precedential value as it did not refer to the ratio of *Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak* correctly. Serious allegations of fraud are not made out when allegations of moral or other wrongdoing are in-between the parties.

In particular, it was held that discrepancies in account books are the usual subject matter in account suits, which are purely of a civil nature. Hence, 'serious allegations of fraud' arise only if either of the two tests laid down in *Rashid Raza v. Sadaf Akhtar* is satisfied, and not otherwise. The Court clarified that the first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct in which the questions are raised which are not predominantly questions arising from the contract itself, but questions arising in the public law domain.

The exception of arbitrability involving prosecution for criminal offences must be read subject to the rider that the same set of facts may lead to civil and criminal proceedings. If it is clear that a civil dispute involves questions of fraud, misrepresentation which can be the subject matter of proceeding under Section 17 of the Contract Act, and/or tort of deceit, the mere fact that criminal proceedings can or have been instituted in respect of the same matter will not lead to the conclusion that a dispute which is arbitrable, ceases to be so.

The fraud that is practised in the performance of the contract may be governed by the tort of deceit, which would lead to damages, but a not rescission of the contract itself. Both kinds of fraud are subsumed within the expression 'fraud' when it comes to arbitrability. However, the two tests of serious allegations of fraud are not established in the case.

The measure of damages for fraudulent misrepresentation and tort of deceit is not the difference between the value of the shares on the date of making the contract and the value the that could be received, if it had resold the shares after purchase. The measure of damages would be to put the successful party in the same position as if the contract had never been entered into, which is, the entitlement to recover the price paid for the shares and all consequential losses.

The balance of convenience is in favour of the respondent, and irreparable loss would be caused to it unless at least the principal sum was kept aside for the purposes of enforcement of the award in India. Hence, the Court partially allowed the appeal.

DECCAN PAPER MILLS CO. LTD. V REGENCY MAHAVIR PROPERTIES & ORS.

Date : 19.08.2020

Citation : Civil Appeal No. 5147 of 2016

SYNOPSIS

Relief claimed under Section 31 of the Specific Relief Act, 1963 can be granted by arbitration.

FACTS

The Appellant and Respondent No. 2 entered into an agreement to develop a portion of the land owned the Appellant. Pursuant to the agreement between the Appellant and Respondent No. 2 an agreement was entered between Respondent No. 2 and Respondent No. 1 through which Respondent No. 2 assigned the execution of its agreement with the Appellant to Respondent No. 1 which contained an arbitration clause.

A deed of confirmation was made with stated that the deed of confirmation would be part of the transfer of assignment from Respondent No. 2 to Respondent No. 1. The Appellant filed a Special Civil Suit alleging that fraud has been played by Respondent No. 3 and sought a declaration that the said agreement was obtained by fraud and hence ab initio null, void and not binding. Immediately thereafter an application under Section 8 of the Arbitration and Conciliation Act, 1996 was made by Respondent No. 1. The Small Causes Court and the Bombay High Court referred the parties to the arbitration.

ISSUES

Whether a proceeding under Section 31 of Specific Relief Act, 1963 for cancellation of written instruments would be a proceeding *in rem*, and be an exception to Arbitration?

HELD

The Supreme Court held that an arbitrator has the power and jurisdiction to grant specific performance of contracts relating to immovable property. Merely because sections of the Specific Relief Act confer a discretion on the courts to grant specific performance does not mean that the parties cannot agree that the discretion will be exercised by a forum of their choice.

The expression 'any person' does not include a third party but is restricted to a party to the written instrument or any person who can bind such party. The jurisdiction under Section 31 is a protective or a preventive one. The three conditions to cancel an instrument; (i) the instrument is void or voidable against the plaintiff; (ii) the plaintiff may reasonably apprehend serious injury by the instrument being left outstanding; (iii) the circumstances court considers proper to grant this relief of preventive justice.

The executant of the document should be either the plaintiff or a person who can in certain circumstances, bind the plaintiff such as a document executed by his agent or by a guardian for a minor. Section 31(1) is strictly an action inter parties and is thus *in personam*. Section 31(2) cannot be said to be i*n personam* when an unregistered instrument is cancelled and in rem when a registered instrument is cancelled. The suit that is filed for cancellation cannot be in personam only for unregistered instruments by virtue of a ministerial action which is subsequent to the decree being passed.

A registered instrument is not retained or kept in any public office but is returned to the person who presented such document for registration, on completion of the process of registration. An original registered document is not, therefore, a public record kept by a State of a private document. Private documents of which public records are kept are not in themselves public documents.

A registered document, therefore, does not become a public document. An entry in the register book is a public document, but the original is a private document. The factum of registration of what is otherwise a private document inter parties does not clothe the document with any higher legal status by virtue of its registration. *Aliens Developers Pvt Ltd v M. Janardhan Reddy* is not good law. Proceeding under Section 31 is with reference to specific persons and not with reference to

all who may be concerned with the property underlying the instrument, or all the world. Cancellation of the instrument under Section 31 is as between the parties to the action and their privies and not against all persons generally, as the instrument that is cancelled is to be delivered to the plaintiff in the cancellation suit. A judgement delivered under Section 31 does not bind all persons claiming an interest in the property inconsistent with the judgement. Reference was also placed on other provisions of the Specific Relief Act to suggest it is an *in personam* actions.

The Court draws reference to its decision in *Avitel Post Studioz Limited v HSBC PI Holding (Mauritius) Ltd* on the invocation of the 'fraud exception' and held as two tests were not met. The exception would not apply to the facts of the case and finding that a valid arbitration agreement exists referred the matter to arbitration. Hence, the appeal was dismissed.

CENTRAL ORGANISATION FOR RAILWAY ELECTRIFICATION V M/S ECI-SPIC-SMO-MCML (JV) A JOINT VENTURE COMPANY

Date : 17.12.2019

Citation : Supreme Court Civil Appeal Nos. 9486-9487 of 2019

SYNOPSIS

Retired railways officers are eligible to be appointed as arbitrators.

FACTS

The Arbitration Clause 64(3)(b) stipulates that the Arbitral Tribunal shall consist of a panel of three retired railway officers. The clause provides that the appellant will provide a list of four retired railway officers from which the respondent will select two officers out of which one of the two selected officers will be made part of the tribunal.

Thereafter, the respondent has the right to nominate two other arbitrators out of which one of them will be the presiding arbitrator. The High Court decision holding that since no neutral arbitrator is contemplated to be appointed, the respondent has no other recourse except file a petition under Section 11(6) and appointed a sole arbitrator, is challenged.

ISSUES

Whether retired railway officers are not eligible to be appointed as arbitrators under Section 12(5) read with Schedule VII of the Act and were statutorily made ineligible to be appointed as an arbitrator?

HELD

The Contract under Clause 64 provided for constitution of Arbitral Tribunal consisting of three arbitrators and High Court is not justified in appointing a sole independent arbitrator without resorting to the procedure for appointment of the arbitrator.

The Supreme Court drew reference from *Voestalpine Schienen Gmbh v Delhi Metro Rail Corporation and Government of Haryana PWD Haryana (B and R) Branch v G.F. Toll Road Private Limited and Others* to hold that appointment of a retired employee of a party to the agreement cannot be assailed on the ground that he is a retired employee of one of the parties to the agreement. There is no bar under Section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015 for the appointment of a retired employee to act as an arbitrator.

The reason for empanelling the retired railway officers is to ensure that the technical aspects of the dispute are suitably resolved by utilising their expertise. Merely because the panel of the arbitrators are the retired employees who have worked in the Railways, it does not make them ineligible to act as the arbitrators.

The right of the General Manager in the formation of Arbitral Tribunal is counter-balanced by respondent's power to choose any two arbitrators from the four names, and the general Manager shall appoint at least one out of them as the contractor's nominee.

8 VIJAY KARIA AND OTHERS V PRYSMIAN CAVI E SISTEMI SRL AND OTHERS

Date : 13.02.2020

Citation : 2020 SCC Online SC 177

SYNOPSIS

The expression 'fundamental policy of law' must be interpreted to mean only fundamental and substratal legislative policy and not a provision of any enactment.

FACTS

The Appellants are shareholders of Ravin Cables Limited a Joint Venture between the parties. Respondent No. 1, through a joint venture agreement, bought the majority of the company which provided for Arbitration seated in London. The Joint Venture Agreement inter alia provided for in the event of default; the Defaulting Party would have to sell its shareholding at a 10% discount to the Fair Market Value.

ISSUES

Whether a case to set aside the award under Section 48 of the Act have been made?

HELD

The legislative policy so far as recognition and enforcement of a foreign award is that an appeal is provided against a judgement refusing to recognise and enforce a foreign award but not the other way round. All grounds relating to patent illegality appearing on the face of the award are outside the scope of interference with foreign awards whose enforcement is resisted.

Section 48 is to enforce foreign awards subject to certain well-defined exceptions which cannot be given expansive meaning. The foreign award must be read as a whole, fairly, and without nit-picking and if the award addressed the basic issues raised and has in substance decided the claims and counter-claims the enforcement must follow.

The expression 'fundamental policy of law' must be interpreted in the perspective that must mean only the fundamental legislative policy and not a rectifiable breach of the law. The Court dismissed the appeal with costs.

9 GELENCORE INTERNATIONAL AG V HINDUSTAN ZINC LIMITED

Date : 08.06.2020

Citation : High Court of Delhi in O.M.P. (EFA) (COMM.) 9/2019, Ex. Appl. (OS) 875/2019

SYNOPSIS

The pendency of appeal proceeding under Section 34 read with Section 48 before the Rajasthan High Court cannot come in the way of the Decree Holders in enforcing the Award before another Court.

FACTS

The Decree Holder and the Judgement Debtor entered into a Contract for the supply of 10,000 mts of MRM concentrate from Australia to India. The Contract had an Arbitration Clause with the Governing Law of the Contract being the Law of England and Wales. The Venue of Arbitration was London, and the proceedings were to be conducted in accordance with Rules of the London Court of International Arbitration.

The Award was challenged by the Judgement Debtor before the Rajasthan High Court. The High Court dismissed the application as non-maintainable. An appeal before the Division Bench of the High Court against the judgement is pending. The Decree Holder has filed these petitions for enforcement of the awards under Section 47 of the Act, 1996.

ISSUES

Whether the High Court has jurisdiction to enforce the awards when another High Court is seized of petitions filed under Section 34 read with Section 48 of the Act?

HELD

The issue of enforcement of a Foreign Award and objection to the territorial jurisdiction of the Court under Section 2(1)(e) of Act relate to two different aspects. In Section 2(1)(e) the subject matter of the Court considers the subject matter of arbitration, that is the contract, while in the enforcement of an Award, it is the subject matter of the Award which is the relevant factor, in this case, it is money. A foreign award if allowed to be enforced, as a

deemed decree. It can be enforced anywhere that the respondents may have money. In other words, it is in the nature of forum hunting. If enforcement of the Award is filed, it is maintainable only where the properties of the Judgement Debtor are located. The only relevant factor in the execution of the Award is the location of the assets or the property of the Judgement Debtor and not the judgement debtor himself. Hence, as the judgement debtor has property in Delhi, the petition is maintainable.

AARKA SPORTS MANAGEMENT PVT. LTD. V KALSI BUILDCON PVT. LTD.

Date : 06.07.2020

Citation : High Court of Delhi in ARB.P. 662/2019

SYNOPSIS

The Court has the power to appoint arbitrator only when it is the seat of arbitration. If the parties have not agreed on the seat of arbitration, then the Court having jurisdiction as per Sections 16 to 20 of the Civil Procedure Code will have to be approached.

FACTS

The petitioner is seeking appointment of an arbitrator under Section 11 of the Act. The arbitration clause is contained in clause 15 of the operation, maintenance, and management agreement. The dispute resolution clause provides;

'15.1 This Agreement shall be governed by and construed in accordance with the laws of India and subject to clauses 15.2 and 15.3, the jurisdiction of this Agreement shall be exclusively in the courts of New Delhi, India.

15.3 Arbitration: [.....] If the Parties are unable to reach an agreement on the choice of an arbitrator within 30 days of the Notice of Arbitration either Party, the Parties shall approach the court of proper jurisdiction for appointment of arbitrator.'

The agreement was drawn at Ranchi; the agreement was signed at Lucknow, and the place of performance/execution of the agreement was Patna, Bihar. Hence, the respondent argues that Delhi is neither the seat of arbitration nor the court of proper jurisdiction.

ISSUES

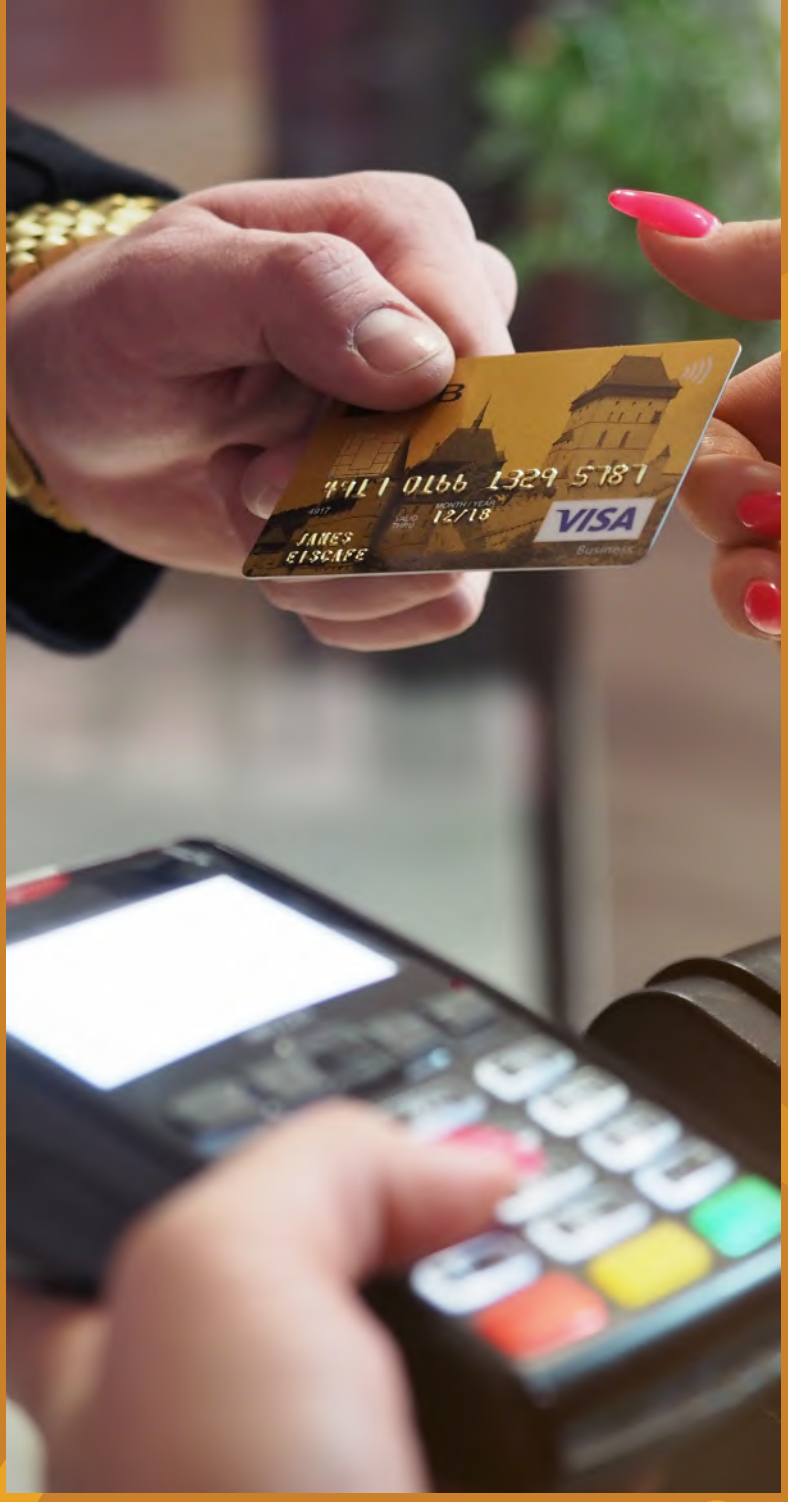
Whether the Court has jurisdiction to appoint an arbitrator under Section 11 of the Act?

HELD

Section 20(1) of the Act empowers the parties to determine the seat of arbitration. The Parties are at liberty to choose a neutral seat of arbitration where neither the cause of action arose, nor the parties reside, or work and Sections 16 to 20 of the Code of Civil Procedure would not be attracted. Once the seat is determined, the Court of that place shall have exclusive jurisdiction to deal with all matters relating to the arbitration agreement between the parties.

If the parties have not agreed on the seat of the arbitration, the Court competent to entertain an application under Section 11 of the Act would be the 'Court' as defined in Section 2(1)(e) of the Act read with Sections 16 to 20 of the Code of Civil Procedure. The Court held it lacks territorial jurisdiction as Delhi is not the seat of arbitration, no cause of action arose, and the respondent does not work at Delhi.

Clause 15.1, which provides for the exclusive jurisdiction of Delhi Courts, is not valid as the parties cannot confer jurisdiction on a Court which otherwise has no jurisdiction. That apart, clause 15.1 is subject to clauses 15.2 and 15.3. Hence, in the present case, the jurisdiction of the Court has to be determined according to provisions of the Civil Procedure Code. Therefore, the Delhi High Court is not a competent court.



BENAMI TRANSACTIONS (PROHIBITION) ACT

1988

TULSIRAM & ORS. V ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

Date : 06.02.2020

Citation : Chhattisgarh High Court [Writ Appeal No. 29 of 2020]

SYNOPSIS

Purpose of provisional order of attachment pending adjudication is to ensure that no third-party interest is created over the property.

FACTS

The appellants owned different extents of properties in different villages, acquired by utilizing the funds allegedly from their own sources. A notice was served to the appellants to the effect that as per the information gathered by the respondent, the above properties were to be held as benami properties and hence, the said properties were being provisionally attached till final adjudication.

It was contended by the appellants that all the properties mentioned in the notice, except those items which were specifically pointed out as belonging to someone else, were purchased prior to the Benami Transaction (Prohibition) Amendment Act, 2016 which came into force only from November 1, 2016. Therefore, the respondents could not proceed against them.

A writ petition was filed by the appellants and the single judge bench held that the very purpose of passing provisional order of attachment was only to ensure that no third-party interest was created over the suit property till final adjudication. Hence, an appeal was filed.

ISSUES

Whether the respondent had the power to confiscate and provisionally attach the property, which was purchased prior to the Benami Transaction (Prohibition) Amendment Act, 2016.

HELD

It was noted that approval was obtained u/s 23 from the competent authority to conduct further investigations after preliminary information gathered made it necessary to take further steps. The order for provisional attachment in terms of the mandate u/s 24(5) was passed only after due consideration and the same was merely a procedural provision. It was observed that no prejudice had been caused to the appellants in any manner because of the provisional attachment and the future course of action by the respondents with regard to the said property was a matter which was yet to be decided and could only be ascertained on culmination of the adjudication proceedings.

Furthermore, whether any provisions of the statute which were substantive in character could be applied retrospectively was still unknown and could be considered only after the passing of the final order by the respondents. The very purpose of passing provisional order of attachment, pending adjudication, was only to ensure that no third-party interest was created over the said property.

Thus, the order for attachment was just an interim measure which was meant to sub-serve the final verdict and was subject to the outcome of the final adjudication. In light of the above facts, the order of the single judge was upheld, and the appeal was dismissed.

M/S FAIR COMMUNICATION & CONSULTANTS & ANR. V SURENDRA KERDILE

Date : 20.01.2020

Citation : Supreme Court [Civil Appeal No. 106 of 2010]

SYNOPSIS

Onus of establishing that a transaction is benami is upon one who asserts it.

FACTS

The respondent wanted to dispose of his property and made his nephew-second appellant his attorney to carry out the sale of the said property on his behalf. An agreement to sell was entered into for the sale of the property for a consideration amount of two lakhs and thirty thousand rupees.

Later, a second agreement was entered into with the buyer, which showed a lesser consideration amount of one lakh thirty thousand rupees. It was contended by the appellant that he had taken a loan of eighty thousand rupees out of the said consideration amount from the respondent and returned it back to him the next day. However, it was argued by the respondent that the appellant had failed to pay him back the said loan amount.

The trial court ruled in favour of the appellant based on circumstantial evidence that an amount of eighty thousand rupees was in fact, deposited by the respondent with his bank. However, the High Court ruled in favour of the respondent and noted that the real consideration was two lakhs and thirty thousand rupees, which had enabled the respondent to give the loan as well as make a deposit of eighty thousand.

Hence, an appeal was filed before the Supreme Court and it was argued by the appellant that no suit of recovery could be enforced by the respondent as the said transaction was prohibited, being a benami transaction.

ISSUES

Whether the argument that the claim of recovery was barred on account of transaction being benami in nature had any merit.

HELD

It was opined that the respondent had not claimed return of any amount from the buyer and that the suit was not based on any plea involving the examination of a benami transaction. Section 3 and Section 4 were examined to outline the definition of benami transaction, and it was held that the arguments of the appellant were clearly insubstantial.

The respondent was not asserting any claim as a benami owner, nor urging a defence that any property or the amount claimed by him was a benami transaction. It was noted that the onus of establishing that a transaction was benami was upon the person who asserted it. The appellants never said that the respondent or someone other than the buyer was the real owner of the property nor was the interest in the property, the subject matter of the recovery suit. Hence, it was held that there was no merit in the appeal and accordingly, it was dismissed.

M/S GANPATI DEALCOM PVT. LTD. V UNION OF INDIA & ANR.

Date : 12.12.2019

Citation : Calcutta High Court [APO No. 8 of 2019]

SYNOPSIS

Benami Transactions (Prohibition) Amendment Act, 2016 is not applicable with retrospective effect.

FACTS

A notice was issued to the petitioner alleging that the property acquired by it was benami u/s 2(8) of the Benami Transactions (Prohibition) Amendment Act, 2016 (**"Amendment Act, 2016"**) as the consideration for the said transaction was provided by shell entities. It was argued by the petitioner that the alleged benami transactions took place in 2011, when the Benami Transactions (Prohibition) Act, 1988 (**"1988 Act"**) was in force. Thus, show cause notice could not have been issued to it under the Amendment Act, 2016 for the offences allegedly committed before the amendment came into force.

ISSUES

Whether show cause notice could be issued under the Amendment Act, 2016 to the petitioner for an alleged benami offence committed in 2011.

HELD

It was observed that the definitions of benami transaction and property were radically changed by the Amendment Act, 2016. Similarly, provisions regarding investigation of contraventions, offences, confiscation, prosecution etc. were also amended. The show cause notice issued u/s 24(1) of the amended 1988 Act referred to the alleged benami transaction, by the petitioner in 2011 u/s 2(8) & 2(9)(D). In order to allege the contravention under the amended 1988 Act, the said contravention should have taken place after

the date on which the said amendment came into force. Cases were cited to support the argument that Amendment Act, 2016 could not have been utilized to charge the petitioner for an alleged offence committed by him in 2011. The substantive rights which were accrued to the petitioner under the 1988 Act could not be taken away by the Amendment Act, 2016. The Amendment Act, 2016 was a new legislation and in order for it to have retrospectivity, it should have been specifically provided therein, that it was intended to cover contraventions at an earlier point of time as well.

Furthermore, no rules were framed u/s 8 of the 1988 Act by the Central Government, which rendered the particular provision inoperative. Assuming that the petitioner had entered into a benami transaction in 2011, no action could have been taken by the Central Government in the absence of enabling procedural rules.

Thus, applying the definition of benami property and benami transaction, it was held that the Central government could not have, on the basis of the Amendment Act, 2016, alleged contravention and started the prosecution in respect of a transaction in 2011. In light of the above facts, the show cause notice issued by the respondent was quashed and set aside.

MUKHTIAR KAUR V PRITAM SINGH

Date : 06.08.2019

Citation : Supreme Court [Civil Appeal No. 5819 of 2013]

SYNOPSIS

Section 4(2) of the Prohibition of Benami Property Transactions Act, 1988 to apply prospectively.

FACTS

The suit property was purchased by Nanta Singh, in the name of the defendant-son in 1972. Subsequently, the suit property was purchased by the appellant, upon payment of the entire sale consideration in 1977. A suit was filed by the defendant-minor through his mother, alleging that the appellant had forcibly encroached upon the suit property and therefore, the possession of the suit property be delivered to him. The trial court held that Nanta Singh was the real owner of the suit property, while the defendant was benamidar and consequently, dismissed the suit. An appeal was filed by the defendant before the district judge and during the pendency of the said appeal, Section 4(2) of the Prohibition of Benami Property Transactions Act, 1988 ("Act") came into force, which barred the appellant from raising the plea that Nanta Singh was the real owner.

This view was accepted by the first appellate court and the High Court, which held that Section 4(2) was retrospective in nature and the bar of raising a defence was applicable. Thus, an appeal was filed before the Supreme Court.

ISSUES

Whether Section 4(2) had retrospective effect.

HELD

Reliance was placed on its judgement in *R. Rajagopal Reddy (D) by LRs. vs. Padmini Chandrasekharan (D) by LRs* and it was observed that the High Court had not properly appreciated the ratio of the law in the said decision and was erroneous in holding that Section 4(2) had retrospective effect.

It was noted that the said provision created substantive rights in favour of the benamidars and destroyed the substantive rights of the real owners, who were parties to such transactions and for whom new liabilities were created under this Act. It was noted that the Act affected substantive rights and could not be regarded as having a retrospective effect. It was held that the Section 4(2) was not retrospective or retroactive in nature and would not apply in appellate or revisional proceedings. Hence, appeal was allowed, and the order of the trial court was restored.

NIHARIKA JAIN & ORS. V UNION OF INDIA

Date : 12.07.2019

Citation : Rajasthan High Court [S.B. Civil Writ Petition No. 2915 of 2019]

SYNOPSIS

Benami Transactions (Prohibition) Amendment Act, 2016 not applicable with retrospective effect.

FACTS

The Income Tax department had conducted search and seizure operations on various premises of the petitioner. Based on the discovery of certain documents, it was alleged that the petitioner had entered into several benami transactions of purchase of lands and consequently, the said properties were provisionally attached u/s Section 24 of the Act as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 (**"Amendment Act, 2016"**). A writ petition was filed by the petitioner challenging the action of the Income Tax department.

ISSUES

Whether the provisions of the Amendment Act, 2016 would be applicable retrospectively or not.

HELD

It was observed that the benami transactions of purchase of lands by the petitioner were entered into before November 1, 2016, which was prior to the date of coming into force of the Amendment Act, 2016. The Amendment Act, 2016 as a whole created substantive rights in favour of benamidars and destroyed the substantive rights of the real owners who were parties to such transactions.

Furthermore, an explanatory or declaratory act is usually intended to supply an obvious omission or is enacted to clear doubts as to the meaning of the previous act and is therefore, given retrospective effect. However, Amendment Act, 2016 neither appeared to be clarificatory nor curative and on the contrary, was introduced to provide for confiscation of benami property and for enhanced punishment.

It was noted that the principle of law known as "*lex prospicit non respicit*" (law looks forward not backward), is a well-known and accepted principle. In the normal course of human behaviour, one is entitled to arrange his affairs keeping in view the laws for the time being in force and such arrangement of affairs should not be dislodged by the retrospective application of law.

Various decisions of the Apex Court dealing with the issue of retrospective effect of the Amendment Act, 2016 were considered and it was held that it is a well settled law that a substantive provision unless made retrospective or otherwise intended by the Parliament should always be held to be prospective. Thus, it was held that the provisions of the Amendment Act, 2016 could not have retrospective operation.

MANGATHAI AMMAL (D) BY LRS AND ORS. V RAJESWARI & ORS.

Date : 09.05.2019

Citation : Supreme Court [Civil Appeal No. 4805 of 2019]

SYNOPSIS

Payment of part sale consideration or stamp duty cannot be sole criteria to hold transaction as benami.

FACTS

The respondents had instituted a suit for partition of suit properties and separate possession. It was contended that the suit properties were ancestral properties and that the husband of the appellant had purchased the suit properties in the appellant's name out of the funds derived through sale of the ancestral properties.

The trial court held that the respondents were entitled to 3/4th share in the suit properties and that the transactions in favour of the appellant were benami in nature. The said judgment was upheld by the Madras High Court, which also held that the sale deeds in favour of the appellant by her husband were benami transactions. Aggrieved by the decision of the High Court, an appeal was filed before the Supreme Court.

ISSUES

Whether the sale deeds/ transactions in favour of the appellant could be said to be benami transactions.

HELD

It was observed that the burden of proving that a particular sale was benami and the apparent purchaser was not the real owner, always rested on the person, making such an assertion.

The burden had to be strictly discharged by adducing legal evidence of a definite character. Reliance was placed on the decision in *Smt. P. Leelavathi (D) by LRs V V. Shankarnarayana Rao (D) by LRs*, where six circumstances were highlighted as guiding factors, which had to be considered in order to hold a particular transaction as benami in nature. Lastly, the intention of the person, who contributed towards the purchase money, had to be decided on the basis of the surrounding circumstances; the relation of the parties; the motives governing their action in bringing about the transaction and their subsequent conduct etc.

In light of above, it was held that the payment of part sale consideration could not be the sole criteria to hold the sale/ transaction as benami. Similarly, merely because of the fact that the stamp duty was paid by the husband of the appellant at the time of the execution could not be a reason in itself, that the sale deed in favour of the appellant was a benami transaction.

SMT. P. LEELAVATHI (D) BY LRS V V. SHANKARNARAYANA RAO (D) BY LRS

Date : 09.04.2019

Citation : Supreme Court [Civil Appeal No. 1099 of 2008]

SYNOPSIS

Mere financial assistance by the father to sons to buy property cannot be termed as benami transaction.

FACTS

The appellant had instituted a suit against the respondents for partition and recovery of 1/4th share in the suit properties. It was contended by the appellant that her father had purchased properties in the name of respondents-sons and the said properties belonged to the family property as the funding for the same was done by her father.

However, the respondents refused to give the appellant's share and argued that the suit properties were exclusively owned by the respondents. The suit was dismissed by both the trial court and the High Court, which held that the suit properties were the self-acquired properties of the respondents and that the appellant was not entitled to any share in the suit properties. Hence, an appeal was filed before the Supreme Court.

ISSUES

Whether the transaction can be said to be benami in nature, where some financial assistance was given by the father to the respondents-sons to purchase the properties.

HELD

It was observed that source of money could not be the sole consideration. It was merely one of the relevant considerations, but was not the determining factor. Placing reliance on its other judgments, it was concluded that while considering whether a particular transaction was benami in nature, the following six circumstances were to be taken as a guide: (i) the source from which the purchase money came; (ii) the nature & possession of the property, after the purchase; (iii) the motive, if any, for giving the transaction a benami colour; (iv) the position of the parties & the relationship, if any, between the claimant and the alleged benamidar; (v) the custody of the title deeds after the sale; and (vi) the conduct of the parties concerned in dealing with the property after the sale. It was noted that financial assistance was also given to the appellant by her father as was given to the respondents-sons.

The main intention of the father was to provide financial assistance for the welfare of his sons. Since none of the other ingredients were satisfied to establish the transactions

as benami transactions, it was held that the appellant had no right to claim share in the suit properties and thus, the appeal was dismissed.

PAWAN KUMAR V BABULAL (D) THROUGH LRS & ORS.

Date : 02.04.2019

Citation : Supreme Court [Civil Appeal No. 3367 of 2019]

SYNOPSIS

Suit not barred u/s 4 where it is proved that the transaction would fall under the purview of Section 4(3).

FACTS

The appellant had filed a suit for declaration of title of suit premises in his name and to cancel the sale deed executed by the first defendant in favour of the second defendant. The appellant had paid the entire consideration amount on behalf of the first defendant-father of the appellant for the purchase of suit premises.

However, the purchase of the same was in the name of the appellant's father-first defendant. Subsequently, the second defendant got a written document in his favour from the first defendant with respect to the suit premises.

An application was filed by the second defendant praying for rejection of the plaint on the ground that the suit was barred u/s 4, which was allowed by the trial court and the same was upheld by the High Court. Hence, an appeal was filed before the Supreme Court.

ISSUES

Whether the suit was not barred by the Act, and saved from mischief of Section 4 by reason of same falling under the purview of Section 4(3)(b).

HELD

It was observed that the transaction could be saved from the mischief of Section 4 if it were to be proved that the case of the appellant would come within the purview of Section 4(3)(b), as per which nothing in Section 4 would apply where the person in whose name the property was held was standing in a fiduciary capacity to the real owner. It was further observed that to determine whether the two parties stood in a fiduciary capacity, the court would have to take into consideration the factual context in which the question arose to arrive at a conclusion.

Whether the matter came within the purview of Section 4(3) was an aspect which should be decided based on the strength of the evidence on record. It was held that the matter required fuller and final consideration after the evidence was led by the parties, as it could not be said that the plea of the appellant as raised on the face of it was barred under the Act.

Hence, the appeal was allowed and the trial court was directed to dispose of the suit based on the merits of the matter.

RAJAGOPAL V VALLIYAMMAL

Date : 26.09.2018

Citation : Kerala High Court [Mat. Appeal Nos. 227 & 457 of 2015]

SYNOPSIS

Burden to prove that a particular sale is benami lies on person who alleges the transaction to be a benami.

FACTS

The appellant-husband had purchased the suit property in the name of his wife-respondent and subsequently, constructed a multi-storied building in the said property by using his own funds. A suit was filed in the family court by the appellant for granting a decree of declaration of his title over the suit property, which was declined by the family court. Thus, an appeal was filed before the High Court.

ISSUES

1. Whether the appellant-husband could establish that the purchase of the suit property in the name of the wife was a benami transaction.
2. If yes, whether he could rebut the presumption envisaged u/s 3(2).

HELD

It was noted that there was a presumption in law that the person who purchased

the property was the owner of the same. This presumption could be displaced by successfully proving that the document was taken benami in the name of another person for some reason, and the person whose name appeared in the document was not the real owner, but only a benami. It is well established that the burden of proving that a particular sale was benami, rested on the person who alleged the transaction to be a benami. The husband was successful in establishing the reasons and circumstances under which the suit property was purchased in the name of the respondent-wife.

There was no prohibition on the husband to enter into a benami transaction by purchasing property in the name of his wife or unmarried daughter. However, the presumption was that the property was purchased by him for the benefit of the wife or the unmarried daughter. It was held that the appellant-husband was eligible to claim title to the suit property as he had successfully rebutted the said presumption u/s 3(2) and proved that the suit property was purchased for his own benefit and not for the benefit of his wife. There was no evidence to prove that the property was purchased for the benefit of the respondent-wife.

Thus, the appeal was allowed, and the appellant was granted the decree of declaration that he was the owner of the suit property.

SNG & PARTNERS
Advocates & Solicitors

BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) & IMPOSITION OF TAX ACT

2015

UNION OF INDIA V GAUTAM KHAITAN

Date : 15.10.2019

Citation : Supreme Court of India [Criminal Appeal No.1563 of 2019]

SYNOPSIS

The Black Money Act's penal provisions have not been given retrospective effect.

FACTS

The Black Money Act was passed by the Parliament on 11.05.2015, and provides in Section 1(3), that, save as otherwise provided in the Act, it will come into force from 01.04.2016.

However, the Central Government, in exercise of its powers under the Act, by way of Notification dated 01.07.2015 (**"Central Government Notification"**), provided that the Black Money Act shall come into force on 01.07.2015.

The Respondent, who had been issued several show-cause notices under the Act, challenged the show-cause notices issued to him, as well as the Central Government Notification, before the Delhi High Court. *Inter alia*, he prayed that the aforesaid Notification be declared illegal, ultra vires, null and void. The High Court, vide interim order dated 16.05.2019, granted a stay on proceedings, primarily on the ground that the Notification was illegal and ultra-vires. This interim order passed was challenged by the Appellants before the Supreme Court.

ISSUES

Whether the Central Government has made the provisions of the Black Money Act retrospectively applicable from 01.07.2015 by way of the Notification issued by it?

HELD

The Supreme Court of India, allowing the appeal:

Referred first to section 3 of the Black Money Act, being the charging section under the Act. The Court noted that a bare reading of its provisions along with section 2(9)(d) unambiguously showed the legislative intent insofar as charging tax on undisclosed assets located outside India is concerned: Undisclosed assets located outside India shall be charged to tax on their value in the previous year in which such assets come to the notice of the assessing officer.

The term "previous year" is defined in section 2(9)(d) as being the period of twelve months commencing on the 1st day of April of the relevant year, and which immediately precedes the assessment year.While the date on which the Assessing Officer notices the acquisition by an assessee of undisclosed asset located outside India is important for the Black Money Act, for the purposes of taxation, the value of such asset has to be ascertained as is in the immediate previous year.

The Court then perused section 59 of the Black Money Act, and noted that the section provides an opportunity to an assessee to make a declaration in respect of any undisclosed assets located outside India and acquired from income chargeable to tax under the Income Tax Act for any assessment year prior to the assessment year beginning on 01.04.2016. The cut-off date for making such a declaration is either on or after the date of commencement of the Black Money Act, but before the date notified by the Central Government.

By way of the Central Government Notification, the date of 30.09.2015 was prescribed as the date on or before which a person is required to make a declaration in respect of an undisclosed asset located outside India. Further, the date 31.12.2015 was prescribed as the date on or before which the person shall pay the tax and penalty in respect of such undisclosed asset located outside India.

The Court, holding that Section 59 gives an opportunity to assessees who have acquired an asset located outside India, from income chargeable to tax under the Income Tax Act, to declare such asset and pay the tax and penalty thereon, noted that the section provides that such declaration is required to be made on or after the date of the commencement of the Black Money Act, but on or before a date

notified by the Central Government in the Official Gazette. Considering this, the Court observed that an anomalous situation would have been created by the Notification: If the date under section 1(3) remained 01.04.2016, then the period for making a declaration would have elapsed by 30.09.2015, and the date for payment of tax and penalty would also have elapsed by 31.12.2015. However, such a declaration would only have been able to have been made after 01.04.2016, according to such date originally prescribed in section 1(3) – leading to an impossibility.

Therefore, in order to give benefit to the assessee, and with the intent of curing the anomaly and removing other difficulties, the date of 01.07.2015 was substituted in section 1(3) in place of 01.04.2016. This enabled assessees desirous of taking the benefit of section 59 of the Act to do so.The court further noted that the penal provisions prescribed under sections 50 and 51 of the Black Money Act would come into play only after an assessee had failed to take benefit of section 59, by either failing to disclose assets covered under the Act, or failing to pay taxes and penalties thereon. Thus, the court held that it cannot be said that the penal provisions were made retrospectively applicable.

Noting further, that "*in any case, in the factual scenario of the present case, it would reveal, that the assessment year in consideration was 2019-2020 and the previous year relevant to the assessment year was the year ending on 31.03.2019.*", the Supreme Court set aside the interim order of the Delhi High Court, and directed the High Court to decide the writ petition on its own merits.

SHRIVARDHAN MOHTA V UNION OF INDIA & ORS.

Date : 18.04.2019

Citation : Calcutta High Court [W.P. No. 568 of 2018]

SYNOPSIS

Prosecuting a person under the Black Money Act during the pendency of penalty proceedings under the Income Tax Act does not amount to double jeopardy.

FACTS

During search and seizure proceedings carried out against the Petitioner by tax authorities on 17.03.2015, evidence for four foreign bank accounts was found by the authorities. The Petitioner submitted that he had received the bank accounts as inheritance from his deceased mother.

Subsequently, a notice under the Income Tax Act was issued by the assessing officer, calling upon the Petitioner to furnish the return of income for the relevant assessment years – however the Petitioner complied without disclosing the overseas bank accounts. The assessing officer concluded the assessment proceedings taking into account his foreign assets, and initiated penalty proceedings as per the Income Tax Act against him.

During the pendency of the assessment proceedings, the Black Money Act came into operation. During the pendency of the assessment proceedings, the Petitioner approached the Settlement Commission, but his application for settlement was declared invalid.

Additionally, sanction was granted for the prosecution of the Petitioner under sections 50 and 51 of the Black Money Act for concealment of foreign assets. The Petitioner in turn initiated the present writ proceedings before the Calcutta High Court.

ISSUES

A. Whether the pendency of proceedings under the Income Tax Act prevents a person from making voluntary disclosure under Black Money Act?
B. Whether the Black Money Act, being a fiscal statute effective since 01.04.2016, should be applied prospectively, and not retrospectively?
C. Whether *mens rea* is a relevant consideration under the Black Money Act?
D. Whether prosecution under the Black Money Act during the pendency of penalty proceedings under the Income Tax Act amounts to double jeopardy? If so, whether irreparable prejudice would be caused to the respondents if the protective orders

were not issued in its favour and whether the balance of convenience tilts in its favour and to what extent?

HELD

The High Court dismissed the writ petition on all grounds, observing:

A. The Court held that the Petitioner had not made use of the sufficient other opportunities to make the relevant disclosure, even if he had been prevented from doing so under the Black Money Act. The Court enumerated that such disclosure could have been made by him through the return of income filed after the search and seizure proceedings, as well as in his settlement application (which had been filed after the Black Money Act came into effect) – however this was not done by him.. Thus, bar of disclosure under the Black Money Act alone would not be sufficient to prevent proceedings against the Petitioner under the Black Money Act.

   Further, it was held that the restriction on voluntary disclosure under the Black Money Act lies in a different chapter of the Black Money Act from the provisions under which prosecution of the petitioner is sought. Being a taxing statute, the Black Money Act needs to be strictly construed – and thus the pendency of notice proceedings under Section 153A of the Income Tax Act will exclude Black Money Act only in relation to Chapter VI of it, as clear from Section 71, and other Chapters will be unaffected.

   Accordingly, the disclosure restriction could not prevent authorities from initiating proceedings under the Black Money Act. Merely citing inheritance of the Foreign Assets from his deceased mother did not absolve the Taxpayer from the obligation of disclosing such Foreign Assets in his income-tax returns.

B. Rejecting the contentions of the petitioner, the Court held that there was no retrospective application of Black Money Act, as it sought to punish failure to disclose foreign assets after the commencement of the Act.

C. On the question of *mens rea*, it was held that it reserved for criminal proceedings. Furthermore, penalty proceedings under Income Tax Act did not require mens rea, to be established, and did not impose a punishment of imprisonment. The High Court also acknowledged the Respondent's view of quoting a judicial precedent by noting that the Income Tax Act did not have a clause for proving *mens rea*.

D. Since the Black Money Act provides for imprisonment, and the Income Tax Act does not, the concept of double jeopardy was found to not be applicable in the present facts. Further, the proceedings under the Black Money Act arose from a a different cause (suppression of foreign assets), and were distinct from penalty proceedings under the Income Tax Act.

With respect to double jeopardy, relying on the Supreme Court's decision in *State of Maharashtra v Sayyed Hassan*, the High Court held that, "*where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence*."

In the Petitioner's case, the Income Tax Act did not impose a punishment of imprisonment for the undisclosed foreign assets, whereas the Black Money Act did. The High Court thus held that, in such circumstances, it cannot be said that the Taxpayer has been sought to be punished twice for the same offence. Thus, the writ petition was dismissed on all grounds.

SRINIDHI KARTI CHIDAMBARAM V PCIT

Date : 02.11.2018

Citation : Madras High Court [W.A.No.1125 of 2018]

SYNOPSIS

A revised return of income completely obliterates or effaces any earlier return of income, and is therefore the only relevant return of income that can be relied upon or referred to when initiating proceedings under the Black Money Act.

FACTS

The Petitioners are family members against whom notices for assessment were issued under the Black Money Act, in respect of a property jointly owned by them in Cambridge, UK ("**Foreign Asset**").

All Petitioners have a 1/3rd share in the property. The Petitioners submit that they had purchased the Foreign Asset with disclosed income, earned in India, and upon which tax had been paid; and the remittance for acquiring the Foreign Asset had been routed through Authorized Dealers. They also submitted that they had voluntarily disclosed the Foreign Asset in multiple documents, and further stated that they do not own any other foreign assets purchased from any undisclosed sources or black money.

The revenue authorities had initiated prosecution proceedings under the Black Money Act for non-disclosure/incomplete disclosure of foreign assets in the return of incomes before completing the assessment under the Black Money Act, and on the basis that the return of incomes were revised to make complete/correct disclosures after notices under the Black Money Act were issued.

In challenge, the Petitioners had filed writ petitions before the Madras High Court, however, all the writ petitions were dismissed, by a common order, dated 12.04.2018. Being aggrieved by the same, the present writ appeals were filed by them.

ISSUES

A. Whether prosecution can be initiated for non-disclosure/incomplete disclosure of foreign assets, while disregarding the disclosures made in the revised return of income filed post the receipt of the notice of assessment under the Black Money Act?
B. Whether prosecution proceedings can be initiated for non-disclosure before passing the assessment order under the Black Money Act?

HELD

The Madras High Court, having perused the facts of the matter at great length, held that while ordinarily, both the wilful failure to file a return of income in relation to foreign income and assets within the stipulated timeline (original due date), and the failure to disclose foreign assets in the return of income filed (including revised and belated) are offences liable for prosecution under the Black Money Act; in the instant case, the prosecution proceedings were initiated for the latter offence, which prosecution could only have been invoked after considering the revised return of income filed.

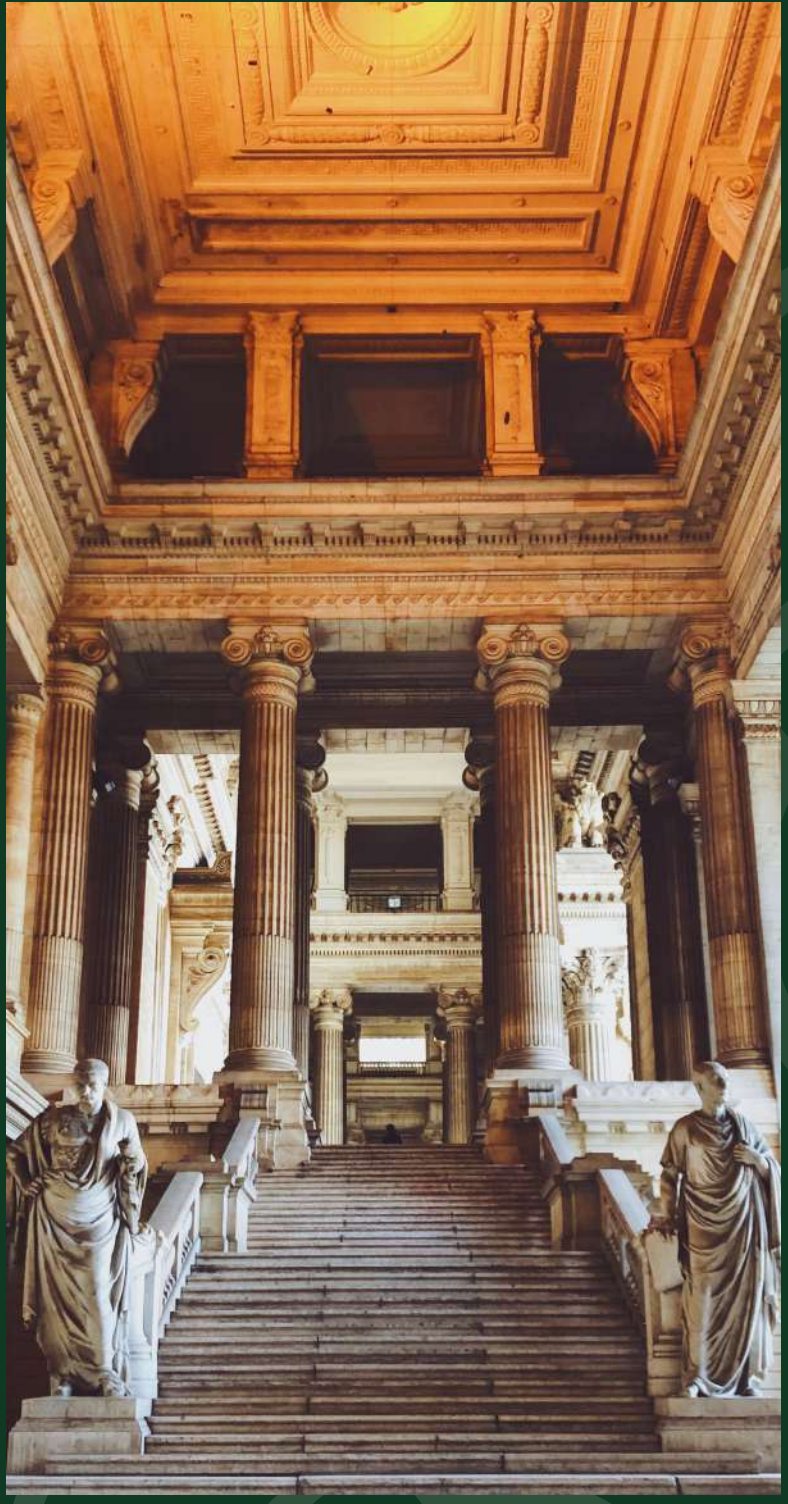
The revised return of income completely obliterates or effaces any earlier return of income, and is therefore, the only relevant return of income that can be relied upon or referred to. Therefore, the Court held that the offence cannot be said to be committed until the time for filing a revised return is over.

The Court further held that even if the Petitioners had omitted to furnish details of foreign assets in the original return, such an offence could only be subject to penalty proceedings and not liable for prosecution.

In view of the fact that the Foreign Asset in each case had been acquired with money that was in the books of account of the assessee (and that tax had been paid on it), and that it had been remitted through banking channels under schemes approved by the RBI – and especially that this was an admitted fact, the Court held that there can be no allegation of Black Money or unaccounted for money, or money that has escaped tax, or money that was remitted through illegal channels.

Keeping in view these findings, the Court concluded that prosecution of an offence under section 50 of the Black Money Act was not tenable.

Accordingly, the High Court quashed the sanction orders and prosecution proceedings in contention, with respect to all the petitioners.



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CODE OF CRIMINAL PROCEDURE

1973

SERIOUS FRAUD INVESTIGATION OFFICE V NITTIN JOHARI AND ANOTHER

Date : 12.09.2019

Citation : (2019) 9 SCC 165

SYNOPSIS

Conditions imposed under Section 212(6)(ii) grant of bail in connection with offences under Section 447 is mandatory. Furthermore, conditions under Section 212(6)(ii) is in addition to those already provided in CrPC, specifically taken by Supreme Court towards grant of bail with respect to economic offences.

FACTS

The instant appeal challenges the grant of bail to Respondent 1 by the High Court of Delhi. The case of the prosecution hinges on the commission of fraud punishable under Section 447 of the Companies Act, 2013 through several other offences under the Companies Act and the Penal Code, 1860 have also been alleged. Respondent 1, was the Chief Financial Officer, Whole Time Director (Finance) and member of the Committee of the Board of Directors on borrowing, investment and loans during FY 2009-10 to FY 2016-17 of Bhushan Steel Ltd. It is alleged that Respondent 1 played an active role in using fraudulent letters of credit to avail credit from lender banks, in inflating stock-in-transit figures to avail greater drawing power from banks, and in manipulating statements of accounts and other financial statements of the company.

ISSUES

Principles governing grant of bail in connection with offences under Section 447 of the Companies Act.

HELD

Section 212(6)(ii) of the Companies lays down two mandatory conditions for grant of bail in connection with Section 447 of the Companies Act. The two conditions are (i) a reasonable ground for believing that the applicant is not guilty of such offence, and (ii) applicant is not likely to commit any offence while on bail. Section 212(7) of the Companies Act, states that the limitation under Section 212(6) with respect to the grant of bail is in addition to those already provided in the CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of CrPC.

Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country.

While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/state and other similar considerations. Vague observation of 'broad probabilities' of the case demonstrates non-application of mind of the Court.

Moreover, the High Court ought not to have been influenced by non-arrest of co-accused and grant of bail to another co-accused. Hence the grant of bail is set aside and remanded back to the High Court to reconsider the Bail Application while keeping in mind the mandatory conditions laid down in Section 212(6)(ii) of the Companies Act and Section 439 of the CrPC.

P. CHIDAMBARAM V DIRECTORATE OF ENFORCEMENT

Date : 05.09.2019

Citation : (2019) 9 SCC 24

SYNOPSIS

The Court dismissed the appeal and held it is not a fit case for exercise of discretion to grant anticipatory bail to the appellant.

FACTS

The appeal relates to the alleged irregularities in the Foreign Investment Promotion Board

(FIPB) clearance given to INX Media for receiving foreign investment to the tune of Rs. 305 crores against an approved inflow of Rs. 4.62 crores. The High Court of Delhi rejected the appellant's please for an anticipatory bail in the case registered by CBI under Section 120-B IPC read with Section 420 Penal Code (hereinafter 'IPC'), Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter 'PCA'). The High Court also refused to grant anticipatory bail in the case registered by the Enforcement Directorate under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter 'PMLA').

ISSUES

A. The validity of the provisions of Prevention of Money Laundering Act, 2002.
B. Whether the court can look into the documents/materials collected during investigation?
C. Whether the appellant has a right to be
D. confronted with the materials collected by the Enforcement Directorate earlier, before being produced to the court?
E. Whether direction to produce the transcripts could be issued?
F. Conditions and factors to be kept in mind for grant of anticipatory bail and bail in economic offences.

HELD

The Bombay High Court observed that the work

A. Money laundering poses a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty. PLMA is a special enactment containing the provisions with adequate safeguards with a view to prevent money laundering. Section 2(1)(y) of PMLA defines 'scheduled offence' which is a sine qua non for the offence of money laundering.

   There are few conditions to be satisfied to apply Sections 5 (attachment of property), 17 (search and seizures) and 19 (power to arrest) of PMLA read with rules under Section 73 of PMLA which act as safeguards.

B. There are several instances when the Court has perused the case diaries/ materials during investigation before the commencement of trial. Where the interest of justice requires, the court has the powers to receive the case diary/ materials collected during the investigation.

   There can be no better custodian or guardian of the interest of justice than the court trying the case. Court has received and perused material only for the purpose of satisfaction of the court's conscience.

   The Court may not extract or refer to the materials which the Court has perused and make observations which might cause prejudice to the accused in trial and other proceedings resulting in miscarriage of justice.

C. If the accused are to be confronted with the materials which were collected by the prosecution, it would lead to devastating consequences and would defeat the very purpose of the investigation into crimes, in particular, white collar offences. The investigating agency would be exposing the evidence collected by them with huge efforts, and it would give the accused to tamper with the evidence and to destroy the money trail apart from paving the way for the accused to influence the witnesses.

   An Investigation into crimes is the prerogative of the police, and except in rare cases, the judiciary should keep out all the areas of investigation.

   It is not the function of the court to monitor the investigation, and there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It must be left to the discretion of the investigating agency to decide the course of the investigation.

   In exercise of its inherent power under Section 482 of CrPC, the Court can interfere and issue appropriate direction only when the Court is convinced that the power of the investigating officer is exercised mala

fide or there is an abuse of power and non-compliance of the provisions of CrPC. However, this power is to be exercised only in rare cases.

D. The questions put to the accused and the answers given by the accused are part of the investigation, which is purely within the domain of investigation officer. The Court cannot interfere unless satisfied that the police officer has improperly and illegally exercised his investigating powers in breach of a statutory provision.

E. *Anticipatory Bail*

Ordinarily, an arrest is part of the procedure of the investigation to secure not only the presence of the accused but several other purposes. The accused in custodial interrogation is permissible and effective as it may lead to the discovery of material facts and relevant information.

Grant to anticipatory bail may hamper the investigation. The Power under Section 438 of CrPC is an extraordinary power and is to be exercised sparingly.

The judicial discretion has to be properly exercised after application of mind as to the nature and gravity of the accusation; the possibility of applicant fleeing justice and other factors in deciding whether it is a fit case for the grant to anticipatory bail.

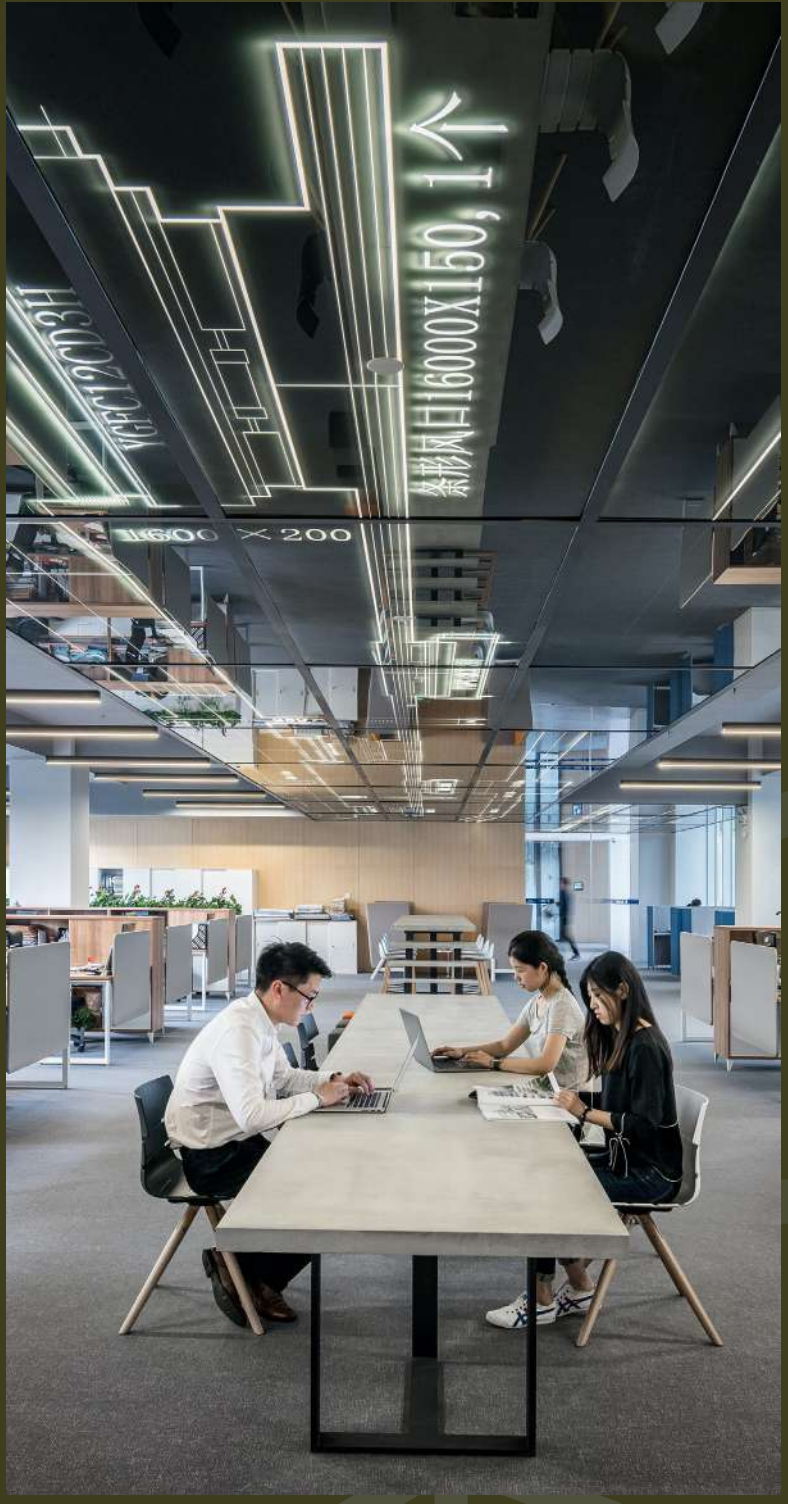
Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence, and hence, the court must be circumspect. A delicate balance is required to be established between the right to personal freedom and the right of the investigating agency to interrogate the accused.

Economic Offences

Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of society. The court also noted that economic offence is committed with deliberate design with an eye on personal profit regardless of the consequences to the community.

Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and materials which might have been concealed. Success in such interrogation will elude if the accused knows that he is protected by order of the court.

Grant of anticipatory bail, particularly in economic offences, would definitely hamper the effective investigation.



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COMPANIES ACT

2013

USHA ANATHASUBRAMANIAN V UNION OF INDIA

Date : 12.02.2020

Citation : (2020) 4 SCC 122

SYNOPSIS

The Tribunal in exercise of its powers under Sections 241, 337 and 339 can only freeze assets of the person who carry on the business which is being mismanaged and not to the business of another company or other persons.

FACTS

The appeal is by Usha Anathasubramanian, former MD & CEO of Punjab National Bank from 14-08-2015 to 5-05-2017. A charge sheet has been filed by CBI against several persons in Punjab National Bank and Gitanjali Gems Ltd. The case against the appellant is that she omitted to take precautions or preventive steps to prevent fraud perpetrated by Nirav Modi and thereby committed misconduct and conspiracy.

NCLT in exercise of its jurisdiction under Section 241 of the Companies Act injuncted the appellant from disposing off their movable or immovable properties and granted only a sum of Rs. 1,00,000/- per month to be allowed for personal expenses.

ISSUES

Whether under Sections 241, 337 and 339 of the Companies Act the Tribunal has to jurisdiction to freeze assets of any person who was knowingly a party to the carrying on of the fraudulent conduct of business?

HELD

Section 241(2) of the Act grants the Central Government a right to apply to the Tribunal for prevention of oppression and mismanagement if it of the opinion that the affairs of the company are being conducted in a prejudicial manner.

The powers given to the Tribunal under Section 242 and powers under Sections 337 and 339 will apply mutatis mutandis. Section 337 refers to the penalty for frauds by an officer of the company in which mismanagement has taken place. Similarly, Section 339 refers to any business of the company which is carried on with intent to defraud creditors of that company.

Therefore, the persons referred to in Section 339(1) as persons who are other than the parties 'to the carrying on the business in the manner aforesaid' refers to the business of the company which is being mismanaged and not to the business of another company or other persons.

It is clear that powers under these sections cannot be utilized in order that a person who may be the head of some other organization be roped in, and his or her assets be attached. Hence, the order freezing assets of the appellant side aside.

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ENVIRONMENTAL LAWS

General

DIRECTOR GENERAL (ROAD DEVELOPMENT) NATIONAL HIGHWAYS AUTHORITY OF INDIA V AAM AADMI LOKMANCH & ORS.

Date : 14.07.2020

Citation : Supreme Court [Civil Appeal No. 6932 of 2015]

SYNOPSIS

National Green Tribunal has power to issue general directions for future guidance, to avoid or prevent injury to environment.

FACTS

petition was filed before the National Green Tribunal ("**NGT**") by the respondent, when two people died in a car accident because of a hill collapse, which was caused due to over-mining. Thus, an application was filed u/s 14 of the National Green Tribunal Act, 2010 ("**Act**"), seeking mandatory injunction to restore the natural contours at the foot base of the hill that had been destroyed. Also, it was prayed to take necessary action for the protection of hills from destruction.

The material produced before the NGT by the State of Maharashtra through an affidavit revealed that large scale destruction of hills by individuals and concerns who had been given short term mining licenses, had occurred.

A slew of directions was issued by NGT and it was argued by the appellants that NGT didn't have the jurisdiction to issue the same.

ISSUES

Whether NGT had jurisdiction to award compensation.

HELD

It was observed that NGT possessed two kinds of power and jurisdiction. One was primary jurisdiction u/s 14-15 of the Act, which gave it the power to adjudicate upon disputes relating to civil cases where a substantial question relating to environment was involved.

Section 15 provided that compensation or damages could be given by the NGT to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Thus, it was concluded that the power and jurisdiction of the NGT u/s 15 were not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred.

The NGT's jurisdiction in one sense was a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers could also be preventive.

Furthermore, as a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (u/s 16) and its original jurisdiction u/s 14, 15 and 17 of the Act, the tribunal, based on the cases and applications made before it, was an expert regulatory body.

Given the panoply of the NGT's powers under the Act, which included considering regulatory directions issued by expert regulatory bodies under the enactments specified in Schedule I, it was held that general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, could be given by the NGT.

Lastly, it was held that the directions given by the NGT in the present case were improper as those were without any rationale and based on no scientific or technical evidence, or experts' opinion and thus, were set aside.

VIKRANT TONGAD V UNION OF INDIA (MOEFCC)

Date : 30.06.2020

Citation : Delhi High Court [W.P. (C) 3747 of 2020]

SYNOPSIS

Delhi High Court directs Centre to publish the draft Environment Impact Assessment notification 2020, in all 22 official languages.

FACTS

The Central Government had issued a draft Environment Impact Assessment ("**EIA**") notification, in exercise of the powers conferred

onto it u/s 3 of the Environment (Protection) Act, 1986. The draft EIA notification was issued for imposing certain restrictions and prohibition on undertaking some projects or expansion or modernisation of such existing projects entailing capacity addition, in any part of India.

The draft notification was issued for the information of the public likely to be affected, and for inviting any objections/ suggestions on the proposal contained in the draft notification in writing for the consideration of the Central Government.

A writ petition was filed before the Delhi High Court to direct the respondent to extend the time period for the public to respond to the draft EIA notification, for filing their objections and suggestions.

Secondly, it was contended by the petitioner that the draft EIA notification should have been made available across the country in the official vernacular languages mentioned in the Eighth Schedule to the Constitution, as it was proposed to have effect all over India.

ISSUES

A. Whether the date for filing the response to the draft EIA 2020 could be extended.
B. Whether it was necessary for the respondent to translate the said draft EIA notification in languages other than Hindi and English.

HELD

With regards to the first issue, the Delhi High Court clarified that the time limit to file the objections to the draft notification was extended up to August 11, 2020. With regards to the second issue, it was of the view that it would be in aid of effective dissemination of the proposed notification if arrangements were to be made for its translation into other languages as well.

Therefore, it was directed that such translation could be undertaken by the Government of India itself, or with the assistance of the respective State Governments, where applicable. Furthermore, it was held that such translations should also be published through the website of the Ministry of Environment, Forest and climate change, Government of India as well as on websites of Environment Ministries of all the States as well as those of State Pollution Control Boards, within 10 days from the date of the order. It was noted that these directions would further enable the public to respond to the draft within the period stipulated in the judgment. Thus, the writ petition was allowed.

LG POLYMERS INDIA V UNION OF INDIA

Date : 01.06.2020

Citation : National Green Tribunal, Principal Bench [Review Application No. 19 of 2020]

SYNOPSIS

National Green Tribunal has power to take suo-motu cognizance against environment law defaulters.

FACTS

The National Green Tribunal ("**NGT**") had initiated suo-motu proceedings against the appellant-company on the basis of media reports, that a hazardous gas leakage incident had occurred in Visakhapatnam, which had resulted in the death of 11 persons.

It had directed the appellant to deposit an initial amount of fifty crore rupees with the District Magistrate of Visakhapatnam, keeping in mind the loss of lives, damage caused to the environment and the liability of the appellant.

This order was challenged by the appellant before the Supreme Court, contending that NGT had no jurisdiction to take suo-motu cognizance. However, the Supreme Court gave liberty to the appellant to raise appropriate contentions before the NGT itself. Hence, a review petition was filed by the appellant.

ISSUES

Whether NGT had power to take action suo-motu.

HELD

It was observed that NGT had the purpose and power to provide relief and compensation to victims of environment damage, restitution

of property, and restoration of environment. To effectuate this purpose, NGT had wide powers to devise its own procedure. In appropriate circumstances, this power included the power to institute suo-motu proceedings and not keep its hands tied in the face of drastic environmental damage and serious violation of right to life, public health and damage to property.

This was especially so when the victims were marginalized and/or by reason of poverty or disability or socially or economically disadvantaged position could not approach the Tribunal. The power was coupled with duty to exercise such powers for achieving the enumerated objects. Failure to exercise suo-motu jurisdiction in such circumstances would have rendered these victims without remedy, causing irretrievable injustice and breakdown of rule of law.

Furthermore, if the NGT was prevented from instituting suo-motu proceedings, then these issues and violations would have remained unaddressed, citizens' inalienable right to life and other rights would have stood jeopardized, and the serious and irreversible environment damage would have continued unchecked.

Lastly, it was noted that, notwithstanding Constitutional jurisdiction of the High Courts, the NGT was not debarred from dealing with substantial issues of environment for which this Tribunal had been exclusively constituted, in absence of express statutory provision or binding judicial decision. In light of above, it was held that NGT had the power to take suo-motu action against the appellant-company.

ALEMBIC PHARMACEUTICALS LTD. V ROHIT PRAJAPATI & ORS.

Date : 01.04.2020

Citation : Supreme Court [Civil Appeal No. 1526 of 2016]

SYNOPSIS

Ex post facto Environmental Clearance against the fundamental principles of environmental jurisprudence.

FACTS

The Environment Impact Assessment ("**EIA**") notification of January 27,1994 mandated prior environmental clearances ("**EC**") for setting up and expansion of industrial projects within thirty categories. The deadline for obtaining an EC under the EIA notification of 1994 was extended to June 30, 2001.

By the circular of May 14, 2002, the Union Ministry of Environment and Forests ("**MEF**") had extended the deadline till March 31, 2003 for those industrial units which had gone into production, without obtaining an EC under the EIA notification of 1994 to apply for and obtain an ex post facto EC. This circular of 2002 was quashed by the National Green Tribunal ("NGT") on the ground that it was contrary to law.

Furthermore, NGT issued directions for closing down of industrial units that were operating without EC. Hence, an appeal was filed by one of the affected industrial units and MEF.

ISSUES

A. Whether NGT had the jurisdiction to strike down the rules or regulations made under the Environment Protection Act, 1986 ("**Act**").
B. Whether the order of NGT, setting aside the circular of 2002 correct.

HELD

A. It was observed that the circular of 2002 was purely an administrative decision which was beyond the scope of Section 3 of the Act and could not be said to have been a measure for the purpose of protecting and improving the quality of the environment. In fact, it allowed defaulting industrial units which had commenced activities without an EC to cure the default by an ex post facto clearance. Thus, it was held that there was no jurisdictional bar on the NGT to enquire into its legitimacy.

B. When the EIA notification of 1994 mandated a prior EC, it proscribed a post activity approval or an ex post facto permission. What was sought to be achieved by

the administrative circular of 2002 was contrary to the statutory notification of 1994. Reliance was placed on the decision in Common Cause V Union of India and it was observed that the concept of an ex post facto EC was in derogation to the fundamental principles of environmental jurisprudence. An EC could be issued only after various stages of the decision-making process had been completed, which ensured that the likely impacts of the industrial activity were considered.

Thus, it upheld the order of the NGT, for quashing the circular issued by MEF which envisaged the grant of post facto EC. However, it set aside the order which directed the closure of the industries for not taking prior EC in terms of EIA notification of 1994 and allowed the resumption of operations by the said industries on condition of paying compensation of ten crore rupees each.

GAURAV PANDEY V UNION OF INDIA

Date : 27.02.2020

Citation : Madhya Pradesh High Court [W.P. No. 17704 of 2018]

SYNOPSIS

Madhya Pradesh High Court issues directives for implementation of Plastic Waste Management Rules, 2016 to curb plastic pollution.

FACTS

A public interest litigation was filed by the petitioner for seeking relief of implementation of Plastic Waste Management Rules, 2016 ("**Rules 2016**") in the State of Madhya Pradesh.

It was also prayed that the respondent be directed to implement the notification dated May 24, 2017 in its letter and spirit for ban of production, transportation, storage, sale and use of plastic carry bags.

ISSUES

To ensure stricter implementation of Rules, 2016 for curbing pollution caused by plastic.

HELD

The view of the petitioner was endorsed by the court that if one wants to survive together, then he is required to protect the environment. Laying emphasis on the importance of protecting the ecosystem, banning of polythene/ plastic bags had to be considered as significant. Use of any non-biodegradable material would affect the whole ecosystem and would indirectly affect all living organisms of the world.

It went onto explain the properties of a polythene and observed that the widespread usage of polythene posed difficulties for waste management as it was not readily bio-degradable and thus, accumulated in landfills and posed as a danger to the life of human beings and animals.

Furthermore, it was observed that punitive measures alone couldn't solve the said problem. It was important for each and every citizen to be aware of his duties as enumerated in the Constitution, which also included the duty to ensure clean and unpolluted environment, which was not the duty of the State alone.

Thus, the responsibility was casted upon each stakeholder for his independent and honest involvement for the eradication and elimination of plastic bags. The writ petition was disposed of with a list of directions and suggestions to the citizens, concerned authorities and the media for achieving the goal of elimination of plastic in terms of the provisions contained in Rules 2016.

It directed the Government to issue directions to schools and colleges to stop the use of plastic with immediate effect and also to the industries to stop the production and use of plastic.

Lastly, each stakeholder was asked to submit their independent progress reports through their respective collectors, every three months before the Principal Registrar of the court to ensure compliance of the said order.

KEYSTONE REALTORS PVT. LTD. V SHRI ANIL V THARTHARE & ORS.

Date : 03.12.2019

Citation : Supreme Court [Civil Appeal No. 2435 of 2019]

SYNOPSIS

Fresh environmental clearance is mandatory for expansion of project area beyond limits previously approved.

FACTS

The appellant had received an environmental clearance ("**EC**") for development of a project area of size 32,395 square metres. As per the environment impact assessment ("**EIA**") notification of the Ministry of Environment and Forests, EC was necessary if the total construction area exceeded 20,000 square metres, which was granted to the appellant.

Subsequently, the construction area was further increased by 8,085 square metres, and the appellant sought an amendment to the EC to reflect the increase in the total construction area, which was accepted by the third respondent on the ground that there was only a marginal increase.

The grant of the amended EC was challenged by the first respondent. An appeal was filed before the Supreme Court against the order of the Principal bench of the National Green Tribunal, which had held that the appellant had not complied with the regulatory procedure as prescribed by the EIA notification and was directed to pay an amount of one crore rupees.

ISSUES

Whether the amended EC granted by the third respondent – State Level Environment Impact Assessment Authority, was in compliance with the procedure as prescribed under the EIA notification.

HELD

It was observed that the EIA notification imposed restrictions on the execution of new projects and on the expansion of existing projects, until their potential environmental impact had been assessed and approved by the grant of EC. A reference was made to the relevant paragraph of the EIA notification to understand the procedure. It was noted that an expansion could occur even after the grant of EC and it was not necessary for the project to breach the upper limit after the expansion. Thus, even after obtaining an EC, if the project was being expanded beyond the limits for which the prior EC was obtained, a fresh application would be required even if the expansion was within the upper limit as prescribed under the schedule.

If this was not the case, then the appellant could keep on increasing the size of the project area without breaching the upper limit, without an assessment of the environmental impact resulting from the expansion. Such an outcome would defeat the entire scheme of the EIA notification, which was there to ensure that any new or additional environment impact was assessed and certified by the relevant authorities.

In light of the above, it held that a fresh EC was mandatory for the expansion of the project area beyond the limits as approved by the prior EC. Hence, the appeal was dismissed.

JITENDRA SINGH V MINISTRY OF ENVIRONMENT & ORS.

Date : 25.11.2019

Citation : Supreme Court [Civil Appeal No. 5109 of 2019]

SYNOPSIS

State cannot alienate common waterbodies for industrial activities under the guise of providing alternatives.

FACTS

A petition was filed by the appellant before the National Green Tribunal u/s 14 of the National Green Tribunal Act, 2010, where he alleged that local ponds of his village were being acquired illegally and were being allotted to private industrialists.

It was contended by him that agents of 6th respondent-private company used excavators and other heavy machinery to forcibly take possession of a common pond, which was being used by the village for over a century.

Furthermore, appellant's petition had been dismissed summarily without any adjudication of the lis or merits, but merely on the basis of an affidavit filed by the fifth respondent - Greater Noida Industrial Development Authority, claiming that it was developing bigger alternative water bodies. Hence, an appeal was filed before the Supreme Court.

ISSUES

Whether it was permissible for the State to alienate common waterbodies for industrial activities, under the guise of providing alternatives.

HELD

Reliance was placed on the decision in *Hinch Lal Tiwari V Kamala Devi* and it was noted that ponds were a public utility meant for common use, which could not be allotted or commercialised. The decision in *Jagpal Singh V State of Punjab* was reiterated and it was noted that since time immemorial, certain common lands had vested in village communities for collective benefit. These lands were inalienable, except in exceptional circumstances when used exclusively for the downtrodden.

It was observed that such protections remained on paper and powerful people and corrupt system had appropriated these lands for personal aggrandisement. It noted that the respondents' scheme of allowing destruction of existing water bodies and providing for replacements, exhibited a mechanical application of environmental protection.

Although it might be possible to superficially replicate a waterbody elsewhere, however, there was no guarantee that the adverse effect of destroying the earlier one would be offset.

Destroying the lake in the present case would have repercussions on the environment and the people living around it. Hence, it was clear that schemes which extinguished local waterbodies albeit with alternatives, as provided in the 2016 Government order by the State of U.P., was violative of Constitutional principles and was liable to be struck down.

Furthermore, it was the responsibility of the respondent to ensure the protection and integrity of the environment, especially one which was a source for livelihood for rural population and life for local flaura and fauna. Hence, the appeal was allowed and the order for allotment of all water bodies to the 6th respondent was held to be illegal and the same was quashed.

HINDU LAWS

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VII. HINDU ADOPTION AND MAINTENANCE ACT, 1956

1 JASMINE KAUR V UNION OF INDIA AND OTHERS

Date : 28.07.2020

Citation : Punjab & Haryana High Court [CWP-10555-2019]

SYNOPSIS

The requirement of obtaining 'No Objection Certificate' (NOC) from the Central Adoption Resource Authority (CARA) is not required by Indian parents.

FACTS

The Court was hearing a writ petition wherein the Passport Authority had refused to issue a Passport to a minor girl, who was given in adoption in accordance with the Hindu Adoption and Maintenance Act (HAMA) by her biological parents to her biological mother's sister and her husband, who are NRIs, OCI cardholders and citizens of the United Kingdom. The passport was refused for want of NOC from CARA. CARA is established under Juvenile Justice Act (JJA), 2015. The The child is being given over by the natural parents of sound mind, the adoptive mother is the real sister of the biological mother, the child is neither orphaned, nor surrendered nor in conflict with the law, and that for the same reason, the 2015 J.J.

Act does not apply in the present situation. The girl was born in November 2017 to a Sikh family in Jalandhar. She was adopted as per Sikh rites performed at a local Gurdwara as both the sides of parents were Sikhs to which a certificate too was issued. An adoption deed was executed between both the parents in November 2018 under the Hindu Adoption and Maintenance Act (as applicable to Sikhs). Thereafter, the family applied for girl's passport which was rejected by authorities stating that NOC from CARA was mandatory. JJ Act does not override the provisions of HAMA Act, it was argued adding that in view of this passport cannot be denied.

ISSUES

Whether NOC is to be obtained and whether the provisions of the JJ Act would apply to adoptions under HAMA?

HELD

It is summarized that valid adoption under HAMA 1956 of a minor child cannot be revoked until disproved. It is not mandatory to invoke the J.J. Act, 2015 in the facts of the present case where the adoption is a direct adoption by the parents to the known adoptive parents/ relatives under HAMA. As per Section 5.2 of Chapter X of the Passport Manual, 2016 and in view of Part I of Schedule III under Rule 5 of the Passports Rules, 1980, NOC from CARA is required only by foreign parents and not Indian parents.

The Court ordered the respondent No.3-CARA shall issue a 'No Objection Certificate' (NOC) in order to ensure a clean transition from one country to another lest they face any difficulty for the purpose of Visa or any other requirement, to the adoptive parents of the petitioner for taking their child to U.K. within two weeks.

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VIVEKNARENDRAN V N SRIVIDYA

Date : 20.07.2020

Citation : Madras High Court (O.P.No.103 of 2020)

SYNOPSIS

It is not permitted to substitute the name of the biological father with that of the adopted father in the birth certificate of a minor child, unless he renounces his right as father.

FACTS

Petitioners are the adopted father and biological/natural mother of minor seeking direction from the Court that Petitioner 1 be appointed as a father of the minor female child and consequently, the minor child be entitled to the legal status of a biological daughter with all the rights of succession and inheritance in respect of the adopted father and a modified birth certificate of the minor be issued.

Petitioners have contended that the conditions prescribed under Adoption Regulations and the Juvenile Justice Act have fully been complied with while filing the present petition and it is submitted that the parties are all Hindus and therefore bound by the provisions of the Hindu Adoption and Maintenance Act, 1956. Court observed that it is well open to the biological mother of the minor child to give her child to adoption and since both petitioner 1 and the petitioner 2 i.e. the biological mother of the child are happily married and living together and the minor has been living with them, there is no impediment to the said prayer of adoption.

It is observed that on the date when the birth certificate of the minor was issued, the biological father was alive, and it is him who has been described as the father of the minor child in the birth certificate. In the present matter, the biological mother cannot deprive the minor child's right to have the name of her biological father in her birth certificate. Only under the following circumstances the birth certificate can be modified:

A. When the entry is erroneous in form or substance; and
B. The entry has been fraudulently or improperly made.

The petitioner's request to delete the biological father's name from the original birth certificate is not legally sustainable since the rules clearly provide for incorporating the name of the adoptive parents separately in column nos. 7 and 8 as adoptive parents and not as natural parents in the prescribed adoption forms.

ISSUES

Can a biological father's name be substituted?

HELD

The original birth certificate issued to the minor at the time of her birth shall remain unaltered. The relationship between the biological parents and the children can never get severed unless he renounces his right as father. Therefore, the Court cannot permit the substitution of the name of the 1st petitioner as the biological / natural father of the minor.

M. VANAJA V M. SARLA DEVI (DEAD) THROUGH LRS

Date : 06.03.2020

Citation : Supreme Court of India (Civil Appeal No.8814 of 2010)

SYNOPSIS

An adoption by a Hindu couple will not be valid unless there is a proof of such a ceremony and consent of the wife of the adopter under the Hindu Adoption and Maintenance Act.

FACTS

The Appellant (M. Vanaja) is the daughter of the original Defendant's sister. The parents of the Appellant died when she was very young. She was brought up by her grandmother and given to the Respondent and her husband (Narasimhulu Naidu) to be taken care of.

The School and College records and other documents show that the Respondent and her husband were the Appellant's parents, but the Appellant was never legally adopted by them.

Later on, the Appellant got married and started living separately. After the death of Narashimhulu Naidu, the Respondent was residing in the suit schedule property and was in enjoyment of the properties of Narashimhulu Naidu. The request made by the Appellant for partition of the properties was turned down by the Respondent leading to the filing of a Civil Suit.

The suit for partition was dismissed by the Trail Court on the ground that the plaintiff could not prove the ceremony of adoption and the judgement was upheld by the High Court of Andhra Pradesh at Hyderabad.

Aggrieved by the judgement, M. Vanaja filed another appeal in the Supreme Court. The two important conditions as mentioned in Sections 7 and 11 of the said Act, 1956 are the consent of the wife before a male Hindu adopts a child and proof of the ceremony of actual giving and taking in adoption.

The Appellant admitted in her evidence that she does not have the proof of the ceremony of giving and taking of her in adoption.

Also, the Respondent who is the adoptive mother has categorically stated in her evidence that the Appellant was never adopted though she was merely brought up by her and her husband. Admittedly, there is no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act.

ISSUES

Whether the Appellant has proved that she has been adopted by the Respondent and Respondent's husband and whether the Appellant is entitled to partition of the properties belonging to Narasimhulu Naidu?

HELD

In view of the aforementioned facts and circumstances, the Supreme Court found no error in the judgment of the High Court. The Supreme Court made it clear that after Act of 1956 came into force, the two essential conditions, i.e. the consent of the wife and the actual ceremony of adoption will have to be proved in order to establish a valid adoption.

MATHEW INACIO ABREO V MALAICA MARIA ABREO (MINOR)

Date : 18.12.2019

Citation : Bombay High Court (Indian Adoption Petition No. 70 of 2019)

SYNOPSIS

Guardians get adoptive parents' status of a 22year old.

FACTS

Inacio Abreo and his wife Dora Abreo were the guardians of Malaica Abreo. They were appointed as her guardian in 1998 when she was barely two years old. The couple has applied for legalising their guardianship so that the labelling of their relation as 'guardians' and 'orphan' could be removed forever and the official status as parents and their daughter prevail but they failed to apply it during the guardianship period.

After the end of their guardianship (i.e. when the girl became an adult), she continued living with the petitioner and his wife as their daughter. The petitioner also submitted that

his wife Dora had expired in 2018 while he has been diagnosed with cancer. He further pleaded that the woman is a member of the family and shall be allowed to be legally adopted, for her to confer the legal status of being his daughter and to lead her life with dignity and confidence.

The HC had earlier held in the absence of any law setting out who could adopt from among the Christian community, persons who took a child in guardianship under the Guardians and Wards Act also have a right to petition the courts to adopt the child.

Such petition could be filed two years later, but in this case, it was 21 years later. The petitioner should have filed the application prior to the year when the child became an adult, which is the time when guardianship ends.

The judiciary has taken a decision in the case protecting the right of the daughter who in the due course of life, should not be denied of her rights being the recognised daughter of parents and still to be termed as an orphan considering the fact that Inacio Abreo and his wife had taken care of her as their own child. The court regards this as the basic right of the person as guaranteed by the constitution.

ISSUES

Can a woman who has turned major be adopted by her guardian father?

HELD

The court recognises that it is necessary to legalise the adoption even though the petitioner's daughter is now an adult. Thus, the court has upheld the quality of humanity in the face of rules and procedures in daily life. The Bombay HC has considered the petition filed by Inacio Abreo and has ruled in favour of him granting the legal adoption right to the parents. The court has allowed the petition and declared the Petitioner, Mathew Inacio Abreo as the adoptive parent of the woman. The court further stated the adoptive father to apply before the concerned Municipal Authorities to issue a Birth Certificate of Malaica Maria Abreo showing the petitioner and his late wife as the woman's parents.

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VIII. HINDU MINORITY AND GUARDIANSHIP ACT, 1956

1 TEJASWINI GAUD V SHEKHAR JAGDISH PRASAD TEWARI

Date : 06.05.2019

Citation : Supreme Court of India (Criminal Appeal No. 838 of 2019)

SYNOPSIS

The paramount consideration is the `welfare of the child' and not rights of the parents under a statute in the matters determining the question as to who should be given custody of a minor child.

In child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

FACTS

The marriage of respondent was solemnized with one Zelam who was detected with breast cancer during her pregnancy. Later, they were blessed with a girl child named Shikha. While Zelam was undergoing treatment, child Shikha was with her father respondent no.1 till November 2017. Unfortunately, on 29-11-2017, respondent No. 1 was suddenly hospitalised, and he was diagnosed with Tuberculosis Meningitis and Pulmonary Tuberculosis. While he was undergoing treatment, appellant No.1-Tejaswini Gaud – one of the two sisters of Zelam and appellant No.4-Dr. Pradeep Gaud who is the husband of Tejaswini, took Zelam along with Shikha to their residence for continuation of the treatment.

On 17-10-2018, Zelam succumbed to her illness. Child Shikha continued to be in the custody of the appellants. Respondent No.1-father was denied the custody of child and on 17-11-2018, he gave a complaint. Thereafter, respondent No.1-father approached the High Court by filing a writ petition seeking custody of minor child Shikha.

Respondent No.1-father has a stable earning. The High Court held that respondent No.1-father, the only surviving parent of the child is entitled to the custody of the child and the child needs love, care and affection of

the father. The High Court took into account that respondent No.1 was hospitalised for a serious ailment and in those circumstances, the appellants have looked after the child and in the interest and welfare of the child, it is just and proper that the custody of the child is handed over back to the first respondent.

However, the High Court observed that the efforts put in by the appellants in taking care of the child has to be recognized and so the High Court granted appellants No.2 and 3 access to the child. The appellants contend that the writ of habeas corpus cannot be issued when efficacious alternative remedy is available to respondent No. 1 under Hindu Minority and Guardianship Act, 1956.

It was submitted that the child was handed over to the appellants by the ailing mother of the child who has expressed her wish that they should take care of the child and therefore, it is not a fit case for issuance of writ of habeas corpus which is issued only in cases of illegal detention.

It is also their contention that the question of custody of the minor child is to be decided not on consideration of the legal rights of the parties; but on the sole and predominant criterion of what would best serve the interest and welfare of the minor and, as such, the appellants who are taking care of the child since more than a year, they alone would be entitled to have the custody of the child in preference to respondent No.1-father of the child.

It was further submitted that Section 6 of the Hindu Minority and Guardianship Act, 1956 cannot supersede the dominant consideration as to what is conducive to the welfare of the minor child and the welfare of the minor child has to be the sole consideration.

ISSUES

Whether the writ of Habeas Corpus is maintainable?

HELD

The Apex Court held, for, restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction. Affirming the High Court view, the bench observed that in this case, the father has neither abandoned the child nor has deprived the child of a right to his love and affection. It also noted that he is a highly educated person and is working in a reputed position and that his economic condition is stable.

The circumstances were such that due to illness of the parents, the appellants had to take care of the child for some time. Merely because, the appellants being the relatives took care of the child for some time, they cannot retain the custody of the child. The Court ordered the appellants to hand over the custody of the child to the first respondent-father.

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IX. HINDU SUCCESSION ACT, 1956

1 VINEETA SHARMA V RAKESH SHARMA

Date : 11.08.2020

Citation : Supreme Court of India [Civil Appeal No. Diary No.32601 of 2018]

SYNOPSIS

The 2005 amendment has a retroactive effect in conferring rights on daughters who were alive at the time of the amendment, even if they were born prior to it.

FACTS

In 2005, section 6 of the Hindu Succession Act, 1956 ("HSA") was amended to make female heirs equal to male coparceners.

Following this major change in the law, two verdicts of the Supreme Court, intended to clarify the interpretation of the amended act, instead created considerable ambiguity as to whether the 2005 amendment was retrospectively, or prospectively applicable to female heirs.

A. *In Prakash v. Phulavati (2016)*, the Supreme Court had held that "rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born." If the coparcener/father had died prior to September 9, 2005 (date on which the amendment came into effect), the living daughter of the coparcener would have no right to coparcenary property.

B. Whereas in *Danamma v. Amar (2018)*, the Supreme Court had held that the 2005 amendment confers upon the daughter the status of a coparcener in her own right, in the same manner as the son. Thus, it confers equal rights and liabilities in the coparcener properties to daughters and sons, at birth.

ISSUES

Whether with the passing of the Hindu Succession (Amendment) Act, 2005, a daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son?

HELD

The Supreme Court overruled the Prakash judgment in its entirety, and partially overruled

Danamma – stating unequivocally that the 2005 amendment to the Hindu Succession Act, 1956 ("**2005 Amendment**") grants equal rights to daughters in the inheritance of ancestral property, with retrospective and retroactive effect.

Keeping in mind the objective of the 2005 Amendment in bringing constitutionally envisaged goal of gender equality to fruition, the Court held that the purpose of the 2005 Amendment was not to confer its benefits to female successors prospectively or retrospectively, but rather, ***retroactively***. The Court reiterated its position in *Danamma*, held that the coparcenery rights are acquired by a daughter at birth, regardless of whether the daughter was born before or after the amendment to the Act was effected, and in the same manner as a son, with same rights and liabilities in the coparcenary. By virtue of acquiring this right at birth, it is not necessary for the father coparcener to have been alive at the time of the 2005 amendment.

This right of the daughter can be claimed in light of the 2005 amendment, and is curtailed only in case the property has been disposed by other means prior to December 20, 2004, which is the cut-off date provided for in Section 6(1) of the Act.

The Court also drew attention to the fact that under the Act, a distinction must be drawn between the 'right to claim a share' versus the 'extent of the share that can be claimed'. A coparcener's right to claim a share in the coparcenary property remains stable although the specific share available to the coparcener fluctuates with births and deaths in the family and becomes determined only at the time of partition.

Therefore, the legal fiction of a 'notional partition', created by proviso to Section 6 does not bring about the actual partition or disruption of coparcenary, but rather, is for the purposes of ascertaining the share of a deceased coparcener when he was survived by a female heir, of Class I, or a male relative of such female.

As such, the proviso to the unamended Section 6 only affects the extent of share that can be claimed by a coparcener but does not affect the right to claim a share in the first place. Therefore, since the daughter acquires the status of a coparcener on account of her birth, her right to claim a share is independent of a notional partition in the event of her father's death prior to the 2005 amendment.

The Court also expressly held that any claim for partition in which the final decree is yet to be drawn, shall now be determined in accordance with this judgment. Stating that the provisions of the amended section 6 are required to be given full effect, the Supreme Court directed that notwithstanding that a preliminary decree has been passed, daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree, or in appeal. There was no specific mention of those final decree proceedings that have already been concluded based on the earlier position of law.

[Note: The only exception now lies in the event that the HUF assets have been partitioned on or before the cut-off date of December 20, 2004.]

DODDAMUNIYAPPA (DEAD) V MUNISWAMY & ORS

Date : 01.07.2019

Citation : Supreme Court of India [Civil Appeal No. 7141 of 2008]

SYNOPSIS

Property inherited from father by sons becomes joint family property in the hands of sons.

FACTS

The Respondent Muniswamy and five others are the grandchildren of one Chikkanna, the propositus of a joint family.

They filed a suit in 1980, seeking a declaration that a compromise executed by their father along with his two brothers with one Dodamuniyappa was not binding on them. The impugned compromise was made in an execution appeal, whereby the father and

uncles of the Respondent had agreed to convey a portion of the joint family property unto the Appellant.

The property had originally been purchased by Chikkanna, and had, upon his death, devolved upon his three sons, including father of the Respondent. They sold the property to another person in 1950, but the sale deed contained a clause of re-conveyance, which stipulated that the purchaser should re-convey the property in the event of future sale.

Without honouring the conveyance clause, the purchaser sold the property to Dodamuniyappa in 1962. In order to enforce the re-conveyance clause, the sons of Chikkanna filed suit in 1964. It was decreed and a deed of re-conveyance was executed, and the possession was delivered in 1974. After that, an execution appeal was filed by Dodamuniyappa.

At the stage of execution appeal, a compromise was entered, restoring part of the property to Dodamuniyappa. The Plaintiffs challenged this compromise contending that the compromise cannot bind them, as it was executed without their knowledge.

The trial court dismissed the suit, holding that the plaintiffs had failed to establish that the property was joint family property in their hands. This was reversed by the High Court, on appeal, and the suit was decreed, declaring the compromise as not binding.

ISSUES

Whether the self-acquired property inherited from Chikkanna was joint family property in the hands of his sons?

HELD

Property inherited from father by sons becomes joint family property in the hands of sons.

The Court reiterated that a person inheriting property from three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, sons' sons and sons' sons' sons but as regards other relations he holds it and is entitled to hold it as his absolute property. The share which a coparcener obtains on partition of ancestral property is ancestral as regards his male issue. They take interest in it by birth whether they are in existence at the time of partition or are born subsequently.

Relying on its judgement in *Smt, Dipo vs. Wassan Singh* (1983) (3 SCC 376), the Supreme Court held that property inherited from a father by his sons becomes joint family property in the hands of the sons.

Thus, in the facts of the present case, the Court found that after the re-conveyance deed was executed in 1974, the property assumed the character of joint family property. Hence, it would be ancestral property in the hands of the Respondents, and the compromise entered into without their consent could not have been executed – and was thus *void ab initio*.

BABU RAM V SANTOKH SINGH (DEAD) THROUGH LRS

Date : 15.03.2019

Citation : Supreme Court of India [Civil Appeal No. 2553/2019]

SYNOPSIS

Preferential right given to heirs under section 22 of the HSA is applicable even if the property in question is agricultural land.

FACTS

Two brothers, Santokh Singh and Nathu Ram, inherited certain agricultural lands after the death of their father. According to Santokh Singh, an arrangement was arrived at, in terms of which the brothers were to be in separate enjoyment of certain specified pieces of land.

Nathu Ram later sent a legal notice to Santokh Singh, intimating his disinterest in continuing the said arrangement, and executed a registered sale deed in respect of his interest in the lands in favour of one Babu Ram.

A civil suit was filed by Santokh Singh praying for permanent prohibitory injunction and declaration, because, as a co-sharer, Santokh Singh had a preferential right to acquire the

Hindu Succession Act, 1956

land which was sought to be transferred by Nathu Ram in favour of Babu Ram.The suit was contested, and the trial court dismissed said suit in 1994.

Aggrieved, Santokh Singh filed an appeal before the Court of the District Judge, which was partly allowed, and held that the Plaintiff had a preferential right under Section 22 of the Act to acquire the half of the suit land. It, therefore, set aside the transfer of suit land by Nathu Ram in favour of Babu Ram.

Babu Ram appealed this judgment before the Himachal Pradesh High Court, which dismissed the appeal , relying on its own judgment in *Roshan Lal v. Pritam Singh*, and held that section 22 of the HSA does not exclude interest in agricultural land of an intestate, and that resultantly, the heir had a preferential right over such land.

ISSUES

A. Whether section 22 of the HSA is applicable even if the property in question is an agricultural land?
B. If so, does it exclude the preferential right over "immovable property"?

HELD

The Supreme Court noted the multitude of decisions rendered by various High Courts with respect to the scope of Section 22, and observed that divergent views were given by different High Courts.

Accordingly, it traced the position of law over time:

A. Looking at the history of laws regarding succession, the Court said that the present Entry 5 of List III of the Constitution showed "succession", in its fullest sense, to be a topic in the Concurrent List. The Court stated that the concept of succession includes within its fold both, testamentary, as well as intestate succession.

Accordingly, it traced the position of law over time:

The court distinguished between 'transfer' and 'succession' of land. It explained that where succession takes place by the operation of law, a transfer occurs through an instrument:

Therefore, the Court stated that when it comes to "transfer, and alienation of agricultural land" which are both transfers *inter vivos*, the competence under Entry 18 of List II lies with the State legislatures – however, when it comes to "intestacy and succession", which are essentially transfers by operation of law, ***both*** the Union as well as State Legislatures are competent to deal with the topic.

States are competent to legislate on transfer of agricultural land, while Centre and states share jurisdiction on succession of any kind of land. Thus, the Supreme Court held that HSA 1956 applies to agricultural land as well, though it also clarified that it has not ruled on the question as to whether a pre-existing state law governing agricultural succession would also be superseded by the HSA in the future.

The Supreme Court also observed that, with the deletion of Section 4(2) of the Hindu Succession Act there remained no exception to the applicability of Section 22 of the Act. Section 4(2).

In the instant case, there was no dispute that field is occupied only by Section 22 of the Hindu Succession Act with respect to State of Himachal Pradesh, therefore the Supreme Court held that the High Court was, "absolutely right" in holding that Section 22 of the Act would operate in respect of succession to agricultural lands in the State.

B. In answering the second issue, and whether a preferential right could be enjoyed by one or more of the heirs:

The Court held that section 22 would operate even in such cases when persons have inherited an agricultural holding and one of them was desirous of disposing of his or her interest in the holding, because the source

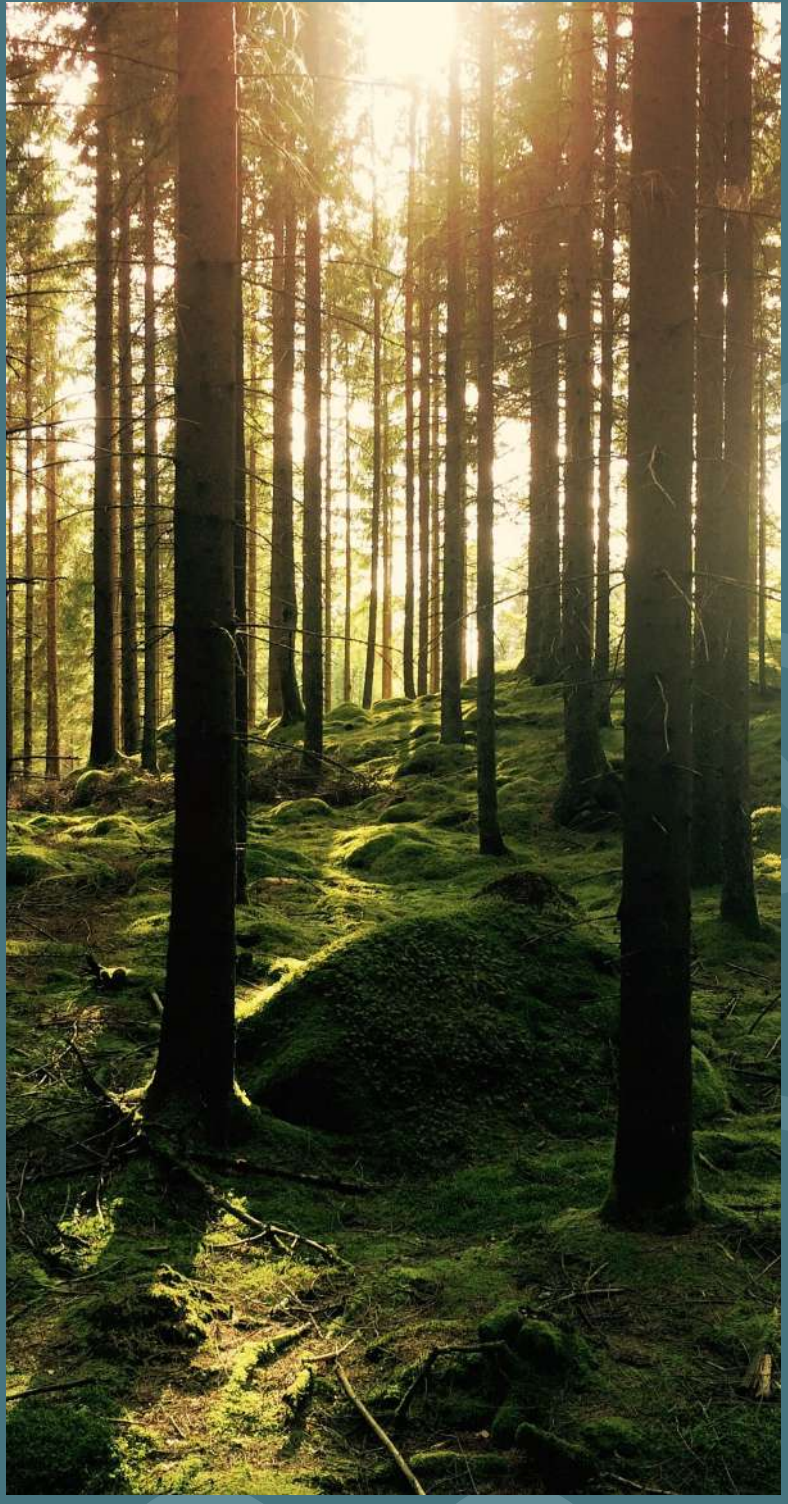
of title or interest of any of the heirs is purely through the factum of succession.

Since the right or interest itself is conferred by the provisions of the Act, the manner in which said right can be exercised has also been specified in the very same legislation.

Therefore, the Court found that the content of the preferential right conferred by section 22 cannot be disassociated from the principles of succession, as they are both part of the same concept.

Accordingly, the Supreme Court concluded that the preferential right given to an heir of a Hindu under Section 22 of the Act is applicable, even if the property in question is an agricultural land

The bench also specifically overruled all High Court decisions that are contrary to this conclusion.



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INDIAN FOREST ACT

1927

THE STATE OF MADHYA PRADESH AND ORS. V UDAY SINGH AND ORS.

Date : 23.03.2020

Citation : Supreme Court of India [AIR 2019 SC 1597]

SYNOPSIS

The Supreme Court while weighing in on the importance of the State specific amendments made to the Forest Act held that jurisdiction under Section 451 of CrPC is not available to a Magistrate, once the Authorized Officer has initiated confiscation proceedings.

FACTS

A Forest Officer apprehended a tractor and trolley belonging to the Respondent, alleged to have been carrying sand illegally excavated from a restricted area of Dalijeet Pura Ghat at National Sanctuary, Chambal without permission and in absence of a transit pass. The tractor and trolley were seized together with sand by the officers of Forest Department U/Sec. 41, 52 and 52-A of Act, 1927 and Sections 27, 29, 39(1)(d), 51 and 52 of Act, 1972. Intimation of seizure was given to Magistrate under Section 52 of Indian Forest Act, 1927 on 27 March 2011.

The Respondent moved an application under Section 451 of CrPC before for interim release of seized vehicle. The Magistrate dismissed the application by an order. A Criminal Revision met with same fate before the District and Sessions Judge. The Respondent then instituted proceedings under Section 482 of CrPC before the MP High Court. By a judgment, High Court directed the Magistrate to pass orders for interim release of the vehicle. The State of Madhya Pradesh instituted the impugned proceedings under Article 136 of the Constitution to assail the judgment of the High Court.

ISSUES

Whether the jurisdiction provided by Section 451 of CrPC is available to the Magistrate once proceedings have been initiated by the Forest Department officials?

HELD

The Court held that:

A. The Amendments brought by MP Act 25 of 1983 to the Indian Forest Act, 1927 led to a conclusion that, specific provisions had been made for seizure and confiscation of forest produce and of tools, boats, vehicles and articles used in commission of offences. Upon a seizure under Section 52(1), officer effecting seizure had to either produce property before Authorised Officer or to make a report of seizure Under Sub-section (2) of Section 52.

   Upon being satisfied that, a forest offence had been committed, Authorised Officer was empowered, for reasons to be recorded, to confiscate forest produce together with tools, vehicles, boats and articles used in its commission. Before confiscating any property under Sub-section (3), Authorised Officer was required to send an intimation of initiation of proceedings for confiscation of property to Magistrate having jurisdiction to try offence.

B. Where it was intended to immediately launch a criminal proceeding, a report of seizure was made to Magistrate having jurisdiction to try offence. Order of confiscation under Section 52(3) was subject to an appeal under Section 52-A and a revision under Section 52-B. Sub-section (5) of Section 52-B imparted finality to order of Court of Sessions in revision notwithstanding anything contained to contrary in CrPC and provided that, it shall not be called into question before any court.

   Section 52-C stipulated that, on receipt of an intimation by Magistrate under Sub-section (4) of Section 52, no court, tribunal or authority, other than an Authorised Officer, an Appellate Authority or Court of Sessions (Under Sections 52, 52A and 52-B) shall have jurisdiction to pass orders. Sub-section (1) of Section 52-C had a non obstante provision which operated notwithstanding anything to contrary contained in Act, 1927 or in any other law for the time being in force. Only saving was in respect of an officer duly empowered by State government for directing immediate

release of a property seized under Section 52, as provided in Section 61.

C. Hence, upon receipt of an intimation by Magistrate of initiation of confiscation proceedings under Sub-section (4)(a) of Section 52, bar of jurisdiction under Sub-section (1) of Section 52-C was clearly attracted. Scheme contained in amendments enacted to Indian Forest Act 1927 in relation to State of Madhya Pradesh, made it abundantly clear that, direction which was issued by High Court in present case, in a petition under Section 482 of CrPC, to Magistrate to direct interim release of vehicle, which had been seized, was contrary to law. Jurisdiction under Section 451 of CrPC was not available to Magistrate, once Authorised Officer initiated confiscation proceedings.

D. Madhya Pradesh amendments to Indian Forest Act 1927 were infused with a salutary public purpose. Protection of forests against depredation was a constitutionally mandated goal exemplified by Article 48A of Directive Principles and Fundamental Duty of every citizen incorporated in Article 51A(g). By isolating confiscation of forest produce and instruments utilised for commission of an offence from criminal trials, legislature intended to ensure that, confiscation was an effective deterrent. Absence of effective deterrence was considered by Legislature to be a deficiency in legal regime.

E. The State amendment had sought to overcome that, deficiency by imposing stringent deterrents against activities which threaten pristine existence of forests in Madhya Pradesh. As an effective tool for protecting and preserving environment, these provisions must receive a purposive interpretation. Statutory interpretation must remain eternally vigilant to daily assaults on environment.

2 RAKESH V STATE OF MADHYA PRADESH & ORS.

Date : 15.11.2019

Citation : Supreme Court of India [AIR 2020 SC 1929]

SYNOPSIS

The Supreme Court held that, MP High Court had falsely interpreted the provisions of the Act with regards to compounding of offences and that Section 68 as applicable enabled the State Government to authorize the Forest Officer to accept the offer of compounding of offence and release seized property.

FACTS

In the impugned matter, the accused had carried out illegal excavation and transportation of 1 trolley of Kathal stone from Forest Compartment R.F.118, which amounted to violation of Section 26(1)(g) and 41 of Indian Forest Act 1927. On finding the vehicle used for the transportation, it was seized as per the empowering provision U/Sec. 52(3) of the Indian Forest Act, 1927. The Accused in the matter however, admitted to the offence and sought settlement of the same, which was thereafter denied by the MP High Court. Aggrieved by the same, the Accused invoked the jurisdiction of the Supreme Court.

ISSUES

Whether an offer made by an accused for compounding an offence in respect of violation of Sections 26(1)(g) and 41 of the Indian Forest Act, 1927 had been justly declined by the competent authority.

HELD

The Court held that:

A. The sole consideration weighed with the authority was that the Appellant had admitted the commission of offence in question. That by itself cannot be the basis to deny the option of compounding predicated in Section 68 of the Act

B. The competent authority in the present case had not considered the matter in proper perspective. It has failed to give full effect to the provisions of Section 68 of the Act. In that, the Authority proceeded merely on the basis that the Appellant had admitted his guilt and the use of subject vehicle in the commission of offence. As aforesaid, that by itself is not enough.

C. Ordinarily, when an Accused takes recourse to the remedy of compounding the offence, it presupposes that he has admitted the commission of stated offence or about the use of seized vehicle in the commission of

the offence. Only then would he apply for compounding of the offence.

D. The exercise of power, though discretionary, has to be judicially exercised. While doing so, the competent authority is obliged to reckon tangible factors such as gravity of offence as expounded in Govind Singh's case or that the vehicle had been used for commission of specified offence even in the past etc.

E. In the present case, however, the only factor weighed with the authority is that the Appellant has admitted the commission of offence. In other words, the authority has not exercised its discretion in judicious manner.

PAWAN KUMAR AND ORS. V THE STATE OF HIMACHAL PRADESH

Date : 06.03.2019

Citation :Supreme Court of India [Criminal Appeal No. 442 of 2019 (Arising out of SLP (Crl.) No. 7713/2017)]

FACTS

The Appellants were apprehended with a vehicle carrying 22 logs of Khair wood. They did not produce any authorization or permit with regard to the same. Their prosecution Under Section 379, Indian Penal Code read with Sections 41 and 42 of the Indian Forest Act culminated in acquittal Under Section 379, Indian Penal Code by the Magistrate. The conviction under the Forest Act was for six months.

The conviction under the Forest Act was assailed before the Sessions Judge in appeal. The Appellants were acquitted as neither the Khair wood logs nor the lorry in which it was being transported were produced as exhibits. The independent witness of seizure also did not support. In the appeal against acquittal by the State, the High Court held that the independent witness did not deny his signatures on the seizure memo. In view of a sample of the log having been produced, non-production of the vehicle was not relevant, reversing the acquittal and sentencing the Appellants Under Sections 41 and 42 of the Forest Act for three months with fine of Rs. 500/- with a default stipulation of one month.

HELD

The Court held that, the non-production of the seized wood and the vehicle, which were the primary evidence of the offence, rendered the prosecution case fragile and unsustainable.

Mere production of the seizure memo does not tantamount to the production of the seized woods and the lorry. Unless the seized wood was produced, mere production of a sample, and there is no material in support that the sample was out of the same 22 logs and thus the conviction of the Appellants could not be sustained.

M.C. MEHTA V UNION OF INDIA (UOI) AND ORS.

Date : 11.09.2018

Citation : Supreme Court of India [2018 (4) RCR (Civil) 842]

SYNOPSIS

The Court held that Taking an overall view of all the facts in the case and the law on the subject, we have no doubt that Kant Enclave is a forest or is a forest land or is required to be treated as a forest or forest land and absolutely no construction activity could have been permitted on it with effect from 18th August, 1992. Any and all construction activity in Kant Enclave since that date is illegal and impermissible in law.

FACTS

The applicant was administratively permitted (if not encouraged) by the Town and Country Planning Department to construct upon the land owned by it in village, the layout plan prepared by the applicant was approved by the Town and Country Planning Department, which was apparently in conformity with the Development Plan for Faridabad and finally, the applicant had entered into an agreement with the State to complete its project of a Film Studio and Allied Complex within five years. The notification was issued in respect of prevention of environmental and ecological degradation in entire area (which included land owned by Applicant). There was a dichotomy of views and a conflict of interest between two Departments of the Haryana Government-one favouring colonization and the other favouring environmental protection and conservation.

ISSUES

Whether, in the State of Haryana, land notified under the provisions of the Punjab Land Preservation Act, 1900 (for short the PLP Act) is forest land or is required to be treated as forest land.

HELD

The Court noted that:

A. The purpose of issuing a notification under the PLP Act is to ensure that in the closed area there is no activity such as cultivation, pasturing of sheep and goats, erection of buildings, herding, pasturing or retaining cattle etc.

   Therefore, the notification is a clear indication that such closed areas must be forest land or treated as forest land so that such objectionable non-forest activities are not carried out therein and that activities that are not normally carried out in forests are prohibited in forest land, so as to preserve and protect such forest land. A notification under the PLP Act does not convert land into forest land but recognizes it as such or at least requires it to be treated as such.

B. The affidavit dated 8th December 1996 was filed in Environmental Awareness Forum v. State of Jammu & Kashmir.6 In this affidavit it is stated that the total forest area in Haryana in 1985-86 was 1,68,543 hectares. This included 26,499 hectares of areas closed under the PLP Act.

   In other words, as far back as in 1985-86, if not earlier, the Principal Chief Conservator of Forests of the Government of Haryana considered, and treated areas closed under the provisions of the PLP Act as forest land. The affidavit goes on to state that in 1995-96 the total forest area in Haryana was 1,54,706 hectares and this included 11,513 hectares of area closed under the PLP Act. It is quite clear to us that as far as the State of Haryana is concerned, closed areas under the PLP Act were always treated as forest land.

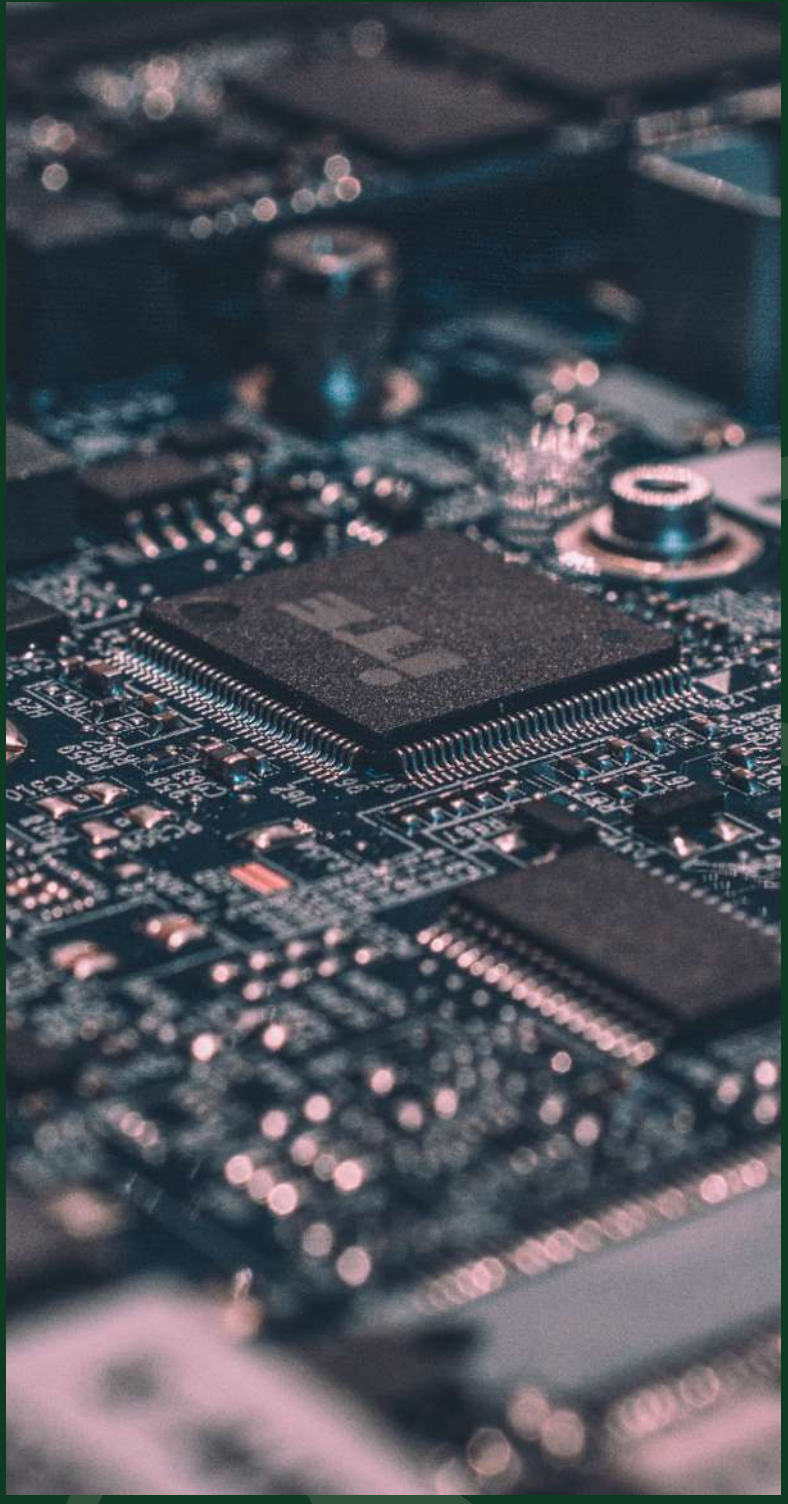
C. Thus, considering the various affidavits and judgements there is a wealth of material to indicate clearly that closed land under the PLP Act is forest land or in any event, is required to be treated as forest land. Several notifications issued under the PLP Act have been brought to our notice which prohibit certain activities which ought not to be carried out on forest land. The affidavits filed by responsible officers of the State of Haryana, including affidavits filed by the Chief Secretary unequivocally state that lands closed under the PLP Act are forest land.

   Similarly, there are judgments and orders passed by this Court to the same effect and the conduct of the State of Haryana, including the Forest Department and its relationship with the Town & Country Planning Department is a clear indication that lands closed under the provisions of the PLP Act are nothing but forest or forest land.

D. The Polluter Pays Principle is a wholesome principle that has been universally accepted and also adopted and applied in our country through several decisions of this Court. In this context, we may draw attention to among two of the earliest decisions rendered by this Court, namely, *Indian Council for Enviro-Legal Action v Union of India and Vellore Citizens' Welfare Forum v Union of India*. The law having been settled for more than two decades; we are of the view that it must be applied in a case such as the present.

E. The damage caused to the Aravalli hills, as already noted, is irreversible. However, perhaps some of the damage could be remedied-at least we hope so. According to R. Kant & Co. it has expended 50 crores in developing Kant Enclave.

   We do not know the exact or accurate figure but proceed on the basis as stated. In our opinion, it would be reasonable to require R. Kant & Co. to deposit 10% of this amount (that is, 5 crore) for rehabilitation of the damaged areas. This amount should be deposited by R. Kant & Co. in the Aravalli Rehabilitation Fund within one month and in any case on or before 31st October 2018.



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INFORMATION TECHNOLOGY ACT

2000

ARJUN PANDITRAO KHOTKAR V KAILASH KUSHANRAO GORANTYAL

Date : 14.07.2020

Citation : 2020 SCC Online SC 571

SYNOPSIS

Section 65B is mandatory and is a condition precedent to the admissibility of evidence.

FACTS

Two election petitions were filed by the Respondent challenging the election of the Appellant. The ground for the challenge was that the nomination papers of the Appellant were improperly accepted by the Officer of the Election Commission. The Respondent to support its allegation relied upon the video-camera arrangements at the Election Commission office. However, the Election Commission, even after repeated orders of the trial court refused to give the certificate under Section 65B of the Evidence Act by giving lame excuses.

ISSUES

Whether a certificate under Section 65B of the Evidence Act is mandatory?

HELD

Section 65B of Indian Evidence Act speaks of admissibility of electronic records and existence, and contents of electronic records are proved once the electronic record is admissible into evidence. Section 65B sub-section (1) begins with a *non-obstante* clause and has a deeming fiction of making an electronic record a document provided the conditions mentioned in the Section are satisfied.

The *non-obstante* clause also makes it clear that admissibility of electronic record needs to follow the drill of Section 65B. Section 65B is a special provision than Sections 62 to 65, and hence for electronic records Sections 62 to 65 is irrelevant.

For instance, a computer tablet or even a mobile phone can be made part of the evidence by the concerned person stepping into the witness box and proving the contents. The requirement of a certificate is compulsory when copies are made from the primary evidence, and such copies are secondary evidence. Section 65B sub-section (4) requisite of a certificate is unnecessary for the original document.

In a fact circumstance where the requisite certificate has been applied for from the concerned authority and such authority either refuses to give such certificate or does not reply to such demand, the party asking for such certificate can apply to the Court for its production under the provisions of Evidence Act, Civil Procedure Code or the Criminal Procedure Code.

Once such application to the Court is made, the party asking for the certificate has done all that he can do to obtain the requisite certificate. The Latin *maxims lex non cogit ad impossibilia*, i.e. the law does not demand the impossible and *impotentia excusat legem*, i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused come into force.

Section 65B does not speak of the stage at which the certificate must be furnished to the Court. The person who is in control of the original evidence and is seeking to rely upon the electronic record shall produce the certificate when the electronic record is produced into evidence.

SUBHENDU NATH V STATE OF WEST BENGAL

Date : 18.02.2019

Citation : 2019 SCC Online Cal 242

SYNOPSIS

The Court issued directions to the police for investigation of crimes involving electronic evidence to be carried on effectively.

FACTS

A matrimonial dispute between the petitioner and his wife alleging that the former had posted objectionable pictures of the latter on a social network platform and had widely circulated such materials.

ISSUES

The importance of conducting an investigation involving offences under the Information Technology Act and/ or offences involving electronic evidence.

HELD

The Court observed that cyber-crimes are on the rise. There is a gross lack of awareness and preparedness in the police force to deal with such crimes. There is a crying need to train and familiarize members of the police force in the matter of collection, reception, storage, analysis and production of electronic evidence.

Electronic evidence by its very nature is susceptible to tampering and/ or alteration and requires sensitive handling. A breach in the chain of custody or improper preservation of such evidence render it vitiated, and such evidence cannot be relied on in judicial proceedings.

A pre-requisite of a certificate is a condition for admissibility and not for the reliability of the electronic evidence. The reliability of the electronic evidence depends on proper collection, preservation and production in Court. Any lacuna would render such evidence in its probative value. Hence, the Court gave directions to ensure that investigation of crimes involving electronic evidence is conducted in a fair, impartial and effective manner.

The directions include (i) training of the police force in reception, preservation and analysis of electronic evidence; (ii) At least one officer in the rank of Inspector from each police station shall attend the training course and shall be certified to that effect; (iii) investigation of Information Technology Act which pre-dominantly includes electronic evidence shall be conducted by the officer/officers who have received specialized training; (iv) Every district shall have a special cyber cell with specialized knowledge in the matter of dealing with electronic evidence and such special cells shall render necessary assistance to the local police stations; (v) Director General of Police shall submit a standard operating procedure concerning preservation, collection, analysis and producing of electronic evidence in criminal cases; (vi) Specialized forensic units be set up in the State to facilitate examination and/or analysis of electronic evidence.

GAGAN HARSH SHARMA & ANOTHER V STATE OF MAHARASHTRA

Date : 26.10.2018

Citation : 2018 SCC Online Bom 17705

SYNOPSIS

The innovation and application of the provisions of the Penal Code, 1860 cannot be sustained for investigation and for taking cognizance when the offences are within the purview of the Information Technology Act, 2000.

FACTS

It is alleged that the petitioners manipulated the employees of the complaint, M/s. Manorama InfoSolutions Pvt. Ltd., to share their knowledge bank, resources and their source code in the software. The FIR alleges that the petitioners have indulged in offences punishable under Sections 408, 420 of the Penal Code, 1860 and Sections 43, 65 and 66 of the Information Technology Act, 2000 (hereinafter 'IT Act').

ISSUES

Whether the invocation and application of the provisions of the Penal Code, 1860 can be sustained when the offences are also bought within the purview of the Information Technology Act, 2000?

HELD

Perusal of the provisions of the IT Act reveals that it is a complete mechanism for protection of data in a computer system or a computer network. The enactment is a complete code which deals with electronic governance and confers a legal recognition on electronic records.

The IT Act also makes acts punishable under Chapter- IX and Chapter- XI, which enumerates the offences related to the computer system or network. The distinction between Section 43 and 66 of the IT Act is very clear. All the acts which are covered under Section 43 if

committed dishonestly and fraudulently are made punishable under Section 66.

The rule against double jeopardy that no man shall be put in jeopardy twice for one and the same offence is a significant rule of criminal law. Article 20(2) of the Constitution and Section 26 of the General Clauses Act, 1897 provide that a subsequent trial or prosecution and punishment is not barred if the ingredients of the two offences are distinct. Distinct offences are those which require proof of an additional fact which the other does not.

The Act of accessing or securing access to computer/ computer system or computer network or downloading of any such data without the permission of the owner is within the purview of Section 43 of the IT Act. When such an act is done dishonestly and fraudulently, it will attract Section 66 of the IT Act.

The ingredients of dishonesty and fraudulently are the same which are present if the person is charged with Section 420 of Penal Code. The offence of Section 379 in terms of technology is also covered under Section 43 of the IT Act. Section 408 of Penal Code, refers to criminal breach of trust by a servant who is entrusted in such capacity with any dominion over the property, would also fall within the purview of Section 43 of IT Act which intends to cover any act of unlawful access or stealing of any data or any information from such computer or computer system.

If done fraudulent and dishonest intention, then it amounts to an offence under Section 66 of the IT Act. Therefore, the ingredients of an offence under Section 420, 408 and 379 of the Penal Code are covered by Section 66 of the IT Act. Hence, prosecution under both the Penal Code and Information Technology Act would be a violation of protection against double jeopardy. Prosecution and investigation under provisions of the Penal Code and IT Act cannot continue at the same time.

It is not permissible to merely undergo the rigmarole of investigation, although it is not open for the investigating officer to invoke and apply the provisions of the Penal Code, 1860.

Referring to the Supreme Court decision in the case of *Sharat Babu Digumarti v Govt. Of NCT of Delhi* which applied the principle of 'generalia specialibus general non-derogant' to hold that IT Act is a special enactment and contains special provision. The Supreme Court concluded by making reference to Section 79 and 81 of the IT Act that special provisions are accorded overriding effect over a general enactment.

Hence, the High Court quashed and set aside the FIR insofar as the investigation into the offences punishable under the Penal Code, 1860.

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INSOLVENCY AND BANKRUPTCY CODE

2016

STATE BANK OF INDIA V ANIL DHIRAJLAL AMBANI

Date : 20.08.2020

Citation : NCLT - IA No. 1009 of 2020 in [CP(IB) 916 (MB) of 2020] and IA No. 1010 of 2020 in [CP(IB) 917(MB) of 2020]

FACTS

The facts leading up to the impugned applications may be summarized as follows –

A. These Applications were filed by the Financial Creditor against the Personal Guarantor of the Corporate Debtors seeking urgent hearing and necessary orders U/ Sec. 97(3) of IBC 2016.

B. Reliance Communications Limited (RCOM) and Reliance Infratel Limited (RITL) in or around 2015-16 approached the Project Finance Strategic Business Unit of State Bank of India, SBI (hereinafter referred to as the Financial Creditor) seeking credit facilities to the tune of Rs. 565,00,00,000/- (Rupees Five Hundred Sixty-five Crores), and Rs. 635,00,00,000/- (Rupees Six Hundred Thirty-Five Crores) respectively for the purpose of repayment of certain existing financial indebtedness.

   The Financial Creditor provided aforementioned amounts on a personal guarantee provided by the Respondent.

C. Both RCOM and RITL committed defaults in repayment in and around January 2017. The accounts were retrospectively declared as Non-Performing Account (NPA) with effect from 26.08.2016 pursuant to the Risk Based Supervision during the year 2017. In view of the default in payment of the credit facilities the Applicant on 31.01.2018 invoked the personal guarantee and issued an Invocation Notice of the even date upon the Respondent.

   Despite various correspondence between the Financial Creditor and the Personal Guarantor (Respondent) no repayment was made on behalf of the Respondent. The Applicant apprehends that it would not be able to recover the claim amount from the CIRP or from the borrowers RCOM & RITL. It accordingly issued a Demand Notice dated 20.02.2020 in Form-B to the Respondent demanding payment.

D. The Notice was not responded to by the Respondent. The Applicant accordingly filed the Petitions under section 95 of the Code against the Respondent before this Authority on 12.03.2020. Soon thereafter however, the Country went into lockdown due to the Covid-19 pandemic and the Petitions could not be listed before this Authority.

   Section 97(3) of the Code mandates that the Authority shall direct the Insolvency and Bankruptcy Board of India (IBBI) within 7 days of filing of such Application to nominate the name of the Resolution Professional (RP). The lockdown was extended periodically and is still in operation.

E. The Respondent had also provided personal guarantee to various other banks without obtaining the consent of the Financial Creditor in availing credit facilities for the group companies of Reliance ADA Limited, from the Industrial and Commercial Bank of China Limited, China Development Bank and Exim Bank of China (hereinafter referred to as the Chinese Banks). The Chinese Banks initiated recovery proceedings against the Respondent in the United Kingdom.

   The Commercial Division of the High Court of England and Wales by an order dated 22.05.2020 directed the Respondent to pay an amount of 717 Million US Dollars (Indian Rs. 5447,53,29,750/- as on 24.05.2020) within 21 days. In case of default in making the payment, the Chinese Banks could pursue all available options of enforcement of the order of the UK Court.

   The Applicant apprehends that the Chinese Banks might attempt to initiate enforcement or execution proceedings against the Personal Guarantor in India including attachment or restraint of his assets in India and abroad.

   Such action would have an adverse effect on the recovery rights of the Applicant. The Applicant hence filed the present Petitions.

HELD

The NCLT observed as follows –

A. Section 60(2) of the Code provides that proceedings against the Personal Guarantor can simultaneously be filed. When the law mandates that a particular proceeding can be initiated, it would be preposterous to think that after initiation of the proceedings the Authority, before whom it is filed, would not act upon such Petition/Application and would not do anything about it until some subsequent event happens.

   Had that been the intention of the Legislature, a provision for initiation of proceedings wouldn't have been made in the first place. Therefore, it would be fallacious to assume that though the proceedings can be filed no action can be taken until the Resolution Plan(s) is/are accepted or otherwise.

   The natural and legal consequence of filing of a Petition/Application would be that the Authority before whom it is filed shall take all possible steps according to law that would follow as per the procedure prescribed for the same.

B. A discharge which the principal debtor may secure by operation of law in bankruptcy or in liquidation proceedings does not absolve the surety of his liability. The Court also held that the fact that the Company i.e. principal debtor has gone into liquidation would not have any effect on the liability of the guarantor.

   The principle thus laid down applies on all fours to the case at hand. In view of such authoritative pronouncement by the Apex Court, it is clear that notwithstanding pendency of the Resolution Plans, the personal guarantor can be proceeded against under section 60(2) read with sections 95 and 97(3) of the Code.

C. Section 97(3) of the Code doesn't provide for any alternative or any option to the Adjudicating Authority to be tardy in making the direction to the Board. The use of the word 'shall' itself indicates the urgency with which the Application needs to be dealt with. The Authority accordingly has no other option than to issue the direction. The submissions made by the Respondents that this Authority could wait till the resolution of the Corporate debtors are completed accordingly cannot be accepted.

   Therefore, in our considered opinion we feel it appropriate to issue the direction in terms of Section 97(3) of the Code. Rule 8 of the I & B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019 provides that for the purposes inter alia of sub section (2) of section 97 the IBBI may share the database of Insolvency Professionals and share a panel of Insolvency Professionals for the purpose inter alia of subsection (4) of section 97 of the Code.

[***Update*** *– The Personal Guarantor (Anil Dhirajlal Ambani) has since approached the Delhi HC through a Writ Petition [W.P.(C) 5712/2020]. The Delhi HC on August 27, 2020 while issuing notice to the relevant respondent parties observed that "the proceedings would continue in relation to the Corporate Debtor and while dealing with those proceedings, the liability of the petitioner may also be examined by the IRP.*

However, the proceedings against the petitioner under Part-III of the IBC shall remain stayed. We restrain the petitioner from transferring, alienating, encumbering, or dealing with, or disposing of any of his assets, or his rights, or beneficial interest therein till the next date (6th October 2020)."]

2

KOTAK INVESTMENT ADVISORS LIMITED V MR KRISHNA CHAMADIA, MR KALPRAJ DHARAMSHI & MS REKHA JHUNJHUNWALA

Date : 05.08.2020

Citation : NCLAT [Company Appeal (AT) (Insolvency) No. 344 – 345 of 2020]

SYNOPSIS

The NCLAT after due consideration of all the facts and issues associated with the impugned matter held that the Resolution Professional committed a grave error in accepting the Resolution Plan of the Resolution Applicant Kalpraj Dharmshi & Rekha Jhunjhunwala after the expiry of the deadline for submission of the Bid/Resolution Plan without notifying/ publishing the extension of the timeline for submission of EOI, as per provision of the I&B Code and Regulations thereof. The Adjudicating Authority also failed to appreciate the illegalities and irregularities pointed out by the Appellant.

Lastly, the NCLAT directed the CoC to take a decision afresh in the light of the directions given above for consideration on the Resolution Plans already submitted within the stipulated timeline within ten days from the date of this Order. If no decision is communicated to the Adjudicating Authority and the timeline for completion of CIRP has already expired, then the Adjudicating Authority is to pass an order for liquidation of the corporate debtor

FACTS

The facts in the impugned appeal can be summarized as follows –

A. The impugned Appeals emanate from two impugned Orders, both dated 28th November 2019, passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench whereby, the Adjudicating Authority, vide the first impugned Order, has rejected Application No. MA/1039/2019 raising objections against the alleged illegalities committed in the conduct of CIRP and vide the second impugned Order passed in MA 691/2019, the Adjudicating Authority has approved the Resolution Plan.

B. Two Resolution Applicants had filed their Resolution Plans within the deadline for submission of Resolution Plan. However, the Resolution Applicant Karvy Group, tendered its Resolution Plan without furnishing guarantee of Rs. 10 Crore. On 10th January 2019, the CoC had opened both the Resolution Plans.

   Subsequently, on 15th January 2019, the Resolution Plans were discussed. In addition to the abovementioned Resolution Plans, two more Resolution Plans were accepted by the Resolution Professional after expiry of the deadline for submission of the Resolution Plans, one from "WeP" Peripherals on 13th January 2019 and another on 28th January 2019 from a consortium of Kalpraj Dharamshi & Rekha Jhunjhunwala.

C. The Applicant/Appellant questioned the Resolution Professional over acceptance of two Resolution Plans that had been submitted after the expiry of deadline for submission of Resolution Plan, without obtaining any CoC resolution to extend the deadline and issuing notice for inviting EoI from other potential resolution applicants.

   The CoC and the Resolution Professional, subsequently, permitted the Appellant to submit a revised Resolution Plan on or before 12th February 2019.

D. The grievance of the Applicant/Appellant is that the Successful Resolution Applicant was allowed to submit its Bid after the expiry of the deadline for submission of Resolution Plan when the Bids by other Resolution Applicants had already been opened and deliberated upon by the CoC.

ISSUES

The issues framed in the impugned appeals were as follows –

A. Whether the Resolution Professional with the approval of CoC, was authorized to accept the Resolution Plans after the expiry of the deadline for submission of the Bid, without extending the timeline for submission of EOI?

B. Whether the act of the Resolution Professional, with the approval of CoC, in accepting the Resolution Plan after the expiry of the deadline for submission of Resolution Plan, can be treated as an act under commercial wisdom of the CoC?
C. Whether Amended Regulation 36A, which came into effect from 04.07.2018, will be applicable in this case, where CIRP is initiated against the Corporate Debtor before coming into force of the amended Regulation?
D. Whether Judgment of the Bench consisting of Member (Technical), who has not heard the argument regarding MA No. 1039 of 2019 is valid?

HELD

Categorically towards all the issues, it was held that –

Issues A. & B.

A. The CoC does indeed, have the power to exercise its commercial wisdom in approval or rejection of the Resolution Plan. However, the same cannot mean that the Resolution Professional, whether with the approval of CoC or without that, or in pursuance of Process Memorandum under the guise of maximization of value, is empowered to adopt a procedure in the conduct of CIRP which is, ab-initio illegal, arbitrary and against the Principles of Natural Justice.
B. The act of the Resolution Professional to accept the Resolution Plan after opening the other bids, which were all submitted within the deadline for submission of Resolution Plan cannot be justified by any means and is a blatant misuse of the authority invested in the Resolution Professional to conduct CIRP.

   However, if the CoC took a commercial decision to extend the timeline, it should have done so by publishing a fresh notice in Form 'G' under Regulation 36A of the CIRP Regulations.

   By adopting a special procedure for accepting the Resolution Plan of the Successful Resolution Applicant, under the guise of maximization of value, the Resolution Professional and the CoC have deviated from the norms prescribed under the Code and the Regulations framed there under, which vitiates the Corporate Insolvency Resolution Process conducted by the RP.
C. The CoC was fully authorized to either accept or reject the Resolution Plan or negotiate with the Resolution Applicants in the exercise of its power under commercial wisdom.

   But in the exercise of commercial wisdom, CoC was not authorized to approve the arbitrary and illegal conduct of corporate insolvency resolution process, which has been done in this case. After expiry of the deadline for submission of EOI, CoC was fully competent to extend the timeline for submission of EOI. It could have done so by following the Rules and Regulations as per due process.

   We have noticed that earlier, the RP had thrice issued notices in 'Form G' for inviting Expression of Interest. As to why the same procedure was not adopted in accepting the Resolution Plan of successful Resolution Applicant/Respondents No. 2 and 3, the RP has failed to come up with any proper justification.
D. At the cost of repetition, we reiterate that illegal exercise of power by the Resolution Professional in conducting CIRP cannot be treated as an exercise of power for maximization of value under Commercial Wisdom.

Issue C.

E. Regulation 36A came into force w.e.f. 4th July 2018 by the amendment in CIRP Regulation, 2016. There is nothing in the amended Regulation which provides for retrospective operation of the amended Regulation.
F. Regulation 36A(6) was introduced vide Notification No. IBBI/2018-19/GN/REG031, which clearly states that the amended CIRP Regulations shall apply to CIRP commencing on or after 4th July 2018. The Corporate Debtor was admitted to CIRP on 14th May 2018, and hence, the

amendments introduced vide notification No. IBBI/2018-19/GN/REG031 is not applicable to Corporate Debtor's CIRP.

Issue D.

G. The salutary principle applicable in the instant case is that of the maxim, "one who hears the matter must decide". It is the Single Member Bench which had heard the argument of the Miscellaneous Application 1039 of 2019 and thus, it alone could have decided it.

Merely because the presiding member of the Single Member Bench was also a part of the reconstituted Division Bench of the Tribunal comprising of two members, it does not mean that he could have taken up the Applicant's MA No. 1039 of 2019 along with the MA No. 691 of 2019. Thus, the Bench has passed the Order on the MA No. 1039 of 2019, even though the other Member of the Bench, Member (Technical), didn't get an opportunity to hear the arguments on that application. Rule 150(2) NCLT Rules, 2016 provides for the Bench which hears the case to also pronounce the Order.

In concluding the judgment, the CoC were directed to take a decision afresh in the light of the directions given for consideration on the Resolution Plans already submitted within the stipulated timeline within ten days from the date of the impugned Order. If no decision were to be communicated to the Adjudicating Authority and the timeline for completion of CIRP had already expired, then the Adjudicating Authority was to pass an order for liquidation of the corporate debtor.

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LIMITATION ACT

1963

NAZIR MOHAMED V J. KAMALA & ORS.

Date : 27.08.2020

Citation : Supreme Court [Civil Appeal No. 2843-2844 of 2010]

SYNOPSIS

The Court held that, a person claiming a decree of possession has to establish his entitlement to get such possession and also establish that his claim is not barred by the laws of limitation. He must show that he had possession before the alleged trespasser got possession.

FACTS

These appeals were brought before the Apex Court against a common judgment dated 06.11.2008 dismissing the Second Appeal filed by the Appellant, but allowing the Second Appeal filed by the Respondent, and setting aside the judgment and decree dated 17.09.1999 of the First Appellate Court to the extent the First Appellate Court had declined the Respondent's claim to a decree of recovery of possession of the suit premises.

The High Court had held that the Respondent, being the Plaintiff in the suit was entitled to a declaration of title in respect of half portion of the suit premises, recovery of possession of the said half portion of the suit premises and also to recovery of income from the said half of the suit property owned by the Respondent and/or charges for use, enjoyment and/or occupation thereof.

HELD

The Supreme Court in analysing the laws with regards to adverse possession, observed that,

A. The maxim "possession follows title" is limited in its application to property, which having regard to its nature, does not admit to actual and exclusive occupation, as in the case of open spaces accessible to all. The presumption that possession must be deemed to follow title, arises only where there is no definite proof of possession by anyone else.

B. A suit for recovery of possession of immovable property is governed by the Limitation Act, 1963. Section 3 of the Limitation Act bars the institution of any suit after expiry of the period of limitation prescribed in the said Act. The Court is obliged to dismiss a suit filed after expiry of the period of limitation, even though the plea of limitation may not have been taken in defence.

   The period of limitation for suits for recovery of immovable property is prescribed in Part V of the Schedule to the Limitation Act, 1963, and in particular Articles 64 and 65 thereof.

C. In the absence of any whisper in the plaint as to the date on which the Appellant-Defendant and/or his Predecessor-in-interest took possession of the suit property and in the absence of any whisper to show that the relief of decree for possession was within limitation, the High Court could not have reversed the finding of the First Appellate Court, and allowed the Respondent-Plaintiff the relief of recovery of possession, more so when the Appellant-Defendant had pleaded that he had been in complete possession of the suit premises, as owner, with absolute rights, ever since 1966, when his father had executed a Deed of Release in his favour and/or in other words for over 28 years as on the date of institution of the suit.

D. As held by the Privy Council in *Peri v. Chrishold* reported in (1907) PC 73, it cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner...and if the rightful owner does not come forward and assert his right of possession by law, within the period prescribed by the provisions of the statute of limitation applicable to the case, his right is forever distinguished, and the possessory owner acquires an absolute title.

BABULAL VARDHARJI GURJAR V VEER GURJAR ALUMINIUM INDUSTRIES PVT. LTD. & ORS.

Date : 14.08.2020

Citation : Supreme Court of India [Civil Appeal No. 6347 of 2019]

SYNOPSIS

The Apex Court observed that Article 137 is the residuary provision on the period of limitation for "other applications" applicable for the purpose of reckoning the period of limitation for an application under Section 7 of the Code and thus, the application made by R2 U/Sec 7 of IBC, 2016 in March 2018, seeking initiation of CIRP in respect of the R1 with specific assertion of the date of default as 08.07.2011, was barred by limitation for having been filed much later than the period of three years from the date of default as stated in the application.

FACTS

This appeal U/Sec. 62 of IBC, 2016 was directed against the judgment and order dated 14.05.2019 passed by the National Company Law Appellate Tribunal, New Delhi whereby, the Appellate Tribunal had rejected a contention that the application made by R2 U/Sec. 7 of the Code, seeking initiation of Corporate Insolvency Resolution Process in respect of the debtor company (R1), is barred by limitation; and declined to interfere with an order dated 09.08.2018, passed by the National Company Law Tribunal, Mumbai Bench for commencement of CIRP as prayed for by R2.

ISSUES

Whether proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 can be barred by limitation?

HELD

The Court, while analysing previous judgements and relevant jurisprudence held that:

A. The Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation;
B. CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor;
C. The intention of the Code is not to give a new lease of life to debts which are time-barred;
D. The period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues;
E. The trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that the right to apply under the Code accrues on the date when default occurs;
F. Default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable;
G. If a default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned.

HANUMAN PRASAD AGARWAL & ORS. V SATYANARAIN AGARWAL & ORS

Date : 11.06.2020

Citation : Calcutta High Court [G.A. No. 990 of 2018 with T.S. No. 7 of 2016]

SYNOPSIS

The Court in analysing whether the right to apply for probate could be considered as a continuing right held that, the right to apply would accrue not from the date of death of the testator but from which the dispute arises or when it becomes necessary to apply for grant of probate as otherwise construing Article 137 as bringing down the curtain to such a right after 3 years cannot stand to reason and would frustrate the very object of the law preserving the wishes of a testator.

FACTS

An application for probate was filed by the executor of the last Will and Testament of the Appellant. The last Will and Testament was signed by the testator on 16th April 1989. The application for grant of probate sets out the heirs and legal representatives of the testator,

namely his 3 sons. The probate petition was filed on 8th September 2014. The present application for rejection of the probate proceedings was filed on 8th February 2018 by the Defendant no. 1, who sought rejection of the plaintiff's application for grant of probate which was converted to a contentious cause and consequently a testamentary suit by an order dated 20th April 2016.

HELD

The Court observed that:

A. While Article 137 applies in cases of grant of probate, the right to apply accrues not from the date of death of the testator but from which the dispute arises or when it becomes necessary to apply for grant of probate.

   In other words, a party may apply when a challenge is made to a Will or a dispute arises in relation thereto. It is also clear that there is no outer limit for filing an application for probate and the time starts running from the date when the right to apply accrues.

B. The Supreme Court's view in Kunvarjeet Singh Khandpur, Krishan Kumar Sharma and that of the Calcutta High Court in Paritosh Patra to the effect that Article 137 of the Limitation Act is applicable to probate proceedings laid down that the right to apply must be construed in the light of the dispute which forces a party to apply for grant of probate.

C. The language of Article 137 of the Limitation Act is not 3 years from the date of death of the testator but when "the right to apply accrues" which means that the time envisaged will be activated once the right is denied, giving rise to a consequent need to assert the right.

   Further while section 293 of the Indian Succession Act provides for a cooling-off period of expiration of 7 clear days from the day of the testator's or intestate's death before a probate of a Will can be granted (and 14 clear days for a letter of administration), there is no outer limit within which an executor has to take out an application for grant of probate.

D. The absence of an endpoint within which such an application has to be filed is a deliberate legislative omission pointing to a larger rationale underlying cases involving grant of probate.
   i. First, the date of death of the testator cannot fix the executor with a simultaneous obligation to apply for probate as it may not be possible for the executor to know of the testator's death in every case. The implementation of the wishes of a testator in terms of giving effect to the Will cannot be defeated merely on account of the delay on the part of the executor in applying for a probate.
   ii. Second, in an application for grant of probate, no right is claimed by the applicant. The applicant only seeks recognition of the court to perform a duty, namely the duty cast by the author of the testament upon the executor with regard to administration of his estate.
   iii. Third, except section 217 which regulates applications for probates/ letters of Administration under Part IX of the 1925 Act, there is no provision in the Succession Act which compels the executor to file for grant of probate.

E. Hence, if the right to apply for probate is seen as a continuing right, construing Article 137 as bringing down the curtain to such a right after 3 years cannot stand to reason and would frustrate the very object of the law preserving the wishes of a testator.

   Importing the provisions of the Limitation Act in a manner which would frustrate the last wish of the deceased cannot also be the intention of the Legislature since the decision of a Probate Court is a judgment in rem not only binding upon the parties to the probate proceeding but binding on the whole world.

SHAKTI BHOG FOOD INDUSTRIES LTD. V THE CENTRAL BANK OF INDIA AND ORS.

Date : 05.06.2020

Citation : Supreme Court of India [Civil Appeal No. 2514 of 2020]

SYNOPSIS

The Court on analysing the facts and history of the case observed that reading the expression in Article 113 as when the right to sue (first) accrues would be re-writing that provision and doing violence to the legislative intent which advisedly used the generic expression "when the right to sue accrues" in Article 113 of the 1963 Act.

FACTS

The Appellant had filed the suit for a decree for rendition of true and correct accounts in respect of the interest/commission charged and deducted by the Respondent-Bank relating to the current account of the Appellant and for the recovery of the excess amount charged by the Respondent-Bank consequent to rendition of accounts with interest at the rate of 18% per annum from the date of deduction including interest pendente lite realization of the amount and future interest.

The Plaint was rejected by the trial Court under Order VII Rule 11(d) of the Code of Civil Procedure on the ground that it was barred by law of limitation, as it was filed beyond the period of three years prescribed in Article 113 of the Limitation Act, 1963. The view so taken by the trial Court commended to the District Court in first appeal and also the High Court in second appeal, which judgment is the subject matter of challenge in the present appeal.

ISSUES

Whether the plaint as filed by the Appellant could have been rejected by invoking Order VII Rule 11(d) of the Code of Civil Procedure?

HELD

The Supreme Court held that:

A. The expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue "first" accrues), Article 59 (when the facts entitling the Plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded "first" become known to him) and Article 104 (when the Plaintiff is "first" refused the enjoyment of the right).

   The view taken by the trial Court, which commended to the first appellate Court and the High Court in second appeal, would inevitably entail in reading the expression in Article 113 as - when the right to sue (first) accrues. This would be re-writing of that provision and doing violence to the legislative intent.

   We must assume that the Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression "when the right to sue accrues" in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling Under Section 22 of the 1963 Act, to wit, continuing breaches and torts.

B. The factum of a suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order VII Rule 11 of the Code of Civil Procedure is ruled out.

C. Reverting to the argument that exchange of letters or correspondence between the parties cannot be the basis to extend the period of limitation, in our opinion, for the view taken by us hitherto, the same need not be dilated further.

SECTION 167(2), REFERENCE ORDER

Date : 12.05.2020

Citation : Madras High Court

FACTS

The facts leading up to the impugned reference order passed by the Chief Justice of the Madras High Court are as follows:

A. Two divergent judgements in relation to a plea of default bail in the light of provisions of Sec.167(2) of the CrPC had been passed by the Madras High Court.

B. The divergence had been with regards to the interpretation of both judgements by the Supreme Court in Re: Cognizance for

Extension of Limitation Period.

C. The **first order** was passed in *Settu v. The State, rep. by the Inspector of Police, Vallam Police Station, Thanjavur District* on 8th May 2020. The accused/petitioner was taken into custody for having committed an offence of chain-snatching. The accused had filed a bail application which had been rejected on the ground of involvement of the accused in three previous cases of the same nature.

Another application was made for automatic bail on the ground that a police report had not been filed within the mandatory time-limit, thus entitling the accused/petitioner to automatic bail. This application led to the impugned divergent Order, wherein the learned single Judge held that the Supreme Court order did not touch upon any specific extension of time for completing investigation and once there was an expiry of the mandatory period as prescribed under Sec.167(2) of Cr.P.C. the accused was entitled for default bail.

The learned Judge also referred to the Fundamental Right guaranteed under Art. 21 of the Constitution of India and any further detention was found to be in violation of the said right. **Accordingly, bail was granted by the learned single Judge.**

D. The **second order** was passed in *S. Kasi v. State through The Inspector of Police, Samanallur Police Station*, where the offence was of idol theft and was based on an alleged recovery. The Learned Single Judge, by order dated 11th May 2020, **refused grant of bail** that was prayed for after noting the order of the learned single Judge referred to hereinabove dated 8th May, 2020.

The learned single Judge in this case came to the conclusion by inference that the period of limitation for investigation under Sec.167 Cr.P.C. would also stand extended keeping in view the extraordinary situation of the Covid Virus-19 spread which has led to a general order of extension by the Apex Court.

Paragraphs 14 to 18 of the order dated 11th May 2020 give reasons for not accepting the line of reasoning as adopted by the learned single Judge in the case of Settu.

HELD

The Chief Justice of Madras High Court observed that:

A. The applicability of the order passed by the Apex Court has to be considered in the light of the fact that Sec.167 Cr.P.C. appears to only set out the outer limit of the detaining power of the Magistrate without charge and thus is an embargo on the period of detention of an accused. The investigation can still continue unhindered. Apart from this there is no express provision so as to condone delay in the Cr.P.C. except the provisions of Sec.468 to Sec.473 thereof.

B. In exercise of the powers conferred under Order I Rule 6 of the Madras High Court Appellate Side Rules the conflict between the above said two orders raising a pure question of law based on the interpretation of the order of the Supreme Court dated 23rd March, 2020 deserves to be clarified by an authoritative pronouncement.

The reference to be answered that arises out of the said conflict of opinions as follows is to be answered by a Division Bench:

"*Whether the orders passed by the Apex Court on 23rd March, 2020 and 6th May, 2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 also apply to the proceedings under Sec.167(2) Cr.P.C. and consequently which of the two opinions expressed by the learned single Judges in the case of Settu and Kasi lays down the law correctly?*"

BANK OF BARODA V KOTAK MAHINDRA BANK LTD.

Date : 17.03.2020

Citation : Supreme Court of India [AIR 2020 SC 1474]

SYNOPSIS

The period of limitation would start running from the date the decree was passed in the foreign court of a reciprocating country. However, if the decree holder first takes steps-

in-aid to execute the decree in the cause country, and the decree was not fully satisfied, then he could then file a petition for execution in India within a period of three years from the finalization of the execution proceedings in the cause country.

FACTS

The predecessor of the Respondent issued a letter of credit on behalf of its customer in favour of foreign company. The Appellant Bank was the confirming bank to the said letter of credit. The predecessor of the Respondent issued instructions to the foreign branch of the Appellant to honour the letter of credit.

Acting on this instruction the London branch of the Appellant discounted the letter of credit and payment of this amount was made to foreign company. The Appellant Bank filed a suit against the predecessor of the Respondent for recovery of its dues in foreign court. This suit was decreed by the foreign court and a decree along with interest thereon was passed in favour of the Appellant bank. The decree was not challenged and became final. The Appellant bank filed an execution petition i.e. almost fourteen years after the decree was passed by the foreign court for execution of the same in terms of Section 44A read with Order 21 Rule 3 of the Code of Civil Procedure, 1908 for recovery of dues.

The execution petition was contested mainly on the ground that the same had not been filed within the period of limitation. The Additional City Civil & Session Judge dismissed the execution petition as time barred holding that Article 136 of the Limitation Act, 1963 applies and the execution petition should have been filed within twelve years of the decree being passed by the foreign Court.

Aggrieved, the bank approached the High Court which upheld the view of the trial court.

ISSUES

The following issues were framed for consideration by the Apex Court:

A. Does Section 44A merely provide for manner of execution of foreign decrees or does it also indicate the period of limitation for filing execution proceedings for the same?
B. What is the period of limitation for executing a decree passed by a foreign court (from a reciprocating country) in India?
C. From which date the period of limitation will run in relation to a foreign decree (passed in a reciprocating country) sought to be executed in India?

HELD

The Court held:

A. Section 44A is only an enabling provision which enables the District Court to execute the decree as if the decree had been passed by an Indian court and it does not deal with the period of limitation. A plain reading of Section 44A clearly indicates that it only empowers the District Court to execute the foreign decree as if it had been passed by the said District Court.

   It also provides that Section 47 of the Act shall, from the date of filing of certified copy of the decree, apply. Section 47 deals with the questions to be determined by the court executing a decree.

   Execution of a decree is governed Under Order 21 of Code of Civil Procedure and, therefore, the provisions of Section 47 of the Act and Order 21 of Code of Civil Procedure will apply. Therefore, in conclusion, Section 44A has nothing to do with limitation.
B. The limitation period for executing a decree passed by a foreign court (from reciprocating country) in India would be the limitation prescribed in the reciprocating foreign country. Obviously, this would be subject to the decree being executable in terms of Section 13 of the Code of Civil Procedure.
C. A party filing a petition for execution of a foreign decree must also necessarily file a written application in terms of Order 21 Rule 11 Clause (2). Without such an application it would be impossible for the Court to execute the decree.

   Therefore, this application for executing a foreign decree would be an application not covered under any other Article of the

Limitation Act and would thus be covered under Article 137 of the Limitation Act and the applicable limitation would be three years.

STANDARD CHARTERED BANK V MSTC LIMITED

Date : 21.01.2020

Citation : Supreme Court of India [2020 (1) WLN 156 (SC)]

SYNOPSIS

The Apex Court held that an application for review cannot possibly be said to be an application filed Under Section 19 even on a cursory reading of the provisions of the Act, as it traces its origin to Section 22(2)(e) read with Rule 5A of the Rules. Such applications are not for recovery of debts but are only applications to correct errors apparent on the face of the record in a judgment that has been delivered in an application filed Under Section 19 and therefore, the DRT cannot be said to have power to condone delay in filing of the application.

FACTS

A Receivables Purchase Agreement was executed between the Appellant and Government Company-Respondent, whereunder receivables from overseas buyers in respect of invoices raised by the Respondent against foreign buyers were purchased by the Appellant.

An Export Insurance Policy was obtained by these parties under which the Insurance Company agreed to indemnify the Respondent and the Appellant in the event of default in payment of foreign buyers. The Appellant had lodged a claim with the said Insurance Company which, however, was repudiated. An application was filed by the Appellant stating that given the admissions contained in the balance sheet of the relevant years of the Respondent-Company, a sum was owed by the Respondent to the Appellant.

This application was allowed by the DRT. An appeal was filed by the Respondent-Company against the said order before the DRAT. While the appeal was pending, Review Application was filed before the DRT by the Respondent-Company after the appeal that was lodged earlier in point of time was withdrawn by the Respondent-Company. In the meanwhile, an application was made to condone a delay in filing the review petition before the DRT, the period of limitation under Rule 5A of the Debt Recovery Tribunal Rules, 1993. This review petition was dismissed by the DRT by holding that Section 5 of the Limitation Act, 1963 was held not to be applicable to review petitions that were filed under Rule 5A of the Rules. A writ petition was filed before the High Court. The High Court set aside the judgment of the DRT, condoned the delay in filing of the review application itself, and restored the review application to the file.

ISSUES

Whether the High Court erred in setting aside the judgment of DRT, condoning delay in filing of review application.

HELD

The Supreme Court held that:

A. The peremptory language of Rule 5A would also make it clear that beyond thirty days there is no power to condone delay. Rule 5A was added with a longer period within which to file a review petition. This period was cut down, by amendment to thirty days.

   From this two things were clear one, whether in the original or unamended provision, there was no separate power to condone delay, as was contained in Section 20(3) of the Act and second, that the period of sixty days was considered too long and cut down to thirty days thereby evincing an intention that review petitions, if they were to be filed, should be within a shorter period of limitation - otherwise they would not be maintainable.

B. Section 22(1) of the Act makes it clear that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, making it clear thereby that Order 47 Rule 7 would not apply to the Tribunal.

   Also, in view of Section 20, which applies to all applications that may be made, including applications for review, and orders being

made therein being subject to appeal, it was a little difficult to appreciate how Order 47 Rule 7 could apply at all, given that Section 20 of the RDB Act was part of a complete and exhaustive code. Section 34 of the Act makes it clear that the 1993 Act, would have overriding effect over any other law for the time being in force, which includes the Code of Civil Procedure.

The High Court, in holding that no appeal would be maintainable against the dismissal of the review petition, and that therefore a writ petition would be maintainable, was clearly in error on this count also.

JAGDISH CHAND & ORS. V STATE OF HIMACHAL PRADESH & ORS.

Date : 10.01.2020

Citation :Himachal Pradesh High Court [2020 (2) SCT 66 (HP)]

SYNOPSIS

The Court held that Rule 17 of 1972 Rules provides that contractual service followed by substantive appointment in a pensionable establishment can also be counted towards qualifying service for grant of pension. Thus, service rendered by petitioners on contractual basis deserves to be counted towards qualifying service for pensionary benefits under of 1972 Rules and for annual increments.

FACTS

Petitioners were appointed as JBTs on contract basis prior in time to Joga Singh & others' appointment as Vidya Upasaks. Appointment of both categories was against sanctioned and regular posts. The Petitioners were regularized as JBTs prior in time to regularization of Vidya Upasaks and the benefits of counting past service granted to all Vidya Upasaks as a category in whole treating it as qualifying service towards grant of pension under 1972 Rules and annual increments had been denied to the petitioners, who were seniors to Vidya Upasaks due to which the impugned matter was filed before the Himachal Pradesh High Court.

ISSUES

The issues framed by the Court were as follows:

A. Whether the Junior Basic Teachers who were initially recruited in 1997 on contract basis as JBTs against regular/sanctioned posts and regularized as such in 2006 are entitled to count their contractual period as qualifying service for purposes of
   i. pension under CCS (Pension) Rules, 1972 and
   ii. annual increments, especially on the basis of judgment delivered on 15.6.2015 in Joga Singh's case (CWP No. 8953/2013)?

B. Whether the prayers made in the writ petitions in respect to counting entire contractual service towards qualifying service for the purpose of pension under CCS(Pension) Rules, 1972 as well as for grant of annual increments are barred by limitation under Section 21 of Administrative Tribunals Act and suffer from delay, laches and estoppel?

HELD

The Court held that:

A. Judgment in Joga Singh's case is a judgment in rem in so far as JBT cadre was concerned. Contractually appointed JBTs (petitioners) and Vidya Upasaks (Joga Singh & Ors) eventually were regularized as JBTs & merged into one cadre of JBT. Petitioners were appointed as JBTs on contract basis prior in time to Joga Singh & others' appointment as Vidya Upasaks.

   Appointment of both the categories was against sanctioned and regular posts. Petitioners were regularized as JBTs prior in time to regularization of Vidya Upasaks.

B. Benefits of counting past service granted to all Vidya Upasaks as a category in whole treating it as qualifying service towards grant of pension under CCS (Pension) Rules, 1972 and annual increments cannot be denied to the petitioners, who were seniors to Vidya Upasaks.

   Apex Court in State of Uttar Pradesh & Ors. v. Arvind Kumar Srivastava & Ors has categorically held that non-extension of

benefit, accorded in favour of a particular set of employees by the Court, to similarly situated persons violates Article 14 of the Constitution of India as like should be treated alike. The benefit given by the Court, was a judgment in rem intended to give benefit to all similarly situated persons, irrespective of whether they approached the Court or not, this exception, therefore, will not operate.

C. The prayers of the petitioners for counting their past contractual service as qualifying service towards pensionary benefits under CCS(Pension) Rules, 1972 and annual increments as allowed to Joga Singh & Other Vidya Upasaks under judgment dated 15.6.2015 cannot be denied to them on grounds of limitation, delay, laches or acquiescence, however, financial benefits are to be restricted to them to three years prior to filing of the writ petitions.

D. Lastly, the service rendered by the petitioners on contractual basis deserves to be counted towards qualifying service for pensionary benefits under CCS(Pension) Rules 1972 and for annual increments.

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SUPERINTENDING ENGINEER/DEHAR POWER HOUSE CIRCLE BHAKRA BEAS MANAGEMENT BOARD (PW) SLAPPER & ORS. V EXCISE AND TAXATION OFFICER, SUNDER NAGAR/ASSESSING AUTHORITY

Date : 25.10.2019

Citation : Supreme Court of India [2019 (14) SCALE 414]

SYNOPSIS

The Court held that if there is no express exclusion in the local or special law, then the provisions contained in Sections 4 to 24 of the Limitation Act shall apply by the provisions contained in Section 29(2) of the Limitation Act.

FACTS

The High Court had refused to condone the delay in the revision filed under Section 48 read with Section 64(5) of the Act of 2005, against the order passed by Tax Tribunal. The Division Bench of the High Court had held that provision of Section 5 of the Limitation Act, could not be applied and the High Court could not condone the delay. The revision had to be filed within ninety days, as provided in Section 48 of the Act of 2005.

ISSUES

Whether Section 5 of the Limitation Act can be invoked to condone delay in filing a revision application under Section 48 of the HP VAT Act.

HELD

The Court held that:

A. Section 5 of the Limitation Act deals with the extension of the prescribed period in particular exigencies. The provision applies to the Court and is excluded in the application to the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908). It provides that if the Court is satisfied that the Appellant/applicant had sufficient cause for not preferring the appeal or making the application within limitation, the Court may admit the same after the prescribed period.

Explanation attached to Section 5 makes it clear that in case the Appellant or the applicant was misled by any order, practice, or judgment of the High Court in ascertaining or computing the prescribed period, may be sufficient cause within the meaning of Section 5.

B. The provisions of Section 5 are applicable to Section 48 as they are not expressly excluded by the provisions under the Act of 2005. More so, in view of the provisions in Section 45(4), which makes provisions to condone the delay like the Limitation Act, conferring power upon an authority also to condone delay.

Further, suo motu revision has also been provided Under Section 46. In Section 48, there is no express exclusion. Because of the scheme of the Act, it cannot be inferred that by implication, the provisions of Section 5 of the Limitation Act are excluded. Provisions contained in Section 29(2) of the Limitation Act would be attracted as there

is no express exclusion or by implication, in view of the provisions of the Act of 2005. We hold that by virtue of the provisions contained in Section 29(2), provisions of Section 5 of the Limitation Act would apply to proceedings Under Section 48 of the Act of 2005.

C. As per Section 29(2), unless a special law expressly excludes the provision, Sections 4 to 24 of the Limitation Act are applicable. When we consider the scheme of the Himachal Pradesh VAT Act, 2005, it is apparent that its scheme is not ousting the provisions of the Limitation Act from its ken which makes principles of Section 5 applicable even to an authority in the matter of filing an appeal but for the said provision the authority would not have the power to condone the delay.

By implication also, it is apparent that the provisions of Section 5 of the Limitation Act have not been ousted; they have the play for condoning the limitation Under Section 48 of the Act of 2005.

SOPANRAO AND ORS. V SYED MEHMOOD AND ORS.

Date : 03.07.2019

Citation : Supreme Court [AIR 2019 SC 3113]

SYNOPSIS

The Apex Court held that merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Thereby the outer limitation of 12 years could not be said to be lost for a suit for possession based on title, merely because the relief of declaration was also sought.

FACTS

A suit was filed by Respondent Nos. 1 to 4 before trial court against the present Appellants. The present Appellants and others contested the suit. One of the main grounds raised was that the suit was not filed within the period of limitation.

The trial court vide judgment dismissed the suit of the Plaintiffs and held that the suit was not filed within the period of limitation. Aggrieved, the plaintiffs filed an appeal in the Court of District Judge. The District Judge vide judgment reversed the judgment and decree of the trial court and came to the conclusion that, the land originally belonged to Dargah and the Plaintiffs and Defendant No. 12 were the Inamdars of the suit land.

Finally, the first appellate court held that, the Plaintiffs were entitled to a decree for possession of the suit land and accordingly allowed the appeal and decreed the suit in favour of the plaintiffs and Defendant No. 12 and against Defendant Nos. 1 to 11 and 15. Aggrieved, the present Appellants and two others filed an appeal in the High Court which was dismissed vide judgment, thus leading to this impugned matter.

HELD

The Apex Court held that the limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff.

RAGHWENDRA SHARAN SINGH V RAM PRASANNA SINGH (DEAD) BY L.RS.

Date : 13.03.2019

Citation : Supreme Court of India [AIR 2019 SC 1430]

SYNOPSIS

The Supreme Court held that considering the affirmations and allegations made in the suit, the same when considered against the backdrop of the law of limitation would have to be decided as a matter of law and fact, and that Courts were to come to a conclusion with regards to the limitation period only after due consideration of fact and law.

FACTS

The Respondent-Plaintiff filed suit against the Appellant for a declaration that the deed of gift executed in favour of the Appellant was showy and a sham transaction and that no title and possession with respect to the gifted property was ever passed to the Appellant/Original-Defendant and hence the same is not binding on him. Appellant/Original - Defendant after filing his written statement, filed an application under Order 7 Rule 11 of Code for rejection of the plaint on the ground that the suit is clearly barred by law of limitation.

The Trial Court rejected the said application on the ground that from the perusal of records and other documents, for determining the question of Limitation, oral evidence was required to be taken into account. Appellant filed a revision application before the High Court. By the impugned judgment and order, the High Court had dismissed the revision application and has confirmed the order passed by the Trial Court rejecting the Order 7 Rule 11 application.

ISSUES

Whether the plaint was liable to be rejected as barred by limitation?

HELD

The Court observed that the lower Courts had materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure.

A. Now, so far as the application on behalf of the original Plaintiff and even the observations made by the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence is concerned, considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers Under Order 7 Rule 11(d) of the Code of Civil Procedure.

B. It was required to be noted that even from the averments in the plaint, it was visible that during the twenty-two years, the suit property was mortgaged by the Appellant herein-original Defendant and the mortgage deed was executed by the Defendant.

Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the Plaintiff had tried to bring the suit within the period of limitation which, otherwise, was barred by law of limitation.

Therefore, the suit was clearly barred by law of limitation, the plaint was required to be rejected in exercise of powers under Order 7 Rule 11 of the Code of Civil Procedure.

MURUGAN AND ORS. V KESAVA GOUNDER (DEAD) THR. L.RS. AND ORS.

Date : 25.02.2019

Citation : Supreme Court of India [AIR 2019 SC 2696]

SYNOPSIS

The Apex Court observed that it is necessary for the person claiming through minor to bring an action within a period of three years from the date of the death of the minor to get the sale deed executed, set aside.

FACTS

The Plaintiffs' case was that Balaraman had no authority to execute Sale Deed on behalf of his minor son Palanivel and Sale Deeds executed by Balaraman were void. It was further pleaded that validity of the Will dated 17.05.1971 has been upheld by the Subordinate Judges Court. The Trial court held that, the

Plaintiff having filed the suit as reversioner, Article 65 of Limitation Act would apply thus making the period for limitation, 12 years and thus, the suit was within time. The Defendants aggrieved by judgment of trial Court filed for an appeal.

The Appellate Court held that, since Palanivel died on 11th February 1986, the suit should have been filed to set aside sale deeds and for possession within 3 years from his death. Suit filed in 1992 was barred by limitation. Appellate Court relied on Article 60 of Limitation Act. Aggrieved against the judgment of First Appellate Court, Plaintiffs filed second appeal in High Court.

The High Court vide its judgment dismissed the second appeal while holding that, the alienations made by Balaraman could be construed only as voidable alienations and not void alienations.

The High Court also held that, the Plaintiffs suit ought to have been filed within 3 years as per Article 60 of Limitation Act. High Court dismissed second appeal. Aggrieved against the judgment, this appeal was filed.

ISSUES

Whether the suit filed by the Plaintiffs-Appellants was barred by limitation?

HELD

The Apex Court held that:

A. The said period of limitation is available when suit is filed for possession of immovable property on any interest therein based on title. The present is a case where, by registered sale deeds the property was conveyed by the father of the minor was nominee party.

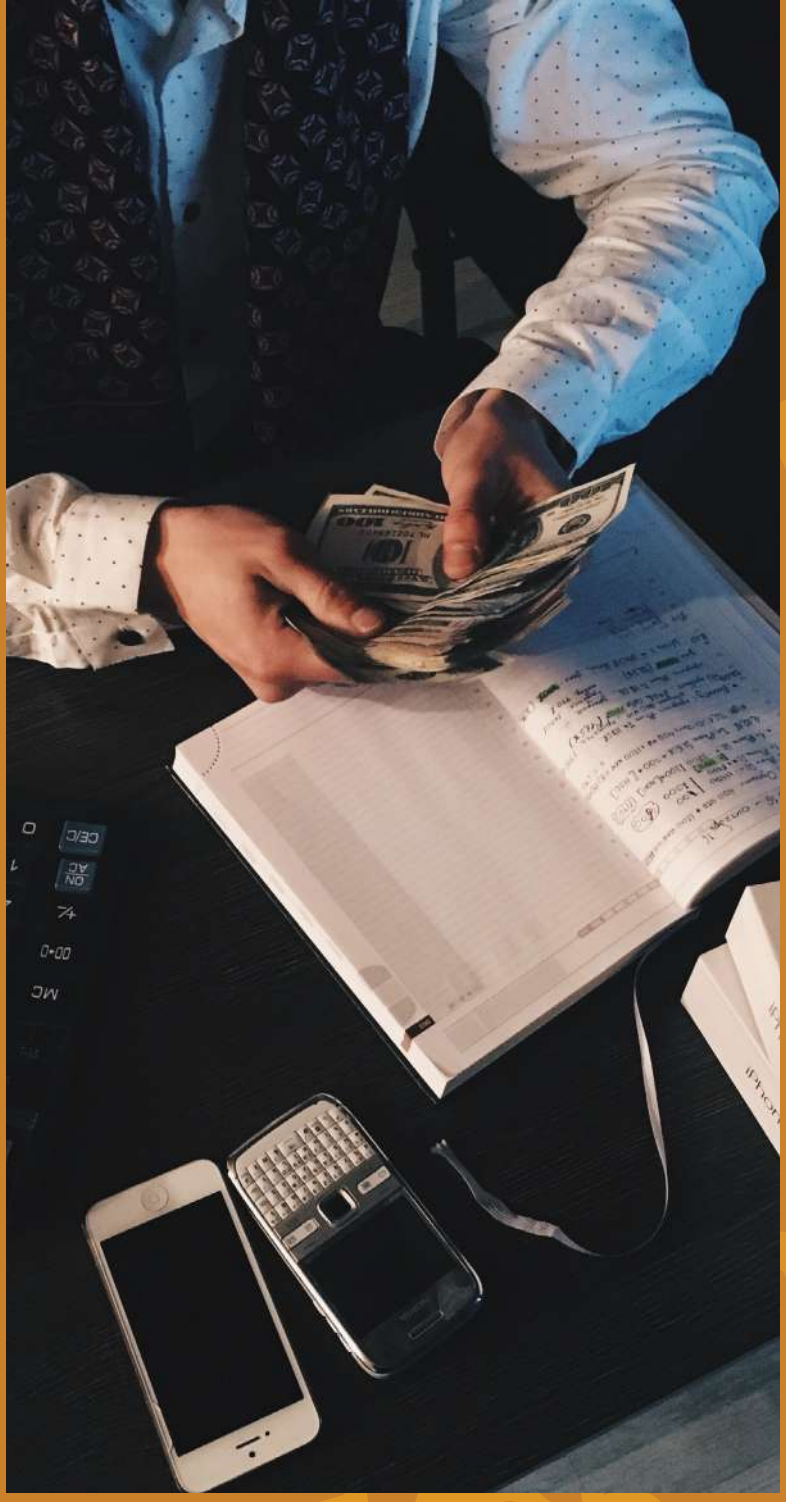
   Thus, when sale deed was executed by Balaraman he purported to convey the right of the minor also. The sale deeds being voidable and not void, Plaintiffs cannot rely on Article 65. We, thus, are of the view that first Appellate Court and the High Court has rightly held that limitation for suit was governed by Article 60 and the suit was clearly barred by time.

B. Limitation Act, 1963 had been enacted by Parliament after enactment of Hindu Minority and Guardianship Act, 1956. Article 60 of Limitation Act, 1963 which provided for limitation “suits relating to decrees and instruments”.

   Limitation Act contemplated suit to set aside a transfer of property made by guardian of a ward for which limitation was contemplated as three years. Article 60 of Limitation Act although provided for a limitation of a suit but also clearly indicated that to set aside a transfer of property made by guardian of a ward, a suit was contemplated.

C. In present case, it was necessary for person claiming through minor to bring an action within a period of three years from date of death of minor to get sale deed executed by Balaraman set aside.

   Sale deeds executed by Balaraman were not repudiated or avoided within period of limitation as prescribed by law.



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PREVENTION OF MONEY LAUNDERING ACT

2002

MOHAMMAD ARIF. V DIRECTORATE OF ENFORCEMENT, GOVT. OF INDIA

Date : 13.07.2020

Citation : Orissa High Court [BLAPL No. 2607 of 2020]

SYNOPSIS

The High Court held that the offence of Money Laundering is an act of financial terrorism that poses a serious threat not only to the financial system of the country but also to the integrity and sovereignty of a nation.

FACTS

A case was registered for offences under provisions of the I.P.C. and Prize Chits and Money Circulation Schemes (Banning) Act, 1978 on the basis of a written complaint alleging that there had been an instance of cheating and fraud through an attractive investment scheme of M/s. Fine Indisales Pvt. Ltd. (hereinafter referred as to M/s. "FIPL"). It was further alleged that for the investments made by the complainant, the financial product nor the product voucher as per the agreement with M/s.

FIPL was not delivered and M/s. FIPL collected huge amounts of money from the public and ultimately duped huge amount from innocent public by giving false assurance of high return for their deposit of money. The case corresponding to the original FIR was also recorded by the Enforcement Directorate as the said FIR revealed the commission of certain Scheduled Offences under PML Act, 2002 and investigation was taken up under various provisions of The Prevention of Money Laundering Act, 2002.

The investigation revealed that M/s. FIPL had floated said fraudulent scheme of their company on inviting deposits from public deceitfully and advertised as a "Multi-level marketing scheme" with a terminal ulterior motive to siphon off the funds collected from public. The advertised scheme of FIPL, ex-facie appeared to be a bodacious Ponzi scheme, inducing susceptible depositors by way of misrepresentation, promising immediate refund in case of any default and timely payment of return on the part of M/s. FIPL. This economic demonology at the hands of M/s. FIPL, its Directors and Shareholders was instrumental in making a windfall gain of about Rs. 703 crores, as revealed from their own records. The matter was thus pending before the High Court for consideration of bail.

HELD

The Court held that:

A. The Prevention of Money Laundering Act, 2002 was passed in furtherance of United Nations resolution (June 1998) to curb and deter economic offences. The said Act came into force on 1st July 2005 which is modelled after the Criminal Justice Act of the United Kingdom, it imposes criminal liability on those who know or suspect that someone is involved in laundering the proceeds of crime and fail to report it.

   The act money laundering involves the process of placement, layering and integration of "proceeds of crime" as envisaged under Section 2 (u) of the Act, derived from criminal activity into mainstream fiscal markets and transmuted into legitimate assets. It has been realized globally that laundering of tainted money having its origins in large scale economic crimes pose a solemn threat not only to the economic stability of nations but also to their integrity and sovereignty.

B. Two types of offences have been contemplated under the PML Act: (a) the actual commission of a scheduled offence which generates tainted wealth or proceeds from the scheduled crime and (b) the laundering of the "proceeds of crime" so generated. The Act is amply clear, that even though a person may not have actually committed a scheduled offence as provided under the Act but upon subsequent participation in the laundering of such monies will nonetheless render him culpable under the Act.

   Money Laundering is an independent as well as continuing offence, which can be inferred from its very definition under Section 2(p) of the Act. The offence is treated as continued offence as long as accused remains in

possession, causes concealment of the nature of the money or continues to mask the tainted money as untainted.

Enforcement Directorate is not investigating the Scheduled offences but the offence of money laundering which is a distinct and separate offence committed "after the commission" of Scheduled offence and which continues to be committed as long as the possession, acquisition and the projection of tainted money as untainted continues.

C. Section 45 of the PML Act makes the offence of money laundering cognizable and non-bailable and no person accused of an offence under PMLA shall be released on bail or on his own bond unless the geminated conditions therein are satisfied viz. (i) that the Public Prosecutor has been given an opportunity to oppose the application for such release and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are "reasonable grounds for believing" that the accused is not guilty of such offence and the accused is not likely to commit any offence while on bail.

D. The offence of Money Laundering is nothing but an act of financial terrorism that poses a serious threat not only to the financial system of the country but also to the integrity and sovereignty of a nation.

The International Monetary Fund estimates that laundered money generates about $590 billion to $1.5 trillion per year, which constitutes approximately two to five percent of the world's gross domestic product. The Supreme Court of India has consistently held that economic offences are sui generis in nature as they stifle the delicate economic fabric of a society. These offences permeate to human consciousness posing numerous questions on the very integrity of the business world.

The offences, such as this, are committed with a deliberate design with an eye on personal profit and often shown to be given scant regard for a sordid residuum left behind to be borne by the unfortunate "starry eyed" petty investors. The perpetrators of such deviant "schemes," including the petitioner herein, who promise utopia to their unsuspecting investors seem to have entered in a proverbial "Faustian bargain" and are grossly unmindful of untold miseries of the faceless multitudes who are left high and dry and consigned to the flames of suffering.

E. The abuse of financial system has great potential to negatively impact a country's macroeconomic performance and may also adversely impact its cross-border externalities. Further, such actions by the offender inflict reputational damage of the country in the world of business and commerce both inside the country and abroad. The act of money laundering is done in an exotic fashion encompassing a series of actions by the proverbial renting of credibility from the innocent investors.

The offenders often target the unsuspecting, rural and economically distressed populations of our state who while hoping for a dreamy return, part with their hard-earned monies.

SEEMA GARG AND ORS. V THE DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT

Date : 06.03.2020

Citation : Punjab & Haryana High Court [2020 (2) RCR(Criminal) 701)]

SYNOPSIS

The Court held that the property acquired prior to the commission of scheduled criminal activity under PMLA, 2002, cannot be attached.

FACTS

On the basis of a FIR under Section 177, 420, 465, 467, 468, 471 of IPC, against M/s. Jaldhara Exports, alleging fraudulent refund of VAT during February-March 2013, Respondent-Enforcement Directorate on 14.8.2013 registered an Enforcement Case Information Report (for short 'ECIR').

The Deputy Director-Respondent provisionally attached a property belonging

to Smt. Seema Garg & Smt. Sangeeta Garg and another property belonging to Saiyrah Garg. The Respondent praying confirmation of provisional attachment filed a complaint before Adjudicating Authority which confirmed the attachment for a period of 90 days during the pendency of investigation or pendency of the proceeding before a court under PMLA.

The Appellants filed an appeal before the Tribunal which dismissed said appeals.

ISSUES

The issues framed for consideration are as follows:

A. Whether provisional attachment of property is sustainable after the expiry of 90 or 365 days from the date of order passed by adjudicating authority?
B. Whether property acquired prior to enactment of PMLA i.e. prior to 1.7.2005 can be provisionally attached under Section 5 of the PMLA?
C. Whether phrase 'value of such property' occurring in definition of 'proceeds of property' includes any property of any person irrespective of source of property?
D. Whether officer attaching property is required to record reason that property is likely to be concealed, transferred or dealt with in any manner which may frustrate proceedings relating to confiscation?

HELD

A. As per clause (a) of Sub-Section (3) of Section 8 of the PMLA, the provisional attachment shall continue during investigation for a period not exceeding 90 days. The aforesaid period of 90 days has been increased to 365 days w.e.f. 01.08.2019 vide amendment Act 7 of 2019. The concept of 90 days period during investigation was introduced w.e.f. 19.04.2018.
B. Property purchased prior to commission of scheduled offence leaving aside date of enactment of PMLA, does not fall within ambit of "Any property derived or obtained directly or indirectly as a result of criminal activity relating to scheduled offence" as provided in the definition of 'proceeds of crime', however it certainly falls within purview and ambit of the third section of the definition namely - " Property equivalent in value held in India or outside where property obtained or derived from criminal activity is taken or held outside the country".

   If property derived or obtained from scheduled offence is taken or held outside India, the property of equivalent value held in India or abroad may be attached irrespective of date of purchase. Any property irrespective of date of purchase may be attached if property derived or obtained from scheduled offence is held or taken outside India.
C. There may be a case where a person accused of commission of scheduled offence, on account of destruction or disposal of property, is having no property. Non-availability of property derived from scheduled offence does not immune an accused from offence of money laundering committed under Section 3 of the PMLA.

   As per scheme of the Act, there is criminal liability of an accused apart from civil liability of attachment of property, thus object of the Act is not defeated merely on the ground that property derived from crime is not available for attachment. The property derived from legitimate source cannot be attached on the ground that property derived from scheduled offence is not available.

   There are so many scheduled offences where property may or may not be involved because every scheduled offence is not committed for the sake of property e.g. offence relating to wild animals, waging war against Government of India, murder, attempt to murder, offences under Arms Act.

   Therefore, the phrase 'value of such property' does not mean and include any property which has no link direct or indirect with the property derived or obtained from commission of scheduled offence i.e. the alleged criminal activity.
D. Lastly, an authority required to record reasons prior to initiating any action is

duty bound to record reasons in writing which cannot be mere formality but should be germane and relevant to the subjective opinion formed by authority. Reasons recorded are subject to judicial review and court may look into material which made basis of reasons recorded.

Furthermore, as per Section 5 of the PMLA, Director or any other Officer authorized by him is duty bound to record reasons on the basis of material in his possession that proceeds of crime are likely to be concealed or transferred or in any other way dealt with which may frustrate any proceedings relating to confiscation.

SHYAM SUNDAR SINGHVI & ORS. V UNION OF INDIA

Date : 10.02.2020

Citation : Supreme Court of India [Special Leave to Appeal (Crl.) No. 792/2020]

SYNOPSIS

The Supreme Court in complete appreciation of the facts and circumstances as dealt with by the Trial Court and the Rajasthan High Court held that no grievous error had been committed in the issuance of the arrest warrants thus further confirming the ratio laid down by the Rajasthan High Court, which deemed that summons through non-bailable warrants for offences under PMLA, 2002 are within the ambit of the legislative intent of the Act.

FACTS

The Petitioners approached the Supreme Court contesting an earlier judgement passed by the Rajasthan High Court in which the refusal of the Trial Court to convert arrest warrants of the Petitioners into bailable warrants through powers conferred under Section 70(2) CrPC.

Brief facts of the case that lead to the issuance of the arrest warrants were that the petitioner had misused his official position to hatch criminal conspiracy to cause loss of revenue to the State Exchequer. After registration of the impugned FIR the Anti-Corruption Bureau (hereinafter referred to as the "ACB"), found that the accused was engaged in the business of mining and was a tout of the Department of Mines and used to identify businessmen engaged in the mining business anywhere in the State of Rajasthan, with the help of officers of the Department of Mines.

The accused, because of his close association with the co-accused, the then Principal Secretary, Department of Mines, used to get instructions to close the mines of the businessmen for one or another reason and thereafter used to contact the businessmen and after striking out deals with officers of the Department of Mines, got the mines reopened while imposing minor penalty in collusion with the officers of the Department of Mines and in lieu of the said transaction, he used to collect huge amount of money from the businessmen.

The Directorate of Enforcement, after the charge-sheet being filed by the ACB, registered an Enforcement Case Information Report (ECIR) against eight accused persons on the allegations of money laundering under the Prevention of Money Laundering Act, 2002 which involved 'proceeds of crime' amounting to Rs. 2.55 Crores, as offences punishable under Sections 120-B IPC and Sections 7, 8, 9, 10 & 13 of Prevention of Corruption Act, were specified under Paragraph-1 & Paragraph-8 respectively of Part-A of the scheduled offences under PMLA, 2002. The Special Judge, after hearing submissions of Enforcement Directorate, proceeded to take cognizance against the accused persons including the petitioner for offences under Section 4 of the PMLA, 2002 and also ordered to secure the presence of all the accused persons through execution of arrest warrants.

ISSUES

Whether a non-bailable warrant can be issued for offences under PMLA, 2002?

HELD

The Rajasthan High Court observed that -

A. A reading of Section 3 of the PMLA, 2002 reveals that the offence of money laundering is an offence regarding indulging in any process or activity connected with proceeds of crime including its

concealment, possession, acquisition or use and further projecting and claiming the same to be untainted property.

B. The Court in affirming an earlier judgement passed in the case of I*nder Mohan Goswami Vs. State of Uttaranchal* [(2007) 12 SCC 1] also emphasised on the point that economic offences are required to be dealt with strict approach as these offences affect the economy of the whole Nation and economic offences are committed with a pre-meditated design.

   This court finds that the economic offences stand on a different footing and they constituent a class apart and need to be visited with a different approach. The economic offences have deep rooted conspiracies and involving huge loss of public funds and thus, need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

C. Lastly, the court emphasised that the status of the accused is one of the considerations that has to be taken into account and those people who are supposed to uphold the law and if they violate the law such persons should also realize the consequences of violating the law.

RAKESH KUMAR GARG V UNION OF INDIA & ORS.

Date : 05.07.2019

Citation : Delhi HC [Writ Petition (Criminal) No. 7071/2019]

SYNOPSIS

The Delhi High Court held that non-filing of charge-sheet within 3 months cannot be a ground for revoking suspension order

FACTS

The petitioner had preferred a writ petition to assail an earlier order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal"). The Tribunal had rejected the impugned Original Application preferred by the petitioner wherein he had assailed the continuation of his suspension. He was initially placed under suspension on the ground that he had been detained by the CBI. His initial suspension of 90 days was extended for a further period of 180 days. The suspension of the petitioner was then further extended for a period of 180 days.

HELD

The Court in the present matter, while analysing all the judgements provided for came to the unwavering decision that because the suspension orders had initially been invoked so as to prevent the Petitioner, a high ranking government official from influencing witnesses and tampering with the evidence of the case, it could in no way be stated that the same should have been revoked with a failure on behalf of the investigating agency to file a charge-sheet within ninety days.

The rationale used in the present matter was resonant with the ideology that because the investigation was still on-going, revocation of the same would lead to a possibility wherein a hinderance would be put on the ongoing investigations under the IPC and PMLA as various witness testimonies had not been recorded.

In summarising their view, the Court observed that there could be no hard and fast rule that in all cases where charge sheet is not filed within three months, of suspension, the same would mandatorily be revoked. The need for continuation of the same would have to be assessed on the facts of each case. Most relevant would be as follows -

A. the nature and substance of allegations;
B. the materials on which the same is founded;
C. the position held by the concerned government officer i.e. whether he is holding a portion of authority and influence, or he is a lower ranked employee with little or no power to influence others concerned with the matter.

ROTOMAC GLOBAL PVT. LTD. V DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT

Date : 02.07.2019

Citation : NCLAT - [2019] 155 SCL 250

SYNOPSIS

The Tribunal, in affirming an earlier judgement stated that Section 14 of the IBC cannot be said to be applicable to proceedings under PMLA, 2002.

FACTS

The Bank of Baroda initiated CIRP against Rotomac Global Pvt. Ltd. (hereinafter referred to as the "Corporate Debtor") after the conclusion of which, in absence of any viable and feasible resolution plan, the Adjudicating Authority ordered for liquidation of the Corporate Debtor.

The Directorate of Enforcement started investigation for commission of offences under the Prevention of Money Laundering Act, 2002 on the basis of information/material from CBI under Section 420, 467, 471, 468 & 120-B IPC and Section 13(2) r/w 13(1)(d) of the Prevention and Corruption Act. Through the investigation it found that the accused persons had misappropriated/diverted bank funds, committed criminal breach of trust and laundered the money so diverted.

The Directorate of Enforcement, basing on the material and evidences on record passed a Provisional Attachment Order, thereby attaching the properties provisionally lying in name of the Corporate Debtor and its Directors wherein it was further ordered that the same shall not be transferred, disposed, parted with or otherwise dealt with in any manner, whatsoever, until or unless specifically allowed to do so by the Directorate. After which, the Liquidator filed an application for direction from the Adjudicating Authority to Directorate of Enforcement for release of assets of the Corporate Debtor, who rejected the application giving rise to the present application preferred by the Liquidator of Rotomac Global Private Limited before the NCLAT.

ISSUES

Whether Section 14 of the IBC would be applicable in cases relating to offences under PMLA, 2002.

HELD

The Court in affirming an earlier judgement in *Varrsana Ispat Limited vs. Deputy Director, Directorate of Enforcement* [Company Appeal (AT) (Insolvency) No. 493 of 2018] observed that:

A. Section 14 is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceeds. The object of the Prevention of Money Laundering Act, 2002 is to prevent the money laundering and to provide confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

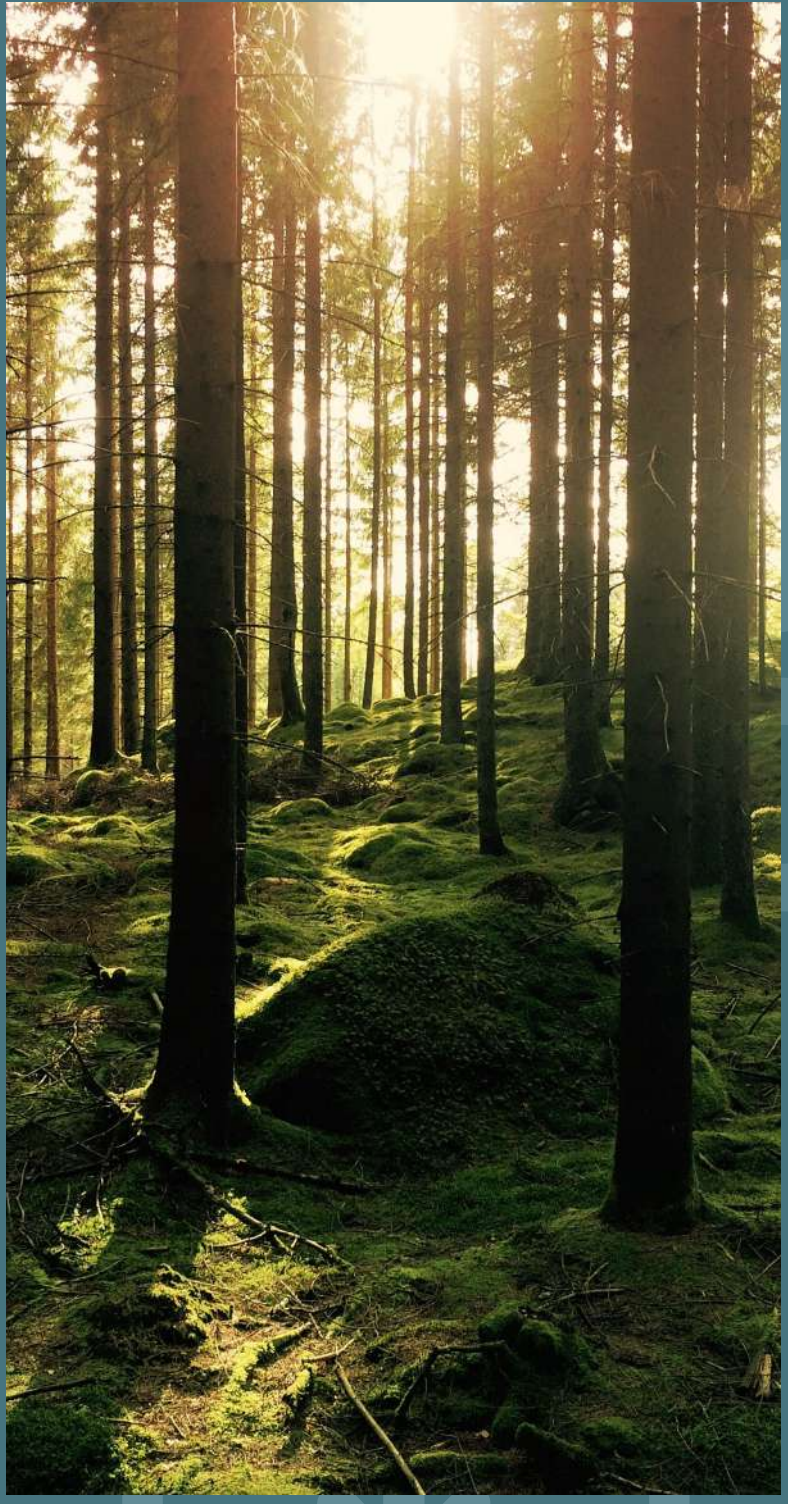
B. PMLA, 2002 relates to 'proceeds of crime' and the offence relates to 'money-laundering' resulting confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

   Thus, as the 'Prevention of Money Laundering Act, 2002' or provisions therein relates to 'proceeds of crime', we hold that Section 14 of the IBC is not applicable to such proceeding.

C. The offence of money-laundering is punishable with rigorous imprisonment which is not less than three years and has nothing to do with the Corporate Debtor.

   It will be applicable to the individual, which may include the Ex-Directors and Shareholders of the Corporate Debtor and they cannot be given protection from the 'Prevention of Money Laundering Act, 2002' and such individual cannot take any advantage of Section 14 of the IBC.

D. Lastly, because PMLA, 2002 relates to different fields of penal action of 'proceeds of crime', it invokes simultaneously with the IBC, having no overriding effect of one Act over the other including the IBC.



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PUBLIC TRUSTS

CENTRE FOR PUBLIC INTEREST LITIGATION V UNION OF INDIA

Date : 18.08.2020

Citation : Supreme Court [W. P. (Civil) No. 546 of 2020]

SYNOPSIS

PM CARES Fund is a public charitable trust.

FACTS

A writ petition was filed before the Supreme Court to direct the respondent to transfer all the donation money from the PM CARES Fund ("**Fund**") to the National Disaster Response Fund ("**NDRF**") and for future contributions to be credited to NDRF.

ISSUES

A. Whether Union of India was obliged to utilise NDRF for the purpose of providing assistance in the fight of Covid-19?
B. Whether all the contributions/grants from individuals and institutions should be credited to the NDRF rather than to the Fund?
C. Whether all the funds collected in the Fund till date be directed to be transferred to the NDRF?

HELD

It was noted that the Fund was created by constituting a trust with the Prime Minister as an ex-officio chairman of the Fund, with other ex-officio and nominated trustees. The Fund consisted entirely of voluntary contributions from individuals and organisations.

It was observed that the mere fact that administration of trust was vested in trustees, i.e., a group of people, would not itself take away the public character of the trust as had been laid down in *Mulla Gulam Ali & Safiabai D. Trust Vs. Deelip Kumar & Co*. The contributions that were made in the Fund were to be released for public purpose to fulfill the objective of the trust.

It was a charitable trust registered under the Registration Act, 1908 and the said trust had not received any budgetary support or any Government money. In light of the above, it was held that the Fund was a public charitable trust. Secondly, it was held that any person or institution could make contribution to the NDRF u/s 46(1)(b) of the Disaster Management Act, 2005 and there was no statutory prohibition on anyone from making contributions towards the NDRF. A reference was made to the notification of the Ministry of Home Affairs, as per which NDRF could be utilized to provide assistance for Covid-19 to States as well.

It was held that there could not be any prohibition in utilization of NDRF for Covid-19 relief as financial planning and fund disbursement was within the domain of the Central Government. Lastly, it was held that the money collected in the Fund were funds of a public charitable trust, different in nature from the funds collected in the NDRF with different objectives. Thus, there was no occasion to issue any direction to transfer the said funds to the NDRF.

GRANT MEDICAL FOUNDATION RUBY HALL CLINIC, PUNE V STATE OF MAHARASHTRA & ORS.

Date : 25.05.2020

Citation : Bombay High Court [WP-LD-VC-28 of 2020]

SYNOPSIS

Funds earmarked for indigent patients cannot be utilized for treating Covid-19 patients, not falling under the beneficiary categories.

FACTS

The petitioner was a public charitable trust, duly registered under the provisions of the Bombay Public Trust Act, 1950 ("**Act**") and was running a hospital by the name of Ruby Hall Clinic.

A writ petition was filed to allow it to utilize funds maintained by it for implementation of the Indigent Patient Scheme ("**Scheme**") u/s 41AA of the Act, for treating Covid-19 patients, who didn't fall in the beneficiary categories.

ISSUES

Whether the petitioner could be allowed to withdraw money from the Indigents Patients Fund for treating Covid-19 patients who didn't belong to the beneficiary categories.

HELD

It was noted that the petitioner had not mentioned the exact amount lying in the Indigents Patients Fund ("**IPF**") maintained by it and also had not disclosed its current financial status. It was only when the petitioner was compelled to disclose its current financial status, it came to the knowledge of the court that the petitioner had fixed deposits to the tune of sixty-eight crore rupees.

It was observed that the petitioner was reluctant to utilize the said amount on the ground that the same was earmarked by it for meeting its capital expenditure. However, the petitioner was seeking urgent permission to utilize the sum, which was specifically earmarked for the indigent and weaker section of the patients, as per the Scheme formulated u/s 41AA of the Act.

It was held that the relief sought would require a detailed hearing and could not be granted at this stage as an urgent relief. Hence, the relief sought by the petitioner was rejected and it was added further that the petitioner was free to use the amount lying in the IPF to treat the indigent patients suffering from Covid-19 in consonance with the Scheme of the Act.

ASHOK KUMAR GUPTA V M/S SITALAXMI SAHUWALA MEDICAL TRUST & ORS.

Date : 03.03.2020

Citation : Civil Appeal No. 1917 of 2020

SYNOPSIS

Conditions required to be satisfied in order to invoke Section 92 of the Civil Procedure Code, 1908.

FACTS

The appellants were trustees of the first defendant-trust and were persons having interest in the affairs of the trust. The appellants had filed a suit for framing a scheme for the administration of the trust, which was a public charitable trust. It was contended by the appellant that the defendants were guilty of ignoring the objectives for which the trust was created and therefore, it was prayed that fresh trustees be appointed from the medical profession for effective administration of the trust. An interim application was also filed by the appellants, seeking leave to institute the suit u/s 92 of the Code of Civil Procedure, 1908 ("**Code**"), which was granted by the district judge. However, when the matter came before the High Court, it accepted the submission that the suit was framed to vindicate the rights of the first appellant and thus, the leave u/s 92 could not be granted. Hence, an appeal was filed before the Supreme Court.

ISSUES

Whether the appellants were rightly granted leave u/s 92 of the Code.

HELD

It was observed that three conditions were required to be satisfied in order to invoke Section 92 of the Code and to maintain an action, which were that (i) the Trust in question was created for public purposes of a charitable or religious nature; (ii) there was a breach of trust or a direction of court was necessary in the administration of such a trust; and (iii) the relief claimed was one or other of the reliefs as enumerated in the said section.

Consequently, if any of these three conditions were not satisfied, then the matter would be outside the scope of said Section 92. It was noted that in the instant case, the concerned trust was created for public purposes of charitable nature. It was held that if in respect of a trust which had set up a hospital, a request was made for framing of a proper scope of administration by appointing trustee from medical profession and from public for proper and effective administration of the trust, the matter would definitely fall within the scope of Section 92 of Code, as all the three conditions had been satisfied.

In light of above, the relief prayed for could not be said to be in the nature of vindicating the personal rights of the first appellant and thus, the appeal was allowed.

IDOL OF SRI RENGANATHASWAMY V P. K. THOPPULAN CHETTIAR, RAMANUJA KOODAM ANANDHANA TRUST & ORS.

Date : 19.02.2020

Citation : Supreme Court [Civil Appeal No. 9492 of 2019]

SYNOPSIS

Conditions to be satisfied for an endowment to be a specific endowment.

FACTS

The suit property was originally purchased by Thoppulan Chettiar and a Stone Mandapam for the deity of Sri Renganathaswamy was constructed by him. He conducted charitable activities at the suit property for the benefit of the devotees.

Later, a deed of settlement ("**Deed**") was executed by him, prohibiting the future sale or mortgage of the suit property, and directing his descendants to continue carrying out the charitable activities upon his death. An appeal was filed before the Supreme Court against the order of the High Court, which permitted the first respondent-trust, to sell a portion of the suit property to the fourth respondent.

It was contended by the appellant that the first respondent-trust was a public religious trust created for the purpose of carrying out charitable objects and thus, the suit property constituted a specific endowment as contemplated u/s 6(19) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 ("**Act of 1959**").

According to the appellant, u/s 34 of the Act of 1959, only the Commissioner of Hindu Religious and Charitable Endowments had the power to grant sanction for alienation of the suit property of a trust and the civil court had no jurisdiction.

ISSUES

Whether the Deed created a specific endowment as regulated by the Act of 1959.

HELD

It was observed that the Deed created an absolute prohibition on the subsequent sale or mortgage of the suit property and allotted the said property for charity work. With respect to the legal heirs, the Deed created an obligation on the settlor's legal heirs to continue the charitable activities at the suit property and thus, it was established that the Deed created an endowment for charitable purposes.

The endowment was a specific endowment because it was a public charity, as the beneficiaries were either the public at large or an amorphous and fluctuating body of persons incapable of being specifically identifiable. Secondly, the endowment was associated with a Hindu religious festival as the Deed stated that the charity was to be carried out for the benefit of the devotees of Sri Renganathaswamy, who visited during the Chithirai Gajendra Moksham and Padi Eighteen festivals. In light of above, it was held that the first respondent trust was a specific endowment under the Act of 1959. Thus, the appeal was allowed, and the judgment of the Madras High Court was set aside.

W.N. ALLAL SUNDARAM V COMMISSIONER H.R. & ORS.

Date : 22.11.2019

Citation : Civil Appeal No. 8349 of 2017

SYNOPSIS

Conditions to be satisfied for an endowment to be a specific endowment.

FACTS

The case of the appellant was that the trust which was created by Bagyammal was a private family trust which could not have attracted the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 ("**Act of 1959**"). The plaint schedule property had been settled in favour of Bagyammal by her predecessors under a deed of settlement, in pursuance of which she was in possession and enjoyment of the property between 1928 and 1959.

A suit was filed by the appellant before the trial judge, praying for setting aside the order passed by the respondent and for a declaration to the effect that the Bagyammal trust was not a specific endowment, which was decreed. However, the judgment of the trial court was reversed by the single judge of the High Court. Thus, a special leave petition was filed before the Supreme Court by the appellant.

ISSUES

Whether the original deed of settlement was in the nature of a specific endowment within the meaning of Section 6(19) of the Act of 1959.

HELD

It was observed that Bagyammal was entrusted with the suit property only to construct an additional choultry to accommodate the devotees of Sree Agastheeswara Swamiyar Devasthanam Temple. The deed of settlement indicated that the choultry was to be specifically utilised for the purpose of extending facilities to pilgrims who visited the Devasthanam.

Furthermore, Bagyammal was restrained from creating any encumbrance on the suit property and it was to be maintained by Bagyammal, her descendants or her nominees. The choultry was to be utilised at all times for the use of the general public. It was noted that in view of the clear terms emerging from the deed, the definition of the expression, specific endowment in Section 6(19) was attracted.

The suit property was endowed specifically for the performance of a religious charity in the temple and therefore, was covered within the scope of definition of specific endowment in Section 6(19). Thus, the appeal was dismissed, and it was held that the decision of the High Court was entirely correct.

REVANSINDH DEV & ORS. V THE CHARITY COMMISSIONER & ORS.

Date : 14.08.2019

Citation : Bombay High Court [W.P. No. 7458 of 2018]

SYNOPSIS

Charity Commissioner's circular barring pujaris from becoming trustees of the temple trust set aside.

FACTS

The petitioners had challenged a portion of a circular dated 13.11.2017, issued by the Charity Commissioner-respondent, State of Maharashtra. The petitioners were pujaris of different religious places situated in the State of Maharashtra, who were governed by their respective trusts.

Their short grievance was that by virtue of the said circular, all the beneficiaries were barred from being appointed as trustees of their respective trusts by the respondent. It was contended by the petitioners that there was no embargo under the Maharashtra Public Trusts Act, 1950 of the nature, as was envisaged in the circular. By virtue of the directives in the said circular, all the beneficiaries such as the pujaris of the trusts were prevented from being appointed or continuing as trustees of their trust.

ISSUES

Whether pujaris could be prevented from being appointed as trustees of the temple trust on ground of being in conflict with the interest of the trust.

HELD

Reliance was placed on the judgment of the Supreme Court in Trambakeshwar Devasthan Trust & Anr. V President, Purohit Sangh & Ors., in which it had observed that the High Court had not only kept in mind the interest of the public, but also the interest of the temple and thus, had rightly held that that Tungars, Purohits and Pujaris had interest in the trust and not necessarily an interest which was in conflict with the interest of the trust. Furthermore, it had noted that their representation in the board of trustees was

necessary to ensure the smooth functioning of the temple. Their appointments in the trust was not in conflict with the interest of the trust only because they had interest in the cash offerings and the consideration for the pujas.

Thus, there was a perceptible difference between "person having interest in the trust" and "person having conflict of interest". In light of the above, it was held that the relevant portion of the said circular be set aside, and any action initiated pursuant to such directive be also set aside. Hence, the petition was allowed.

VIJAY PULLARWAR & ORS. V SHRI HANUMAN DEOSTAN (PUBLIC TRUST THROUGH ITS TRUSTEES)

Date : 16.11.2018

Citation : Supreme Court [Civil Appeal No. 7789 of 2011]

SYNOPSIS

Whether the property is a property of the trust and including the question as to whether it should be so recorded as the property of the trust, is a matter exclusively within the domain of the Charity Commissioner.

FACTS

The first respondent was a public trust, which was duly registered under the provisions of the Bombay Public Trusts Act, 1950 ("**Act of 1950**"). The respondents had filed a suit for possession on the basis of title and contended that the suit property occupied by the predecessor of the appellants, namely Wasudeo Pullarwar, was the property of the respondent and consequently, the appellant-occupant had no right, title or interest in the suit property.

The suit was contested by the appellants, who asserted that the respondents had no locus to institute the suit and that the suit was not maintainable due to the absence of permission of the Charity Commissioner for filing suit for possession of immoveable property allegedly belonging to a public trust.

The trial court accepted the claim of the respondents that the suit house was the property of the public trust, which was reversed by the district court. However, the High Court allowed the appeal filed by the respondents and restored the decree of possession passed by the trial court. Hence, an appeal was filed before the Supreme Court.

ISSUES

Whether the High Court had exceeded its jurisdiction u/s 100 of the Code of Civil Procedure, 1908 in reversing the judgment of the first appellate court.

HELD

It was observed that whether a trust exists or not and whether a particular property belongs to such trust, was to be decided by Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal. The claim of the respondent could have been answered on the basis of the registration application of the trust and Schedule I.

However, the registration application and the description of the suit property given in Schedule I as the registered property of the public trust, were both disregarded by the High Court. It was noted that the High Court had made a grave error by brushing aside the findings recorded by the first appellate court. In light of above, it held that the decision of the first appellate court was correct as the respondents had failed to provide any documentary evidence to establish their claim that the suit property was the property of the trust.

Hence, the appeal was allowed, and the decision of the High Court was set aside.

SHRI AMBADEVI SANSTHA & ORS. V JOINT CHARITY COMMISSIONER & ORS.

Date : 25.09.2018

Citation : Supreme Court [Civil Appeal No. 9936 of 2018]

SYNOPSIS

Charity Commissioner has to be objectively satisfied that there is a necessity to alienate the property in the interest of public trust.

FACTS

The appellant was a registered public trust under the Bombay Public Trusts Act, 1950 ("**Act of 1950**"). The erstwhile secretary of the old body of the appellant-trust had applied to the Joint Charity Commissioner ("**JCC**") for grant of permission to sell the properties of the appellant-trust, which was objected by two persons.

Subsequently, the newly elected body of the appellant-trust had also approached the JCC and 15 trustees had objected to selling of the said properties. However, despite the objections, the JCC granted the permission for the sale of the same. Aggrieved by this, a writ petition was filed before the High Court by the appellant-trust, which was dismissed. Hence, an appeal was filed before the Supreme Court.

ISSUES

Whether the order passed by JCC with respect to the sale of properties of the appellant-trust, in violation of Section 36 of the Act of 1950.

HELD

It was observed that the power to grant sanction had to be exercised by the Charity Commissioner, taking into consideration three classic requirements i.e. the interest, benefit, and protection of the trust.

The Charity Commissioner had to be objectively satisfied that there was a necessity to dispose of the property in the interest of public trust. Its power also included inviting offers from the members of the public and also to direct the trustees to sell or transfer the trust property to a person, whose bid or the quotation was the best.

It was noted that the JCC had failed to ascertain the actual price of the properties and the permission to sell the properties had been granted in a mechanical manner, ignoring the illegality of the transactions.

Furthermore, the transactions could not have been finalized nor possession could have been handed over before filing application to the JCC u/s 36 of the Act of 1950.

Thus, the transaction was wholly impermissible and in violation of the intendment of the provisions contained u/s 36. In light of above, the appeal was allowed and judgment of the High Court was set aside.

SNG & PARTNERS
Advocates & Solicitors

WILDLIFE PROTECTION ACT

1972

RED LYNX CONFEDERATION VS. UNION OF INDIA AND ORS.

Date : 10.08.2020

Citation : Supreme Court of India [Writ Petition(s) (Criminal) No(s). 166/2020]

SYNOPSIS

The Supreme Court dismissed the PIL challenging the constitutional validity of the provisions under Sections 11 and 55(c) of the Wildlife Protection act, 1972 which deal with the authorised hunting of wild animals when they pose a threat to either human life or crop and the conditions requisite for Courts to take cognizance of offences under the Act, respectively.

FACTS

A Public Interest Litigation was brought to the Supreme Court with the following reliefs being sought:

A. "Issue a writ of mandamus, or any appropriate writ, order or direction to Centralize all the weapon license holder's data and activities through an intelligence software for strict monitoring of crop protection and sports category to avoid illegal use weapon and ammunition (explosives) AND/OR;
B. Guidelines may be framed to have Veterinarian as wildlife wardens and in wildlife sections of the Ministry; Veterinarian Council of India is defunct since 2017 and to be made operational honouring Indian Veterinarian Council Act 1984 Section 30, 54 & 56 AND/OR;
C. The section 55(c) [60 days' notice] and Section 11 of Wildlife Protection Act 1972 are unconstitutional and inhumane and hence it to be declared ultra vires AND/OR;
D. Court may pass any other order which may deem fit for managing population control effective solution to reduce Human Animal Conflict."

HELD

The Division Bench of the Supreme Court held that relief sought in prayer clause 1 cannot be granted. Moreover, the reliefs which have been sought in prayer clauses 2 and 3 trench upon an area of policy. No valid basis has been indicated in the petition in respect of the prayer for challenging the constitutional validity of Section 55(c) and Section 11 of the Wildlife Protection Act 1972. In the absence of any cogent foundation in the pleadings both on facts and law, we are not inclined to entertain the petition under Article 32. A petitioner who moves the court purportedly in public interest is not exempt from observing the essential principles of pleading.

TATA HOUSING DEVELOPMENT COMPANY LTD. VS. AALOK JAGGA AND ORS.

Date : 05.11.2019

Citation : Supreme Court of India [2020 (10) FLT1]

SYNOPSIS

The Apex Court, while noting the adverse impact of humanities expansive activities observed that the Court must perform its duty in such a scenario when the authorities have failed to protect the wildlife sanctuary eco-sensitive zone and held that no permission could be given in the present matter for construction to be carried out within such close proximity of the Wildlife Sanctuary.

FACTS

The Appellant had proposed to develop a project in the revenue estate of village, 123 metres from the boundaries of the Sukhna Wildlife Sanctuary. Appellant applied for environmental clearance from SEIAA.

The MoEF recommended for environmental clearance in its meeting. The Nagar Panchayat Naya Gaon granted permission to raise the construction to Appellant. The High Court had ultimately given the finding that the project site was found to be a part of the area of Sukhna Lake.

The permission granted by Nagar Panchayat to the Appellant had been set aside. On writ petition, the High Court had ultimately given the finding that the project site was found to be a part of the area of Sukhna Lake. The permission granted by Nagar Panchayat to Appellant had been set aside.

ISSUES

Whether housing activities can be permissible within short distance from a Wildlife Sanctuary.

HELD

The Apex Court held that -

A. The most potent threat faced by the earth and human civilization as a whole which is confronted with, today, is environmental degradation and wildlife degeneration. The need to protect flora and fauna which constitutes a major portion of our ecosystem is immediate.

   Development and urbanization coming at the cost of adversely affecting our natural surroundings will in turn impact and be the cause of human devastation as was seen in the 2013 floods in Uttarakhand and in 2018 in Kerala. The climate change is impacting wildlife by disrupting the timing of natural events.

   With warmer temperatures, flowering plants are blooming earlier in the year and migratory birds are returning from their wintering grounds earlier in the spring.

B. Wildlife conservation in India has a long history, dating back to the colonial period when it was rather very restrictive to only targeted species and that too in a defined geographical area. Then, the formation of the Wildlife Board at the national level and enactment of Wildlife Act in 1972 laid the foundation of present day "wildlife conservation" era in post-independent India. Project Tiger in the 1970s and the Project Elephant in 1992-both with flagship species-attracted global attention.

   India then also became a member of all major international conservation treaties related to habitat, species and environment like Ramsar Convention, 1971; Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973; Convention on Migratory Species, 1979; Convention on Biological Diversity, 1992, among others

C. The human as well as the wildlife are completely dependent upon environment for their survival. Human is completely dependent on the environment. Like the human, the wildlife is also dependent on the environment for its survival and also get effected by the environment. The relationship between the human and animal can be understood by the food-chain and food-web.

   The wildlife is affected by several reasons such as population, deforestation, urbanization, high number of industries, chemical effluents, unplanned land-use policies, and reckless use of natural resources.

D. Such projects cannot be permitted to come up within such a short distance from the wildlife sanctuary.

   Moreso, in view of the Notification issued with respect to the Sukhna wildlife sanctuary towards the side of Chandigarh Union Territory and also considering the fact that proposal made by the Punjab Government, confining the Buffer Zone to 100 meters, has rightly not been accepted by MoEF, as the Government of Punjab as well as the MoEF, cannot be the final arbiter in the matter.

E. The Court has to perform its duty in such a scenario when the authorities have failed to protect the wildlife sanctuary eco-sensitive zone. The entire exercise of obtaining clearance relating to the project is quashed.

   We regret that such a scenario has emerged in the matter and that it involved a large number of MLAs of Punjab Legislative Assembly. The entire exercise smacks of arbitrariness on the part of Government including functionaries.

WITNESS PROTECTION

MAHENDER CHAWLA & OTHERS V UNION OF INDIA & OTHERS

Date : 05.12.2018

Citation : (2019) 14 SCC 615

SYNOPSIS

Witness Protection Scheme made law under Article 141 and 142 of the Constitution.

FACTS

The writ petition is filed by the petitioners under Article 32 of the Constitution of India raises important issues on the efficacy of the criminal justice system in this country.

In the instant case the petitioners have approached this Court with allegations that in the trials that are going on against one Asaram, who has been charged with the offence of committing rape.

In numerous cases, the witnesses have been threatened with serious consequences in case they depose against Asaram. It is alleged that as many as 10 witnesses have already been attacked, and that three witnesses have been killed. These petitioners include a witness, father of a murdered witness, father of the child rape victim and a journalist who escaped murder attempt by goons of godman Asaram.

ISSUES

Directions to the State for protection and identity of witnesses in criminal cases under Article 32 read with Article 141 and 142 of the Constitution of India.

HELD

Oral evidence that is the deposition of witnesses play a vital role in facilitating the court to arrive at disputed questions of facts and to find out where the truth lies. They are, therefore, the backbone in the decision-making process. Bentham stated more than 150 years ago that "witnesses are eyes and ears of justice". The conditions of witnesses in Indian Legal System can be termed as "pathetic".

There are many threats faced by the witnesses at various stages of an investigation and then during the trial of a case. Apart from facing life threatening intimidation to himself or herself and to his/her relatives, and the trauma of attending the court regularly. It is due to the lack of witness protection program in India and the treatment that is meted out to the witnesses; there is a tendency of reluctance in coming forward.

These witnesses neither have any legal remedy, nor do they get suitably treated. The present legal system takes witnesses completely for granted. They are summoned to court regardless of their financial and personal conditions. They are not even suitably remunerated for the loss of time and expenditure towards conveyance, etc.

This has created problems of low convictions in India. This has had serious repercussions on the criminal justice system itself. Criminal justice is closely associated with human rights. Whereas, on the one hand, it is to be ensured that no innocent person is convicted and thereby deprived of his liberty, it is of equal importance to ensure, on the other hand, that victims of crime get justice. In this whole process, the protection of witnesses assumes significance to enable them to depose fearlessly and truthfully.

It would also ensure a fair trial and the rule of law. The right to life also includes in its fold the right to live in a society, which is free from crime and fear and right of witnesses to testify in courts without fear or pressure. Issues of protection of the identity of witnesses and witness protection program have been raised in a number of judgements.

The Central Government placed on record, the Witness Protection Scheme, 2018, based on the inputs received from the States, Union Territories, States Legal Services Authorities, High Courts, police personnel and open sources including civil society.

A clear reading, the essential feature of the Witness Protection Scheme, 2018 include identifying categories of threat perceptions, preparation of a "Threat Analysis Report" by the Head of the Police, protection measures

like ensuring that witness and accused do not come face to face during the investigation, protection of identity, change of identity, relocation of witnesses, witnesses to be apprised of the scheme, confidentiality and preservation of records, recovery of expenses, etc.

Since it is beneficial and benevolent scheme which is aimed at strengthening the criminal justice system in this country, all the States and Union Territories accepted that the Court to enforce that said scheme as a mandate of the Court till the enactment of a statute by the legislatures. The Union of India, as well as the States and the Union Territories, shall enforce the Witness Protection Scheme, 2018 in letter and spirit.

It shall be 'law' under Articles 141 and 142 of the Constitution, till the enactment of suitable parliamentary and/or State legislations on the subject. In addition, all district courts in India, Vulnerable Witness Deposition Complexes shall be set up by the States and Union Territories. This should be achieved within a period of one year.

The Central Government should also support this endeavour of the States/ Union Territories by helping them financially and otherwise.

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