

LJSoft

FOR WINDOWS & LINUX OS

*The First Computer Case Finder
For Supreme Court and Bombay High Court Judgments*

- * A user friendly software, menu driven, easy to use.
- * Search facility by Acts, Sections, Topics, keywords, Case Names, Judges Names, Case Number etc. to make it simpler to locate any judgment.
- * Different sorting options provided viz. Appellant-wise, Respondent-wise, Date-wise, subject-index wise.
- * Providing Complete Judgment with headnotes.
- * Topics are selected by an expert panel of Editors.
- * Printing option provided to enable you to print full or any part of the judgment.
- * Monthly updates provided alongwith a copy of printed DIGEST containing index of all the latest judgments.

ANNUAL SUBSCRIPTION

Premium Module - Rs. 2500/- only p.a.

Economy Module - Rs. 3500/- only p.a.

For further enquiries contact :-

SANJEEV KUCHHAL

SONEX PUBLISHERS

Plot No.5 & 6, Kamdhenu Housing Society, Pisa Devi Road,
Near New Monda, P.O. Naregaon, Aurangabad - 431007

MUMBAI OFFICE :

A-306, Ramji House, 3rd Floor, Jambul Wadi,
Dhobi Talao, Mumbai - 400 002

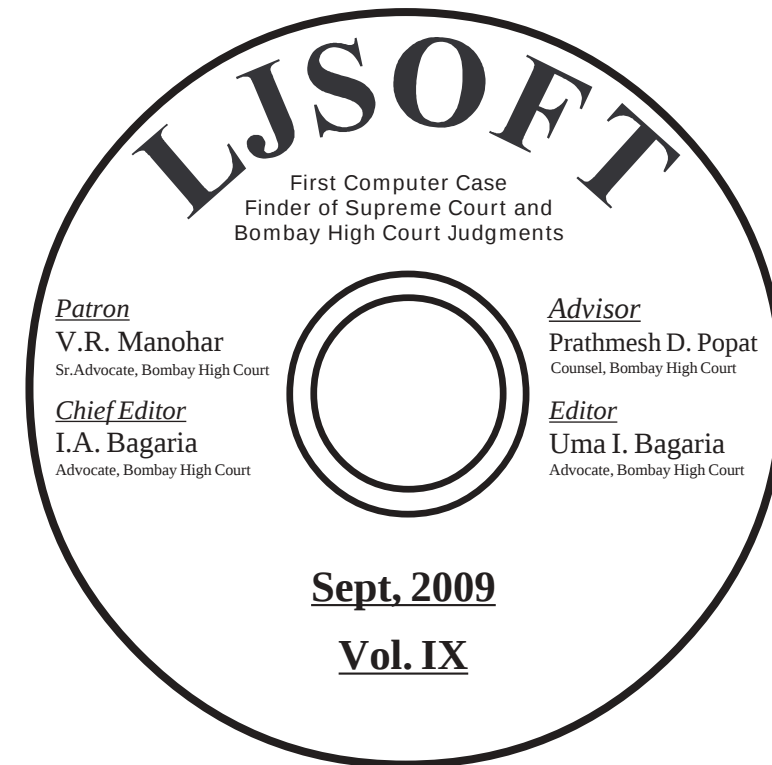
MOBILE : 93257-23208, 98207-23208

email : ljsoft@hotmail.com

Authorised Representative : **Mr. Deepak Bijani 98204-35380 / 93240-91592**

MONTHLY LJSOFT DIGEST

(*Update CD of LJSOFT* enclosed)



A *digest* of all the cases compiled in the Computer Case Finder LJSOFT for the month of September, 2009.

The full text of the cases is provided in the Software LJSOFT. This index is for reference purpose for the users of the Computer Case Finder LJSOFT.

CITATION : LJSOFT 2009 (9)



LJSoft

**The First Computer Case Finder
for Supreme Court and Bombay High Court Judgments**

- * Powerful yet very **User Friendly** Computerized Case Law Information Retrieval System.
- * Covering the Judgments of Bombay High Court including all the Benches and also covering the Judgments reported in various journals of Maharashtra.
- * Covering Important Judgments of Supreme Court and all the cases FROM Bombay High Court.
- * **Monthly** updates provided alongwith **FREE** Printed Digest giving all the latest Judgments.
- * **Maximum Coverage** of Judgments - In year 2001 - 1420 Cases, in 2002 - 1591 Cases, in 2003 - 1635 Cases, in 2004 - 1621 Cases, in 2005 - 1910 Cases, in 2006 total 2328 and in **2007 total 2305 cases are compiled.**



Call : **93257-23208 / 98207-23208**
for Demonstration

LJSOFT

COMPUTER CASE FINDER

***Most exhaustive coverage
of Bombay High Court
Judgments giving parallel
citations of all the
journals.***

NOMINAL INDEX (SEPT, 2009)

S. No.	LJSoft Citation	Digest Page No
<u>A</u>		
1.	Agricultural Produce Market Committee Vs. Shah Nawaz Kasim Shaikh	193 11
2.	Ajit Gaitonde & anr. Vs. Smt. Ezilda Emiliana Cristina Pinto (since deceased) (GOA)	184 23
3.	Alka Ramesh Rao Patil Vs. Nutan Mahila Sarvodaya Balvikas Sanstha, Pachora & ors. (AUR)	195 79
4.	Amardeep Textiles Vs. Popatrao Shesh Rao Kolhe (URC) (AUR)	53 50
5.	Anand B. Shirwaikar Vs. State (Through CBI, Panaji) (URC) (GOA)	190 32
6.	Anand s/o Ramesh Chavre Vs. State of Maharashtra & ors. (URC) (AUR) ..	163 44
7.	Anjum Fatima Aslam Vs. Mrs. Ayesha Anis Shaikh & anr.	143 13
8.	Anupama Wine Distributors Vs. Tilaknagar Industries Ltd.	156 39
9.	Ardesheer Behram Dubash Vs. Wealth Tax Officer	180 111
10.	Arlinda Dias & anr. Vs. Margao Co-op. Housing Society Ltd. (GOA)	37 76
11.	Ashoka Buildcon Pvt. Ltd. Vs. Mah. State Road Development Corpn.	122 11
12.	Asst. Collector of Customs (Pre.) Bombay Vs. Ahmed Abdulkarim & Anr. .	179 49
13.	Avarsekar & Sons Private Ltd. Vs. Dr. Dhananjay Shivdas Varade & ors. ...	101 83
<u>B</u>		
14.	Babu Thomas (Maj (Ret.)) Vs. Goa Shipyard Limited (GOA)	81 52
15.	Balasaheb Ambadas Gunde Vs. Union of India & ors. (URC) (AUR)	12 64
16.	Bhagwant Shesh Rao Borale Vs. Education Officer (Secondary) (NAG)	43 81
17.	Bharatiya Kamgar Sena Vs. Chefair Employees Guild & anr.	29 88
18.	Bihar State Financial Corporation Vs. Chhotanagpur Minerals (SC)	194 108
19.	Bilkis Bano w/o Abdul Razzak Vs. State of Maharashtra & anr. (AUR)	159 67
20.	Bindiya A. Chawla & Ors. Vs. Ajay Lajpatrai Chawla & Ors.	119 103
21.	Board of Trustees of the Port of Bombay Vs. UCO Bank Singapore & ors. ...	141 22
<u>C</u>		
22.	Cartini India Limited Vs. Additional Commissioner of Income Tax & ors. ...	128 57
23.	Chagan s/o Kisan Koli Vs. State of Maharashtra & anr. (AUR)	204 62
24.	Chetan Vitthal Tupe Vs. Shailesh Narayan Shinde & ors.	147 97
25.	Chhabutai Sanjay Tupatkar Vs. Govind Haruishchandra Wasnik (NAG)	85 95
26.	Chintaman s/o Barbaji Dupare Vs. Vithabai w/o Deoraoji Wahane (NAG) .	139 65
27.	Chotumal Bahiramal Sindho (since deceased) through his LRs. Vs. Baburao Vinayak Mohadkar (since deceased) through his LRs.	160 16
28.	Commissioner of Income Tax Vs. Damodar Mangalji Mining Co. (GOA)	33 55
29.	Commissioner of Income Tax Vs. Grasim Industries Limited (URC)	18 57

30.	Commissioner of Income Tax Vs. Hindustan Hotels Ltd. & anr. (GOA)	27 56
31.	Commissioner of Income Tax Vs. Kotak Mahindra Finance Ltd. (URC)	132 55
32.	Commissioner of Income Tax Vs. Madhukar K. Inamdar H.U.F. (URC)	25 57
33.	Commissioner of Income-tax Vs. Swedish Telecoms International AB	46 54
34.	Commissioner of Income Tax Vs. Uttamchand Jain	24 57
<u>D</u>		
35.	Damu s/o Motiram Rathod & ors. Vs. State of Maharashtra (AUR)	157 66
36.	Danial Nana Pathare Vs. Tilaknagar Industries Limited & another (AUR) ..	109 112
37.	Dashrath Bapu Shinde & ors. Vs. State of Maharashtra	89 78
38.	Dattatraya Bhim Rao Patwari Vs. Manik Rao Ram Rao Birajdar (AUR)	192 14
39.	Dattatraya s/o Adinath Bandgar Vs. State of Maharashtra & ors. (AUR)	126 86
40.	Deorao s/o Gunajirao Tathe Patil Vs. State of Maharashtra & anr. (AUR) ...	149 67
41.	Dev Sha Corporation Vs. Shree Ram Mills Ltd.	135 71
42.	Devidayal Sales Pvt. Ltd. Vs. State Trading Corporation of India & anr.	130 23
43.	Devilal R. Chhajed Vs. Smt. Sumati Wd/o. Raja Nadar & 3 Ors.	178 110
44.	Dighi Koli Samaj Mumbai Rahivasi Sangh (Regd.) Vs. Union of India & ors.	13 43
45.	Dilip s/o Devaji Yenorkar Vs. Divisional Joint Registrar & ors. (NAG)	76 75
46.	Dinesh s/o Dhaniram Bhoute Vs. State of Maharashtra (NAG)	97 52
47.	Duryodhan Hiranman Ingole Vs. Indian Council Agriculture Research (NAG) ..	79 89
<u>E</u>		
48.	Eknath P. Kamble Vs. Janqui Nilu Kamble & anr. (GOA)	144 112
49.	Eknath S/o Bandu Malve Vs. Somnath Bhagwat Malve (AUR)	201 111
50.	Esquire Shipping and Trading Pvt. Ltd. Vs. Maharashtra Maritime Board ..	102 43
51.	Executive Engineer & ors. Vs. Vasant Nattuji Kosare & anr. (NAG)	57 88
52.	Executive Engineer Vs. Bhagwan s/o Yashwanta Kulkarni & anr. (AUR) ...	185 70
<u>F</u>		
53.	Fehmida Abubakar Varakaya Vs. State of Maharashtra & Ors.	202 90
<u>G</u>		
54.	Gajanan Narayan Joshi Vs. Haridas Bhikulal Jobanputra (URC) (NAG)	10 101
55.	Ganeshanan Lakshmanan and another Vs. State of Maharashtra	54 35
56.	George L. Fernandes Vs. State of Goa & ors. (GOA)	34 66
57.	Girish Vasantrao Bhoyar & anr. Vs. Nimbaji Warluji Bambal (NAG)	86 25
58.	Gorakhnath Balu Shinde Vs. State of Maharashtra & anr.	103 42
59.	Government of Goa Vs. Jaisu Shipping Co. Pvt. Ltd. (GOA)	152 10
60.	Govind Sakharam Ubhe Vs. State of Maharashtra	47 78
61.	Gurukripa Traders Vs. Kailas Ramnarayan and anr.	58 98

H

62. Haresh N. Mirchandani Vs. Reshma Mirchandani and anr. (URC)	1	63
63. Haresh P. Jashnani Vs. Satco Securities & Financial Services L.	115	73
64. Hari Bhuraji Mahajan (Died) through his L.Rs. Vs. Rajendra Shankar Dawknor & ors. (AUR)	88	15
65. Hari Shanker Singhania & ors. Vs. State of Maharashtra & ors.	66	17
66. Hari Shree Enterprises Vs. Vikas Housing Ltd. & ors.	153	37
67. Harinarayanan Punamchand Vyas Vs. State of Maharashtra (URC)	22	32
68. Herculano Coelho Vs. Antonia Pobrinha Dias e Faleiro (URC) (GOA)	20	31
69. Hindustani Education Society & anr. Vs. Union of India & ors. (AUR)	188	58

I

70. Indo Automobiles Vs. Jai Durga Enterprises & Ors. (SC)	203	100
--	-----	-----

J

71. Jafarali Mithabhai Hirani (Died) through L.Rs. & ors. Vs. State of Maharashtra & ors. (AUR)	167	70
72. John Manuel Vaz & anr. Vs. Iria Maria dos Milagres E Ditosa da Costa alias Iria da Costa & ors. (GOA)	23	51
73. Julia Rodrigues w/o Carlos Rodrigues (since deceased) & ors. Vs. Narayan Naique s/o. Yesso Naik & anr. (GOA)	161	51

K

74. Kaikhosrou (Chick) Kavasji Framji & anr. Vs. Union of India & anr.	42	104
75. Kailash Ambadas Lad Vs. Manjusha Ashok Oza (URC) (AUR)	45	24
76. Kamal Parwar Vs. Timotio Fernandes & anr. (GOA)	60	26
77. Kanchan K. Rathod Vs. State of Maharashtra (URC)	4	34
78. Kanwardeepsingh Harbansingh Bedi Vs. State of Maharashtra	67	31
79. Kawadu Latari Ramteke & anr. Vs. Suresh Latari Ramteke & ors. (NAG)	99	24
80. Kedarnath Construction Co. Vs Municipal Corporation of Gr. Mumbai	70	40
81. Khanderao Bhujangrao Babar Vs. Bharatbai Shrimant Gomsale (AUR)	137	11
82. Kinnariben Shantilal Patel Vs. Rajmal Premchand Surana (AUR)	107	105
83. Kisanrao Khobragade Education Society & anr. Vs. Bhojraj s/o Kevalram Motghare & ors. (NAG)	82	92
84. Kishore Chabu Shedge Vs. State of Maharashtra (URC)	3	35
85. Kunitakara Electric Company Vs. Greenvally Home Developers (P) Ltd. .	104	10

L

86. Lok Holdings & Constructions Ltd. Vs. Housing Development & Improvement India Ltd. & ors.	71	9
87. Lokesh Chandra & anr. Vs. State of Maharashtra & ors. (NAG)	26	106
88. Lonza India Pvt. Ltd. (Re:)	171	39

M

89. Madhao s/o Atulchandra Bapat Vs. State of Maharashtra & ors. (NAG)	77	90
90. Madhukar Dattatraya Gholap Vs. State of Maharashtra & ors.	116	45
91. Madhukar Pandurang Gadade Vs. State of Maharashtra & ors. (AUR)	62	94
92. Mahabir Nuniwal Vs. Neptune Co-operative Housing Society Ltd. & anr. ..	124	27
93. Mahalsa Saunsthane Mardol Vs. Ajay G. Poi Raiturcar & ors. (GOA)	78	105
94. Maharashtra Seva Sangh & anr. Vs. Shaikh Jamalchand & anr.	145	80
95. Maharashtra State Road Transport Corpn. Vs. Alfred James Gamare (AUR) .	96	89
96. Mahavir Metal Mart Vs. Union of India & ors.	114	18
97. Mahendra Gulabchand Kochar Vs. Sakham Ramdas Patil (AUR)	121	99
98. Mandatai w/o Prabhakar Pande Vs. Additional Commissioner (NAG)	56	17
99. Mankawati Shikshan Sanstha Vs. State of Maharashtra & ors. (AUR)	176	40
100. Manoj Bansilal Biyani Vs. Sameer Krishnadhan Karr & anr. (AUR)	63	84
101. Manoj Bansilal Biyani & anr. Vs. Sunil Murlidhar Chaudhari & ors. (AUR)	181	85
102. Maruti Bhanudas Kamble Vs. Bajaj Auto Ltd., Pune & Anr.	32	64
103. Maruti G. Gund & ors. Vs. Inspector of Customs Preventive & anr.	49	97
104. Masuood Alam Khan-Pathan Vs. State of Maharashtra & ors.	69	74
105. Maytas Infra Limited Vs. Utility Energytech and Engineers Pvt. Ltd. & Ors.	61	8
106. Methodist Episcopal Church Vs. Methodist Church in India & ors. (NAG) ...	93	21
107. Mikes Corporation Vs. Picotee Exports & Anr.	138	8
108. Mohan Ajabrao Telkhade Vs. State of Maharashtra & ors. (NAG)	21	18
109. Mohd. Abdul Rasheed & anr. Vs. Deputy Charity Commissioner (AUR)	75	15
110. MRC Logistics Private Limited Vs. Regional Director & anr.	51	37

N

111. Nagpur Vinkar Sahakari Soot Girmi Maryadit Vs. Rashtriya Mill Mazdoor Sangh & ors. (NAG)	158	76
112. Nandos Indage Restaurants Pvt. Ltd. Vs. Nando's Resources BV. and Anr. ..	65	8
113. Narayan Mahadu Bhokate (deceased) by his LRs. Vs. State of Maharashtra	196	86
114. Narayan Shamba Kubal Vs. Ankush Pandurang Halarnkar (GOA)	80	101
115. Narendra Akash Maharaj Petkar & anr. Vs. Shahaji Baburao Petkar & ors. ...	73	28
116. New India Assurance Co. Ltd. Vs. Babruwan Pralhad Wakure (AUR)	105	95
117. New India Assurance Co. Ltd. Vs. Mangala Devidas Pophale (AUR)	142	94
118. New India Assurance Co. Ltd. Vs. Laxmi Rama Padsalgi & ors. (GOA)	110	96
119. NTPC Limited Vs. Reliance Industries Limited	95	20

O

120. Olivinho J.F.Gomes (Prof) Vs. Chief Secretary State of Goa & ors. (GOA) ..	14	18
---	----	----

P

121. P.A. Karkhanis Vs. Uco Bank & ors.	38	45
122. Pandharinath Mahadeo Patil Vs. Unus Noormohamed Mulla & anr.	187	102
123. Pandurang Doulu Patil Vs. Ramrao Dadu Patil since deceased by his LRs. ...	92	107
124. Percy Shiavak Mistry Vs. Bennet Coleman & Company Ltd.	98	28
125. Pradeep Babubhai Chinai & anr. Vs. Sindhu Resettlement Corpn. Ltd..	186	103
126. Praful Pimpalwar (Dr.) Vs. Prakashchandra P. Agrawal (NAG)	168	21
127. Prakash Ganpat Sawant Vs. Ravindra Babaji Satam and others	155	25
128. Pramod Jamwal Vs. Bank of Maharashtra & ors. (NAG)	118	24
129. Prashant Jhunjhunwala Vs. Union Territory of Daman & Diu & ors.	55	36
130. Pravin Vijaykumar Taware & ors. Vs. Special Executive Magistrate & anr. ...	41	30
<u>R</u>		
131. Radhabai Mahadeo Thakur Vs. Gajanan Shriram Akone & ors. (NAG)	123	92
132. Raghav Manu Gupta & anr. Vs. State of Maharashtra	48	97
133. Raghunath Baba Pathare & ors. Vs. State of Maharashtra (AUR)	169	70
134. Rajaram N.S. Bandekar & Company Pvt. Ltd. & anr. Vs. Oriental Insurance Company Ltd. & anr. (GOA)	199	47
135. Rajendra Pandurang Pagare & anr. Vs. State of Maharashtra & ors. (AUR) ..	17	87
136. Rajendra Dwarkadas Raisonni Vs. Sunita Ashokkumar Raisonni (AUR)	197	109
137. Rajendran Vs. N. Mohanan & anr. (SC)	112	100
138. Rajeshwar s/o Hiranman Mohurle (In Jail) Vs. State of Maharashtra (NAG) ...	52	93
139. Rama Kashinath Dhumal (died) through L.Rs. Vs. Laxman Deorao Dhumal & ors. (AUR)	191	72
140. Ramabai Rajkumar Surwade Vs. State of Maharashtra (URC) (NAG)	74	60
141. Ramdas Bhikaji Darade Vs. Hon'ble Minister of State & ors.	113	85
142. Ramesh Bodhraj Nagpal (HUF) and anr. Vs. Prakashkaur Sardar Deelipsingh and anr. (AUR)	198	26
143. Ramji Dhondji Dhumal & ors. Vs. Mahadu Jalbaji Dhumal & ors. (AUR)	87	54
144. Ramrajsingh Vs. State of M.P. and Anr. (SC)	106	100
145. Rangnath Trimbak Sonawane Vs. Baban Ganpat Mhaske & ors. (AUR)	108	96
146. Ravinder Kaur & ors. Vs. Smt. Amarjit Kaur & ors. (NAG)	84	95
147. Ravinder Singh Ahluwalia Vs. Kuljinder Singh Ahluwalia & ors.	72	9
148. Rayat Shikshan Sanstha Vs. Shahaji Gajendra Kadam (URC) (AUR)	39	79
149. Rehana Begum Vs. Khwaja Baba Urdu Education Society & ors. (NAG) ...	174	81
150. Reliance Industries Limited Vs. Reliance Natural Resources Limited	44	38
151. Revansidha Ramchandra Jeurgi Vs. State of Maharashtra (URC)	2	33

S

152. Saeed Sohail Sheikh Vs. State of Maharashtra & ors. (URC)	7	41
153. Sanjay Bhila Mandawade Vs. State of Maharashtra	59	62
154. Sanjay Haribhai Indane Vs. Rashtirya Apang Association & ors. (NAG)	151	82
155. Sanjay Z. Rane & ors. Vs. Saibai S. Dubaxi (since deceased) through her LRs. (GOA)	35	69
156. Santosh Bhau Humane Vs. State of Maharashtra	15	59
157. Satish Kumar Agarwal Vs. State	19	60
158. Satish s/o Shrawan Hirudkar & Anr. Vs. State of Maharashtra (NAG)	68	59
159. Satnam Overseas Ltd. & anr. Vs. m.v. OOCL ABILITY & ors.	117	48
160. Satyanarayan Swaroopnarayan Khandelwal Vs. Smt. Chandrakalabai w/o Ramssahay Khandelwal & ors. (NAG)	148	110
161. Savitri Chandrakesh Pal-I Vs. State of Maharashtra & ors.	136	46
162. Savitri Chandrakesh Pal-II Vs. State of Maharashtra & ors.	134	92
163. Sawale Motiram Shridhar Vs. Maharashtra Seva Sangh & ors.	146	80
164. Shakuntala wd/o Mulchand Yadav & ors. Vs. Deputy Conservator of Forest & anr. (NAG)	5	111
165. Shalini Vaman Godbole Vs. Special Land Acquisition Officer & ors.	36	68
166. Shamal w/o Sharad Baride Vs. Sharad Baburao Baride (AUR)	100	53
167. Shivaji Shikshan Sanstha & anr. Vs. Ram Dnyanoba Latpate & ors. (AUR) ...	177	83
168. Shri Ramchandra Samaj Seva Samitee Vs. State of Maharashtra (NAG)	125	78
169. Shrikant Vasudeo Bhole since deceased through LRs. Smt. Mangala Shrikant Bhole and ors. Vs. Satish Shankar Gupte and ors.	162	107
170. Shriram Mandir Sansthan Vs. Tulsiram Bhagirath Lohiya & ors. (NAG)	165	73
171. Shruti w/o Shriram Jangam Vs. Shriram s/o Balkrushn Jangam (AUR)	175	29
172. Sind Cooperative Housing Society Vs. Income Tax Officer (URC)	11	56
173. Snehal w/o Sanjay Bapat Vs. Sanjay s/o Madhusudan Bapat (NAG)	127	53
174. Sopanrao Laxmanrao Mhaske & anr. Vs. Union of India & anr. (AUR)	166	44
175. Sri Krishna Agencies Vs. State of A.P. & Anr. (SC)	200	98
176. State of Maharashtra Vs. Dattu Mahadev Markad & ors. (AUR)	131	71
177. State of Maharashtra Vs. Pandurang Govind Raut	64	101
178. State of Maharashtra Vs. Vijay Waman Patil & Ors.	16	33
179. State of Maharashtra & anr. Vs. Balaji Raosaheb Shinde & anr. (AUR)	40	63
180. State of Maharashtra Vs. Shrimant Govindrao Narayanrao Ghorpade	111	66
181. Subhash Hiraji Jadhav (Since dec.) by LRs. Vs. Padmakar Hiroo Jadhav	129	108
182. Sunil Gulabchand Jain (Dr.) Vs. State of Maharashtra & anr. (AUR)	173	34
183. Supreme Treves Pvt. Ltd. Vs. Deputy Commissioner of Income-tax (URC) ...	170	55
184. Sushama Suresh Nigudkar & anr. Vs. State of Maharashtra	183	61
185. Sushila Gopal Patil & ors. Vs. Reshmasing Mehersing Khanguda (AUR)	28	15

<u>T</u>	
186. Trambak Barku Patil Vs. Damu Chindhu Patil & anr. (AUR).....	30
187. Trivendibai Kishnrao Ghadge deceased through LRs. & anr. Vs. State of Maharashtra (AUR)	189
188. Twist Spin Industries Vs. KMH Enterprises (NAG).....	90
<u>U</u>	
189. United Spirits Limited Vs. Commissioner of Customs (Import)	31
190. Universal Ferro and Allied Chemicals Ltd. Vs. Maharashtra Ferrio Alloys Mazdoor Sangh & anr. (NAG)	133
<u>V</u>	
191. V.I.P. Industries Limited Vs. Athar Jameel & ors. (NAG)	8
192. Vandana Bharat Kauthalikar Vs. State of Maharashtra & ors. (URC)	9
193. Vasant Namdeo Bichukle Vs. Joint Charity Commissioner & 19 ors.	150
194. Veerbhadrapa s/o Mahadappa Rachatte Vs. Mahalingappa s/o Gurlingappa Karanje & ors. (AUR)	172
195. Venkatesh Pradyumnacharya Varakhedakar since deceased by his LRs. Vs. Maharashtra State & ors.	140
196. Vijay Agarwal Vs. Lehman Brothers Advisors Pvt. Ltd. & anr.	83
197. Vijay Khadya Bhandar & anr. Vs. Ramlal Motilal Prajapati (URC) (NAG) ..	182
198. Vijay Nivrutti Taware & ors. Vs. State of Maharashtra (URC)	50
199. Vijaykumar Tukaram Kasale Vs. State of Maharashtra & ors. (AUR)	120
200. Viky Karamsing Bahadur Vs. State of Maharashtra (URC)	6
201. Vimal Builders Vs. Nand Kumar Anant Vaity & ors.	164
202. Vimalkumar Ravji Shah Vs. Employees Provident Fund Organisation	94
203. Vinayak Hari Kulkarni & ors. Vs. State of Maharashtra & anr.	154
204. Vitthalrao Damodhar Hepat & anr. Vs. Matru Seva Sangh & anr. (NAG).....	91

(NAG) - NAGPUR BENCH
(AUR) - AURANGABAD BENCH
(GOA) - GOA-PANAJI BENCH

(SC) - SUPREME COURT
(URC) - UNPUBLISHED CASES

OFT 2009 VOL. (9) (SEPT' 09)
SUBJECT INDEX

Arbitration and Conciliation Act, 1996 — Section 7, 34 — Setting aside of award — Existence of arbitration agreement.	54
Arbitration proceedings — Dispute regarding balance amount for cloth allegedly supplied to the respondents — Arbitration agreement said to have been printed on the invoices — Delivery of invoices cannot be inferred merely because some payments were made — Existence of an arbitration agreement could not be inferred which is said to have been printed on the invoices without proof or delivery of the invoices to the respondents — Learned Single Judge rightly held that there was no arbitration agreement as required by law. (See para 5, 6, 7)	69
Result : Appeal dismissed.	21
Mikesh Corporation Vs. Picotee Exports & Anr. 2009 (9) LJSOFT 138	49
Arbitration and Conciliation Act, 1996 — Section 9 — Specific Performance Act, 1963 — Section 14 — Termination of contract — Grant of injunction — Interim reliefs.	65
Highway project — Respondents have been awarded the work of engineering procurement and construction of the portion of the project Highway — Petitioner is sub-contractor of the Respondents — Termination of contract — Respondents are not owner of the land and it is a Public Project — Merely because there is a construction contract entered into between the parties, the petitioner is not entitled to specific performance of the contract in view of Section 14 of Specific Performance Act automatically — Court cannot compel the respondents to continue with the contract — Difficult for the Court even to supervise such performance of contract, based upon such type	87

LJSoft Digest (Sept, 2009)	8
of public project — Even if, according to the petitioner the respondent has terminated the contract illegally and in breach of the various clauses a remedy of compensation/damages is available to he petitioner, but not the relief of injunction as prayed. (See para 9, 11, 13)	91
Result : Accordingly.	15
Maytas Infra Limited Vs. Utility Energytech and Engineers Pvt. Ltd. & Ors. 2009 (9) LJSOFT 61	22
Arbitration and Conciliation Act, 1996 — Section 9 — Franchise agreement — Interim relief — Proper parties.	46
Franchise Agreement between the Petitioner and Respondent No.1 and the Sureties — Petitioner invoked Section 9 for grant interim measures order to protect the property — Parties to the Arbitration agreement/clause are necessary and proper parties in such proceedings — Respondent No.2 is not a party to the Agreement — Relief basically can be granted only against Respondent No.1 and not against Respondent No.2 — Petitioner failed to show how they can enforce this contract against Respondent No.2 — No case made out where any relief can be granted including the interim measures or protection to the Petitioner against Respondent No.2 — Interim order granted against Respondent No.2 is vacated ad it will continue against Respondent No.1 only. (See para 8, 9, 10, 11)	9
Nandos Indage Restaurants Pvt. Ltd. Vs. Nando's Resources BV. and Anr. 2009 (9) LJSOFT 65	99
Arbitration and Conciliation Act, 1996 — Section 9 — Interim reliefs.	34
Agreement for sale — Total consideration of Rs.54 crores as per the agreement have been paid to the petitioner — Petitioner submitted that in addition to the said amount the	81

respondents are liable to make to pay Rs.625/- per sq.ft. under the agreements — However pre-condition of the said amount is free T.D.R. and as there is nothing on record to show that the said T.D.Rs. have been sanctioned free of cost — Terms are not so clear that he is entitled for this amount as of right merely by asking — All the ingredients to grant interim measure/ protection u/s 9 are missing — No case made to grant any interim security or relief to the petitioner. (See para 9, 10, 13)
Result : Petition dismissed.

Lok Holdings & Constructions Ltd. Vs. Housing Development & Improvement India Ltd. & ors. 2009 (9) LJSOFT 71

Arbitration and Conciliation Act, 1996 — Section 9 — Partnership Act, 1932 — Section 14 — Purchase of shares — Ownership of shares — Interim reliefs.

1) Partnership firm purchased shares in name of deceased-partner — Shares shown as asset of firm in balancesheet and dividends reflected as income of firm in profit and loss account — Alleged that he held those shares in his fiduciary capacity and/or as Trustee for and on behalf of the firm — Ample material on record to show that deceased was holding the shares for the benefit of the partners and it was for and on behalf of the firm — Shares are the property of the firm as contemplated u/s 14 of Partnership Act or not is a matter of trial and inquiry — Sufficient at this stage to observe that there exists dispute with regard to the property of the firm — Firm is already dissolved and it is just and convenient to protect the property of the firm — Petitioner entitled for the relief in terms of prayers (a) and (b) as prayed. (See para 25, 33, 35)

2) Interim relief — Unregistered Supplemental Deed of Partnership — Section 9 petition cannot be said to be a Suit as

9 contemplated u/s Section 69 of the Partnership Act — Effect of unregistration of such deed is insignificant — Application u/s 9 of the Act of 1996 though the partnership Deed is unregistered is maintainable. (See para 16)
Result : Petition allowed.

Ravinder Singh Ahluwalia Vs. Kuljinder Singh Ahluwalia 2009 (9) LJSOFT 72

Arbitration and Conciliation Act, 1996 — Section 9 — Employment Agreement — Interim reliefs.

1) Termination of personal service agreement — Agreement itself nowhere provides any right to continue with the contract or any fixed period clause — Agreement was admittedly on Will — Upon termination even if as alleged is illegal or invalid cannot be the reason to pass any interim protection or measure — At this stage and on the material available whether alleged termination is valid or not just cannot be gone into in Section 9 Petition specially considering the nature of agreement between the parties — Such agreement is not enforceable. The Petitioner cannot claim continuity of service or employment — Only remedy is to claim compensation/ damages — No case is made out for any relief as prayed. (See para 12)

2) Termination of personal service agreement — Petitioner has not accepted the full and final proposal — In case of failure to accept the settlement and if there is dispute raised, unless it is decided finally, it is difficult to accept that the proposed amount is due and payable and therefore, it should be secured even before the constitution of the Arbitral Tribunal. (See para 18)

Result : Petition dismissed.

Vijay Agarwal Vs. Lehman Brothers Advisors Pvt. Ltd. & anr. 2009 (9) LJSOFT 83

Arbitration and Conciliation Act, 1996 — Section 9, 17 — Interim reliefs — Grant of. Dispute regarding agreement/ contract for Air Conditioning System — Petitioner prayed for interim restraintment order from creating any third party rights to complete the remaining work — Third person/ party is already appointed and doing the remaining work — All ingredients for interim protection/ injunction are not sufficient to restrain the Respondent as prayed — Balance of convenience, equity lies in favour of Respondent — If there is a breach of contract or wrongful termination of the contract that is always the matter of damages which need to be considered by the Arbitral Tribunal. (See para 5, 6)
Result : Petition dismissed.

Kunitakara Electric Company Vs. Greenvalley Home Developers (P) Ltd. 2009 (9) LJSOFT 104

Arbitration and Conciliation Act, 1996 — Section 9, 37(1)(a) — Grant of interim relief.

1) Dispute regarding contract for removal of ship and towing it away wholly to the ship breaking yard — Appeal against the order passed in the application filed by Respondent u/s 9 of the Arbitration and Conciliation Act — Concerned Judge who passed the impugned Judgment was a Law Secretary when file regarding finalisation of the same contract was pending with the State Government — He had dealt with the file in the capacity of Law Secretary — He should not have taken up the matter on judicial side and that too without disclosing this aspect to the parties — Impugned Order set aside and matter is remanded and transferred to Principal District Judge, South Goa, Margao, to decide afresh. (See para 13 to 16)

2) Interim reliefs — Concerned Judge who passed the impugned Judgment had dealt with the file regarding the same contract in the capacity of Law Secretary — Contended that since the matter is required to be decided only by the Principal District Judge in whose jurisdiction it arose, the Principal District Judge might be under impression that this matter cannot be transferred to any other Judge in the same District — Even if that be so, the concerned Judge should have asked the parties to approach the High Court by way of a transfer application u/s 24 of CPC and should have left the matter of transfer to be decided by the High Court. (See para 15)
Result : Appeal allowed.

Government of Goa Vs. Jaisu Shipping Co. Pvt. Ltd. 2009 (9) LJSOFT (GOA) 152

Arbitration and Conciliation Act, 1996 — Section 11 — Contract Act, 1872 — Section 64 — Appointment of Arbitrator — No claim certificate — Effect of — Plea of undue influence.

1) Construction contract — No Claim Certificate was submitted as the Respondents declined to release the payment without submission of separate No Claim Certificate for each individual contract — There was hardly any time lost by the Applicant in retracting its No Claim Certificate — Predominant position of the Respondents by itself was an influence over the Applicant — Certificate containing a provision that debarred applicant from taking legal remedy amounts to an undue influence, pressure or duress exercised by the Respondents upon the Applicant — Allowing the petition Respondents are directed to appoint an Arbitrator in terms of Clause 29.1.2 of the Agreement. (See para 8, 13, 17)

2) Appointment of arbitrator — Respondents

contended that Petitioner should be called upon to deposit the amounts already received by it and restore the status as on the date of submission of the No Claim Certificates — Same cannot be done inasmuch as it has already done the work much in excess of payment received — It will be most inequitable to direct status quo ante as prayed. (See para 14)

Result : Petition allowed.

Ashoka Buildcon Pvt. Ltd. Vs. Maharashtra State Road Development Corporation & anr. 2009 (9) LJSOFT 122

Benami Transactions (Prohibition) Act, 1988 — Section 3, 4 — Bar under — Acquisition of land — Compensation — Ownership — Letters Patent Appeal — Maintainability of. See Sanjay Z. Rane Vs. Saibai S. Dubaxi (since deceased) through her LRs. 2009 (9) LJSOFT (GOA) 35

Bombay Court Fees Act, 1959 — Section 6 — Suit for partition — Valuation.

See Radhabai wd/o Mahadeo Thakur Vs. Gajanan Shriram Akone 2009 (9) LJSOFT (NAG) 123

Bombay Court Fees Act, 1959 — Section 6(iv)(J), 8 — Schedule I Article 7 — Valuation of suit.

Suit for declaration and injunction against Agriculture Produce Market Committee (APMC) restraining APMC from levying and imposing market fees & supervision charges — While considering the valuation of the suit the total frame work of the suit including its contents is important — Respondents have specifically demanded the refund of the amount so collected by the petitioners — Suit as framed is susceptible to monetary evaluation and subject to Schedule I of Article

7 of the Bombay Court Fees Act — Trial Court has gone on foundation that it is a suit for declaration only — Impugned order is quashed and set aside. (See para 7, 8)

Result : Petition allowed.

Agricultural Produce Market Committee Vs. Shah Nawaz Kasim Shaikh & ors. 2009 (9) LJSOFT 193

Bombay Court Fees Act, 1959 — Section 6(j), 6(ha) — Specific Relief Act, 1963 — Section 19 — Suit for specific performance — Impleadment of subsequent transferee — Declaratory relief — Requirement to pay Court Fees.

Suit for specific performance of agreement as well as for recovery of possession — Subsequent purchaser is required to be joined as party to the suit only for the purpose of directing him to join the vendor in executing the sale-deed as per the directions of the court in favour of the vendee — Although the declaratory relief is claimed against the subsequent purchasers the said claim is superficial and no court fees is required to be paid in that regard. (See para 7, 8)

Result : Petition dismissed.

Khanderao s/o Bhujangrao Babar Vs. Bharatbai w/o Shrimant Gomsale & others 2009 (9) LJSOFT (AUR) 137

Bombay Court Fees Act, 1959 — Section 7, 43 — Dishonour of cheques — Appeal against conviction — Suspension of sentence — Ad-valorem Court fees — Payment of — Validity of. See Gurukripa Traders Vs. Kailas Ramnarayan 2009 (9) LJSOFT 58

Bombay High Court Appellate Side Rules, 1960 — Chapter IV Rule 3, 5, 12 — Chapter IX Rule 1, 2, 5 — Chapter XVII Rule 2, 25 — Chapter XXVII Rule 7 — Bombay High Court

(Original Side) Rules, 1980 — Rule 611, 620 — Constitution of India, 1950 — Article 39-A, 225, 348(2), 350 — Goa, Daman and Diu Reorganization Act, 1987 — Section 20(3) — Constitutional validity of Rule 2(i) of Chapter XVII — Language of proceedings — Translation of accompaniment — Marathi annexures without English translation — Common High Court for two States and union territories.

1) Non-acceptance of Petition because the annexures are not translated into English — Division Bench of High Court in the Judgment reported in 2007 (7) LJSOFT 37 declared that the proviso to Rule 2(i) of Chapter XVII of the Bombay High Court Appellate Side Rules is ultravires Article 348(1)(a) of the Constitution of India — Article 348 gets an over-riding effect in respect of the foregoing Articles of the said Chapter which commences from Article 343 — Article 348 has no over-riding effect over Article 350 — While seeking access to courts the citizen is entitled to rely upon Article 350 — Marathi is the official language of the State of Maharashtra — Most of the transactions in the State of Maharashtra are done in Marathi — Proviso has been made at every place that if the document is in Marathi it will be accepted — However, if, for whatever reason, the court desires that the translation should be submitted then the court will pass an order to that effect and thereafter procedure provides the translation will be placed on record — Purpose of allowing Marathi documents to be filed seems to minimize the costs of litigation to spare time to prepare the translations and to make the justice delivery system easily accessible to the litigants — Such a proviso must have been included and this is in consonance with Articles 350 and 39A of the Constitution — This aspect of the matter has

not been considered by the Division Bench but only Article 348(2) was considered — Division Bench has not looked into Articles 350 and 39A of the Constitution of India while considering the vires of the said provision — Judgment of Division Bench reported in 2007 (7) LJSOFT 37 requires reconsideration by a larger Bench. (See para 16, 17, 18)

2) Common High Court for two States and union territories — Goa, Daman & Diu Reorganization Act notified as on 30-5-1987 — On 30-5-1987 whatever the Appellate Side Rules and the Original Side Rules that were in existence and were in force became the Rules of the Common High Court — Jurisdiction, powers and authority as it existed and was exercisable, has been maintained — Would be inappropriate to state that the proviso to Rule 2(i) of Chapter XVII of the High Court Appellate Side Rules does not reflect the present reality viz. the Common High Court for two States as also the Union Territories which have different official languages — Regional representation of the official language in order to provide an easy access to justice and avoid expenses of translation could have been provided to the citizens in the respective areas by amending the Rules — At the most the amendment in the Rules would be required to be made to the effect that if any document is filed in the official language of Goa or the Union Territories, the said document shall be accepted in the matters or in the courts located in the respective territories — Only because other official languages is not reflected in the Rules and that only the Marathi which is the official language of Maharashtra is reflected in the Rules it cannot be said that the Rule is bad. (See para 17, 18)

Vinayak Hari Kulkarni & ors. Vs. State of Maharashtra & anr. 2009 (9) LJSOFT 154

Bombay High Court (Appellate Side) Rules, 1960 — Rule 18 — Allotment of Ration shop — Revision — Maintainability of — Forum — Jurisdiction of Single Judge.

See Smt.Savitri Chandrakesh Pal-II Vs. State of Maharashtra 2009 (9) LJSOFT 134

Bombay High Court (Original Side) Rules, 1980 — Rule 611, 620 — Language of proceedings — Translation of accompaniment — Marathi annexures without English translation.

See Vinayak Hari Kulkarni Vs. State of Maharashtra 2009 (9) LJSOFT 154

Bombay Municipal Corporation Act, 1888 — Section 33(2), 33(3) — Code of Civil Procedure, 1908 — Order VI Rule 17 — Election Petition — Amendment — Delay and laches.

1) Election of Municipal Corporation — Election Petition filed on 1-2-2007 — Application for amendment for Written Statement filed by the Petitioner on 1-12-2008 — Time and the election procedure is prescribed under the statute and the rules — Early disposal of such Election Petition is an essential requirement — Any kind of delay and/or laches in such matters always results into injustice to the Parties as well as to the Voters — Pleadings at proper time with full knowledge of the case ought have been filed as supporting documents — Requirement of due diligence and specially when the trial is already commenced and over is a very essential aspect while dealing with the Election Petition like this — Submission that she was wrongly or not properly advised at the relevant time just cannot be the reason to accept this contention — No justification to permit to bring such documents and averments on record — Learned Judge rightly rejected

the applications as there was no justification whatsoever given in support of these applications. (See para 10, 13, 14)

2) Election of Municipal Corporation — Reserved Ward — Petitioner was declared as “disqualified” on the strength of the report of Caste Verification Committee — In view of Section 33(2) the candidate who secure next highest number of valid votes shall be deemed to have been elected — Chief Judge, Small Causes Court, has no option but to pass such order of declaring the next highest person who secured next highest valid votes as elected — However as per Section 33(2) one more facet which requires that the Judge to consider to declare next person elected against whose election, “no cause of objection is found”. (See para 15)

Result : Petition dismissed.

Mrs. Anjum Fatima Aslam Vs. Mrs. Ayesha Anis Shaikh & anr. 2009 (9) LJSOFT 143

Bombay Public Trusts Act, 1950 — Section 19, 70 — Trust property — Transfer of immovable property — Sanction for.

See Shriram Mandir Sansthan Vs. Tulsiram s/o Bhagirath Lohiya 2009 (9) LJSOFT (NAG) 165

Bombay Public Trusts Act, 1950 — Section 22, 50-A — Code of Civil Procedure, 1908 — Order XII Rule 9 — Section 35 — Change report — Elections — Writ jurisdiction — Suppression of facts — Imposition of costs.

1) Public Trust — Scheme is provided u/s 50-A, for modification and / or change in the constitution of the trust — Elections ultimately have been declared in view of the directions approved by the Supreme Court — Such election, which is at most advanced stage, could not be arrested resorting to the

extraordinary jurisdiction. (See para 11)

2) Applications filed under Article 226 and 227 of the Constitution — Parties, who are filing their pleadings are supposed to plead material and true facts and it has to be true disclosure — Disclosure in petition is highly important and significant for the reason that the petition is verified by the petitioner — Synopsis is a practice insisted by High Court — Synopsis facilitates the Court to understand the points raised and involved in the case — Importance of synopsis is restricted and limited — It was for the Petitioner to disclose the filing of the Misc. Civil Application and details thereof till disposal — There is suppression of fact on the part of the Petitioner — Costs are required to be imposed, to send clear and right message to the litigating fraternity that suppression of facts is not the phenomena approved at-least by the High Court, especially when extra ordinary jurisdiction is invoked. (See para 12, 14)

Result : Petition dismissed.

Dattatraya Bhimrao Patwari Vs. Manikrao Ramrao Birajdar and 23 others 2009 (9) LJSOFT (AUR) 192

Bombay Public Trusts Act, 1950 — Section 41-D(3), 41-D(5), 41-B — Code of Civil Procedure, 1908 — Section 2(2), 113 — Suspension, removal and dismissal of trustee — Interim order of suspension — Maintainability of appeal — Interpretation of statutes — Mischief Rule — Division Bench Reference.

1) Suspension u/s 41-D(3) is necessarily an interim measure directed to protect the trust — Same is different from suspension u/s 41-D(1) which is in the nature of punishment imposed after due inquiry and after giving full opportunity to the concerned trustee or other

person — No application u/s 41-D(5) is maintainable against interim order of suspension passed u/s 41-D(3) by the Charity Commissioner — No appeal lies against such order to High Court u/s 41-D(6) — Remedy is either by way of review to the Charity Commissioner who passed the order or by way of Writ Petition under Article 227 of the Constitution of India. (See para 24)

2) Principles of Natural Justice — Right to file appeal is a creature of statute — There is no inherent right of appeal — Right of appeal is not requirement of natural justice. (See para 12)

3) Second Appeal — Appeal to High Court against decision in application by District Court is a second appeal and ‘application’ to the District Court is nothing but an appeal — As per Section 100 of CPC Second Appeal is to be entertained only in case there is a substantial question of law — Legislature never intended that Second Appeal should be provided against interlocutory or interim orders. (See para 17)

4) Interpretation of statutes — Ordinarily while interpreting the statute the court should give effect to the intention of legislature as expressed in the words used by it — No outside consideration can be called in aid to find that intention — Courts have to endeavour to find out the exact sense in which the words have been used in a particular context — They are entitled to look at the statute as a whole and give an interpretation in consonance with the purposes of the statute and what logically follows from the terms used — Modern method of interpretation is purposive or functional and the literal rule of interpretation is out of vogue. (See para 21)

5) Interpretation of statutes — Mischief Rule — It is the duty of the Judge to make such

construction of a statute as shall suppress the mischief and advance the remedy. (See para 22)

Result : Accordingly.

Mohd. Abdul Rasheed s/o Mohd. Abdul Razzak & anr. Vs. Deputy Charity Commissioner & ors. 2009 (9) LJSOFT (AUR) 75

Bombay Public Trusts Act, 1950 — Section 70, 70-A — Revision — Limitation — Revisional powers of Charity Commissioner.

Public Trust created by Will — Though there is no Appeal preferred u/s 70 within a prescribed period the revisional power is given to the Charity Commissioner to pass order either suo motu or on an application filed — No specific provision in Section 70-A about the limitation in filing revision application — There is no bar of any kind — Such revision is maintainable — Though it is desirable that such power should be exercised within a reasonable time, but that cannot be the reason to dismiss the revision on the ground of limitation. (See para 3, 5)

Result : Petition dismissed.

Vasant Namdeo Bichukle Vs. Joint Charity Commissioner, Latur Region & 19 ors. 2009 (9) LJSOFT 150

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 — Section 12(3)(b) — Eviction proceedings — Arrears of rent — Willful default — Appeal — Subsequent events.

Suit for eviction on the ground of willful default in payment of the rent — Suit dismissed by trial Court — Respondents filed appeal before the first appellate Court — Irregularity committed by tenants while

depositing the rent during the pendency of the appeal — Appeal is continuation of the suit — Cause of action for the suit would continue even during pendency of the appeal and the Appellate Court is entitled to take cognizance of the subsequent developments — Cannot be said that such an event cannot be taken into account so as to pass decree u/s 12(3)(b) — Contention that non-payment of the standard rent during pendency of the appeal would give rise to separate cause of action cannot be accepted — First appellate Court rightly decreed the suit by allowing the appeal. (See para 13, 14)

Result : Petition dismissed.

Hari Bhuraji Mahajan (Died) through his L.Rs. Vs. Rajendra Shankar Dawknor & ors. 2009 (9) LJSOFT (AUR) 88

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 — Section 13(A)(1) — Eviction proceedings — Bonafide requirement — Armed forces personnel — Purchase of property after retirement.

Respondent-landlord retired from Indian Air Force in 1973 — After the lapse of substantial period he purchased the suit property from the earlier owner — Respondent who became landlord of the property after his retirement would not be entitled to recover possession of the leased out premises by virtue of provisions contained in Section 13A1 of Bombay Rent Act — Application preferred by the respondent/landlord before the Competent Authority was not maintainable u/s 13A1 — Impugned order liable to be quashed and set aside. (See para 8, 9, 14, 16)

Result : Application allowed.

Smt. Sushila Gopal Patil & ors. Vs. Reshmasing Mehersing Khanguda 2009 (9) LJSOFT (AUR) 28

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 — Section 13(1)(g) — Eviction proceedings — Bonafide requirement — Comparative hardship.

1) Suit for possession on the ground of bonafide requirement — Contended that fact that the Plaintiff was in possession of three shops was not disclosed in the plaint and this fact has come on record only during the evidence of the Plaintiff — Held that this is not a case of non-disclosure of the material and relevant facts — Plaintiff has already disclosed the fact that he was in occupation of one shop which was used for doing his business — Possession of the premises received during the pendency of the suit two years before giving evidence and much after institution of the suit cannot be the basis to non-suit the Plaintiff — Argument regarding non-disclosure of material facts is completely devoid of merits. (See para 8 to 11)

2) Suit for possession on the ground of bonafide requirement for his business as well as start separate business for his two sons — Mere non examination of person for whose need premises was required by itself was no ground to non-suit the landlord — Two sons were fully dependent on the Plaintiff and it is the Plaintiff who was keen to make provision for their separate business — Non-examination of the two sons is no ground to non-suit the landlord. (See para 13)

3) Bonafide requirement — Comparative hardship — Fact that the suit premises can be divided by itself cannot be the basis to answer the point in issue — Accepting the case of requirement for starting separate business for two sons the question that ought to have been examined by the Appellate Court itself is whether the premises admeasuring 6 ft. x 10

ft. can satisfy the requirement — Answer would obviously be in the negative — Tenant no more interested in his business and because of old age — He had no male issue and was permitting his brother's sons to conduct the business — Tenant did not require the suit premises for himself any more — Issue of comparative hardship have to be answered in favour of the Plaintiff/landlord and against the tenant — Partial decree as ordered by the Appellate Court is manifestly wrong — Impugned Judgment and Decree modified to the effect that the suit for possession is decreed in respect of the whole of the suit premises with costs. (See para 18)

4) Eviction proceedings — Subsequent events ought to be considered by the Court — However that will happen only if the litigant is diligent and takes out appropriate proceedings in that behalf well in time and not in the manner which is sought to be done now by tendering affidavit across the bar. (See para 21)

Result : Petition filed by the tenant dismissed whereas Petition filed by the landlord is allowed.

Chotumal Bhiramal Sindho (since deceased) through his LRs. Vs. Baburao Vinayak Mohadkar (since deceased) through his LRs. 2009 (9) LJSOFT 160

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 — Section 14, 15 — Eviction proceedings — Public premises — Applicability of Bombay Rent Act — Jurisdiction of Small Causes Court — Return of plaint.

See Pradeep Babubhai Chinai Vs. Sindhu Resettlement Corporation Limited 2009 (9) LJSOFT 186

Bombay Stamp Act, 1958 — Section 31, 32, 53 — Constitution of India, 1950 — Article 226 — Arbitration award — Adjudication and determination of stamp duty — Issuance of certificate — Alternate remedy — Maintainability of petition.

Arbitration award — Adjudication order within the meaning of the relevant statutory provisions is yet to be passed and communicated to the Petitioners — Adjudication as to stamps payable on an Award, which is an Instrument for the purposes of the Act — Controversy as to under which Article of Schedule-I the award is chargeable to stamp duty has to be decided by the adjudicating authority — Adjudication contemplated in this case is u/s 31(2) — Adjudication of stamp duty and adjudication order contemplated by Section 31 is capable of being challenged u/s 53 — Adjudicating Authority will apply its independent mind and arrive at a decision on the quantum of stamp duty payable on the subject award — Authority will carry out the exercise fairly and in accordance with law and the Court need not assume its power, in its limited jurisdiction, merely because of a vague apprehension of the Petitioners — Even if Adjudication order is adverse to the Petitioners, yet, after it is duly communicated to the Petitioners, they have an alternate and efficacious remedy of an appeal u/s 53 — Petition dismissed on the ground of availability of alternate and equally efficacious remedy. (See para 9, 12, 13)

Result : Petition dismissed.

Hari Shanker Singhania & ors. Vs. State of Maharashtra & ors. 2009 (9) LJSOFT 66

Bombay Village Panchayats Act, 1958 — Section 35 — No-confidence motion against Sarpanch — Meeting — Service of notice on husband.

1) No confidence motion against the petitioner-Sarpanch — Service of notice on the husband of petitioner held to be good — Petitioner could have stated on oath by entering the witness box that the signature on the notice is not either of her own or that of her husband — In the absence of such a statement there was no need to refer the signature to an expert. (See para 7, 8)

2) No-confidence motion — Service of notice on husband of petitioner — Application signed by the husband of the petitioner making a request to send the signature to an handwriting expert — Application could not be considered as it was not an application made by the petitioner or her counsel — It was an application made by a person not connected with the dispute at all — Court or authority is not supposed to act upon an application of third party not connected with the dispute. (See para 7)

Result : Petition dismissed.

Mandatai w/o Prabhakar Pande Vs. Additional Commissioner, Amravati & ors. 2009 (9) LJSOFT (NAG) 56

Bombay Village Panchayats Act, 1958 — Section 145 — Dissolution of Panchayat — Revision — Maintainability of — Delegation of powers.

Dissolution of Panchayat — Once State Government delegates the powers to the Commissioner u/s 145 the State could not have entertained the revision u/s 145 — Order passed by the Commissioner is deemed to be passed by the State — If the State entertains revision against the Order of Commissioner it would amount to sitting in appeal against

its own Order — Hon'ble Minister could not have entertained the revision against the Order of the Commissioner — Order of the Hon'ble Minister is non est as he did not have the power to entertain the revision once power to dissolve was exercised by the Commissioner for and on his behalf — Impugned order being an illegal order is liable to be set aside. (See para 4, 6)

Result : Petition allowed.

Mohan Ajabrao Telkhade Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (NAG) 21

Central Civil Services (Pension) Rules 1972 — Rule 7, 49 — Two distinct employers — Entitlement to two pensions.

Petitioner employed in civil service obtained voluntary retirement on completing the requisite actual service and joined Goa University and worked there till he reached superannuation age — Petitioner's employment with the University is not falling under last part of Rule 7(1) as it is not same or even continuous service — Employment with Goa University was a fresh employment and cannot be said to be re-employment — Cannot be said that the Petitioner is earning two pensions at same time — Recourse to Rule 7 by the Respondents is misconceived and unsustainable. (See para 10)

Result : Petition allowed.

Prof Olivinho J.F.Gomes Vs. Chief Secretary State of Goa & ors. 2009 (9) LJSOFT (GOA) 14

Central Excise Act, 1955 — Section 11-BB, 40 — Interest Act, 1978 — Section 3 — Refund of excise duty — Claim of interest.

1) Recovery of the interest payable on the amount of refund of excise duty — Plaintiff suing for such interest is required to maintain

its action in a Civil Court only upon payment of ad valorem Court fee — Writ Petition has been rightly dismissed — Writ Petition is not maintainable in view of the alternate remedy of filing appeal — Dismissal of Writ Petition on either of these grounds cannot bar a civil action if otherwise maintainable. (See para 7, 8)

2) Refund of excise duty — Claim of interest — Bar u/s 40 of Central Excise Act — Plaintiff has not only claimed statutory interest u/s 11BB — Plaintiff also claimed interest from 1985 when its amount was blocked by the Excise Authorities by way of Bank Guarantee which came to be enforced — Such interest is not claimed under the Central Excise Act but under the common law and Interest Act — Claim for such recovery can be made only in a Civil Court — Only such of the claim, as could have been made u/s 11BB of Central Excise Act could have been made before the Excise Authority — Suit not barred u/s 40 of Central Excise Act. (See para 10)

3) Excise duty paid under protest — Plaintiff gave a Bank Guarantee of Rs.1 Lakh which was enforced on 8.2.1985 — Additional amount of Rs.1292.12 as demanded was made under protest on 23.11.1985 — Plaintiff is entitled to recovery of such interest as the amounts wrongfully recovered and retained by the Excise Authority under common law and the Interest Act from the respective dates of their recoveries — Plaintiff entitled to interest @ 12% — However Plaintiff cannot be entitled to any interest for the period between 6.6.1997 to 1.10.1999 when the Plaintiff pursued its remedy in the wrong forum, being the writ jurisdiction without payment of ad valorem Court fee. (See para 13, 14, 15)

Mahavir Metal Mart Vs. Union of India & ors. 2009 (9) LJSOFT 114

Central Excise Rules, 1944 — Rule 9(B) — Confiscation and seizure — Provisional assessment — Refund of duty — Redemption fine — Doctrine of unjust enrichment.
See United Spirits Limited Vs. Commissioner of Customs (Import) 2009 (9) LJSOFT 31

Code for Special Schools for Physically Handicapped Students — Clause 43, 77, 82 — Schools for Physical Handicapped Students — Termination of service — Violation of procedure.

See Sanjay Haribhai Indane Vs. Rashtirya Apang Assn. 2009 (9) LJSOFT (NAG) 151

Code of Civil Procedure, 1908 — Order I Rule 3 — Election petition — Parties to the Petition — “Necessary parties” — Scope of — Term “any other candidate”.
See Manoj Bansilal Biyani Vs. Sunil M. Chaudhari 2009 (9) LJSOFT (AUR) 181

Code of Civil Procedure, 1908 — Order I Rule 9 — Motor accident — Compensation — Non-joinder of necessary parties.
See New India Assurance Company Ltd. Vs. Babruwan Pralhad Wakure 2009 (9) LJSOFT (AUR) 105

Code of Civil Procedure, 1908 — Order I Rule 10 — Non joinder of necessary party — Addition of defendant — Delay.
 1) Addition of defendant — Suit for claim of damages — Death of child due to collapse of wall constructed by defendant-trust — Contention was raised suit is bad for non-joinder of all trustees — Defendants cannot in fact oppose an application of addition of such persons as defendants — One cannot blow hot and cold in the same breath — Court has certainly a power irrespective of application even to add or substitute a right

person — This is a case of necessary party not having been joined — Impugned order set aside the application is allowed subject to payment of costs of Rs.2000/-. (See para 8)
 2) Addition of defendant — Inordinate delay of more than 15 years in making the application — However it is not for High Court to enter into that question as to whether the suit is barred by limitation against them — Every defendant, who is added, is deemed to be added from the date of service of summons on him — After the proposed defendants are added, they have a right to agitate the question whether the suit is within limitation as against them or not. (See para 8, 9)
 Result : Petition allowed.

Vitthalrao s/o Damodhar Hepat & anr. Vs. Matru Seva Sangh, Warora & anr. 2009 (9) LJSOFT (NAG) 91

Code of Civil Procedure, 1908 — Order I Rule 10 — Order XXII Rule 10 — Subsequent purchasers — Impleading of party as defendants — Doctrine of lis pendens.
See Satyanarayan Swaroopnarayan Khandelwal Vs. Chandrakalabai Ramssahay Khandelwal 2009 (9) LJSOFT (NAG) 148

Code of Civil Procedure, 1908 — Order I Rule 10 — Enhancement of compensation — Reference — Scope of — “Person interested” — Impleading of — Limitation.
See Chintaman Barbaji Dupare Vs. Vithabai D. Wahane 2009 (9) LJSOFT (NAG) 139

Code of Civil Procedure, 1908 — Order VI Rule 1 — Suit for redemption, possession and mesne profits — Nature of transaction — Interpretation of documents.
See Eknath Bandu Malve Vs. Somnath B. Malve 2009 (9) LJSOFT (AUR) 201

Code of Civil Procedure, 1908 — Order VI Rule 1, 2 — Rules of pleadings — Plea of adverse possession — Burden of proof.
See Rama Kashinath Dhumal (died) through L.Rs. Vs. Laxman Deorao Dhumal 2009 (9) LJSOFT (AUR) 191

Code of Civil Procedure, 1908 — Order VI Rule 17 Proviso — Suit for specific performance — Contract for supply of gas — Amendment of written statement — Commencement of trial.
 Amendment of written statement after trial has commenced — Contract for supply of gas — Pricing policy modified and clarified by EGoM and these events took place after filing of the written statement — Government’s role and its policy play important role in such gas supply agreement — EGoMs deals with the pricing and utilisation of/distribution of certain quantities of gas which include various aspects of approval and the control of Government in all respects — Say of Government and such policies always play important role — All these issues are interlinked and interconnected and depends upon the declared policy and the scheme of such agreement to supply of natural gas — In such types of litigation/dispute for proper adjudication of the matter such materials are necessary to decide the issues as raised from the point of view to grant or not to grant the prayers of the suit — Amendment is bonafide and filed within the reasonable time — Proviso to Order 6 rule 17 of CPC no way restricts the power of the court to grant amendment if case is made out — Defendant allowed to carry out amendment. (See para 22, 23, 25)
 Result : Chamber summons allowed.
NTPC Limited Vs. Reliance Industries Limited 2009 (9) LJSOFT 95

Code of Civil Procedure, 1908 — Order VI Rule 17 — Amendment of written statement — Absence of specific denial — Deemed admission.

1) Suit for declaration and injunction — Written statement was not filed within ninety days by the defendant — Writ petition filed by defendant was allowed by High Court directing the written statement to be accepted on record — Trial had begun even before the written statement was filed on record — Application for amendment of written statement was moved within period of two months after the written statement was allowed to be placed on record — Due to the fault of the lawyer that all the paragraphs of the plaint were not dealt with and there was no specific denial of any of the facts after the paragraph No.7 onwards in the plaint — Party is ordinarily not to be punished for the fault on the part of the lawyer — Application for amendment seeking to deal with those paragraphs which were at all not dealt with — There was no deliberate delay nor the amendment can be said to be malafide — Trial Court did not commit any error in allowing the amendment application even though after the trial had begun. (See para 8)

2) Amendment of written statement — Due to the inadvantage on the part of the lawyer that there was no proper denial of the contentions in the plaint — Contention that if any particular fact is not specifically traversed it is deemed to be admitted and by denying those facts the defendant wants to withdraw those admissions cannot be accepted — Said argument would apply in a case where there is a specific admission and that is sought to be withdrawn — This is a case of deemed admission and not a specific admission given in the written statement — Cannot be said that

the defendant is withdrawing the admission as such. (See para 9)

Result : Petition dismissed.

Twist Spin Industries Vs. KMH Enterprises 2009 (9) LJSOFT (NAG) 90

Code of Civil Procedure, 1908 — Order VI Rule 17 — *Election Petition — Amendment — Delay and laches.*

See Anjum Fatima Aslam Vs. Ayesha Anis Shaikh 2009 (9) LJSOFT 143

Code of Civil Procedure, 1908 — Order VII Rule 10 — *Eviction proceedings — Public premises — Applicability of Bombay Rent Act — Jurisdiction of Small Causes Court — Return of plaint.*

See Pradeep Babubhai Chinai Vs. Sindhu Resettlement Corporation Limited 2009 (9) LJSOFT 186

Code of Civil Procedure, 1908 — Order VIII Rule 1 — Delay in filing written statement — Condonation of delay.

Proceedings for fixation of fair rent — Delay in filing the written statement — Provisions of Order 8 Rule 1 of CPC are directory in nature and the delay can be condoned in exceptional circumstances — Petitioner applied for leave to file Written Statement within a period of 90 days from the service of the suit summonses — Though circumstances cannot be said to be an exceptional circumstance strictly, but then as matter needs to be decided on merits and the matter was pending till then, there was no difficulty for the learned trial court to allow the application and the respondent could have been compensated with necessary costs. (See para 7)

Result : Petition allowed.

Dr. Praful Pimpalwar Vs. Prakashchandra

Purushottamsaran Agrawal 2009 (9) LJSOFT (NAG) 168

Code of Civil Procedure, 1908 — Order VIII Rule 5, 10 — Delay in filing written statement — Condonation of delay.

Suit for possession, declaration, injunction and cancellation of instruments — Plaintiffs have also filed an application for temporary injunction — Written Statement not filed by defendants within 90 days — Plaintiffs filed application contending that the Court should deliver the judgment under Order 8 Rule 10 of CPC — Defendants contended that they did not file Written Statement because of the fact that they had moved an application u/s 9A of CPC as well as application under Order 7 Rule 11 of CPC for rejection of plaint and both these applications have not been decided — Conduct of defendants shows that defendants filed reply to temporary injunction application and separately raised pleas with regard to jurisdiction and plaint being defective — They never intended to let the suit be decreed by default — It must be assumed that the defendants were under bonafide belief that the Written Statement could be filed later — Where other interim applications are decided or are pending and delay occurs in filing Written Statement that could be sufficient ground to condone the delay — Court has a power to condone the lapse in filing the Written Statement beyond 90 days — Trial Court did not commit an error in rejecting the application moved by the plaintiffs to deliver the judgment under Order 8 Rule 10 of CPC. (See para 3)

Result : Petition dismissed.

Methodist Episcopal Church through its Trustees Vs. Methodist Church in India & ors. 2009 (9) LJSOFT (NAG) 93

Code of Civil Procedure, 1908 — Order XI Rule 22 — Order for discovery and inspection — Non-compliance of — Dismissal of suit.

Dismissal of suit for non-compliance of discovery of inspection of documents — Contended that inspection was not given regarding two documents as the said documents were not in its possession — No affidavit to that effect filed in Trial Court — Provisions of Order 11 Rule 21 of CPC should be applied only in extreme cases where obstinacy or contumacy on the part of the defendant or a wilful attempt to disregard the order of the court is established — Contention on behalf of the appellant appeared to be genuine and having pointed out the facts to Appellate Court it is appropriate to take into account said explanation — Order of dismissal set aside and the suit is restored for trial. (See para 6, 7, 8)

Result : Appeal allowed.

Board of Trustees of the Port of Bombay Vs. UCO Bank Singapore & ors. 2009 (9) LJSOFT 141

Code of Civil Procedure, 1908 — Order XII Rule 9 — *Section 35 — Change report — Elections — Writ jurisdiction — Suppression of facts — Imposition of costs.*

See Dattatraya Bhimrao Patwari Vs. Manikrao Ramrao Birajdar and 23 others 2009 (9) LJSOFT (AUR) 192

Code of Civil Procedure, 1908 — Order XIII Rule 1(3)(a) — Withdrawal of suit with liberty to present fresh suit — Appellate proceedings.

Suit for declaration of ownership as well as for possession — Suit dismissed by trial Court and appeal was filed by the Plaintiff — At appellate stage plaintiff filed application seeking withdrawal of the suit with permission

to file suit on the same cause of action — Plaintiff raised two grounds, one as regards failure of the plaintiff to apply to bring on record legal representatives of deceased defendants no.1, 5 and 6 second was regarding ambiguity in describing the suit property — Held that non-filing of application for bringing legal representatives of deceased defendants no.5 and 6 cannot be termed as a defect of formal nature which requires withdrawal of the suit — Plaintiff can very well present appropriate application — Regarding the defect in describing the suit property it is essential for the plaintiff to disclose as to what is the ambiguity which he wants to clarify by presenting a fresh suit — Contents of the application do not disclose any defect which is of a formal character enabling the plaintiff to seek withdrawal of the suit within parameters of Order XXIII Rule 1(3)(a) of CPC — First appellate Court was not justified in permitting the plaintiff to withdraw the suit with liberty to present fresh suit on the same cause of action. (See para 12, 13)

Result : Petition allowed.

Veerbhadrapa s/o Mahadappa Rachatte Vs. Mahalingappa s/o Gurlingappa Karanje & ors. 2009 (9) LJSOFT (AUR) 172

Code of Civil Procedure, 1908 — Order XIV Rule 1 — Non-framing of issues.

Suit for specific performance of agreement for sale — Trial Court held that the power of attorney did not empower the holder of the attorney to enter into agreement to sell or transfer the property — However no such a plea was raised in the written statement — Trial Court did not frame any issue regarding the authority or otherwise of the power of attorney and the consequence of its ratification or otherwise — Non-framing of an issue is a

defect in the trial and has affected the rights of the parties to the suit adversely — Impugned Judgment and Decree set aside and matter remanded to the Trial Court. (See para 4, 5)

Result : Appeal allowed.

Ajit Gaitonde & anr. Vs. Smt. Ezilda Emiliana Cristina Pinto (since deceased) 2009 (9) LJSOFT (GOA) 184

Code of Civil Procedure, 1908 — Order XVII Rule 2 — Order IX Rule 8 — Dismissal for default — Restoration of suit — Appearance of a counsel.

1) Dismissal of suit for non-prosecution — Neither the Counsel nor the advocate on record was present — Junior Advocate appeared before the Court without instructions and merely for the purpose of taking an adjournment — Court refused to grant an adjournment and dismissed the suit — Words “make such order as he thinks fit” itself suggest that there are other options available to the court than to write a judgment on merits — Course adopted by the Court was well within the four corners of Order 17 Rule 2 of CPC — Contention that if the Court was not inclined to grant an adjournment it was incumbent upon it to have decided the suit and passed a judgment on merits cannot be accepted. (See para 9, 15, 16)

2) Dismissal of suit for non-prosecution — Neither the Counsel nor the advocate on record was present — Suit is of the year 1979 and was instituted in 1977 — Evidence already recorded by the Commissioner and the matter was posted for arguments — No satisfactory explanation is given as to why the advocate on record left Bombay without having made proper arrangements — Conduct of the Advocate on record found to be casual

particularly when it was cautioned that the Advocates on record should take responsibility in pursuing the matter in absence of the counsel — Though the explanation given by the plaintiffs is not entirely satisfactory but taking an overall view of the matter in the interest of justice the motion is allowed subject to costs — As the Defendant has not filed any reply opposing the motion no costs is awarded in their favour — Costs of Rs. 20,000/- to be paid by the Plaintiffs to the High Court Legal Services Committee. (See para 9, 15, 19, 21)

3) Absence of Counsel and the advocate on record — Junior Advocate appeared before the Court without instructions and merely for the purpose of taking an adjournment and was not in a position to argue the matter — Presence of a Counsel has to be an effective presence and not mere physical presence — Appearance of Counsel who is not able to or unwilling to plead the cause of his client can hardly be termed as an appearance in the context of Order 17 Rule 2 or Order 9 Rule 8 of CPC. (See para 15)

4) Dismissal of suit for non-prosecution — Neither the Counsel nor the advocate on record was present — Matter sought to be restored by filing affidavits by the advocates — Possible that in a given case, if the suit is dismissed on account of default on the part of the Counsel, the plaintiffs are not even aware of the dismissal — Desirable that the affidavit in support of the Notice of Motion should be that of the plaintiffs so that the plaintiffs are aware as to the happenings in their suit. (See para 20)

Result : Notice of motion allowed.

Devidayal Sales Pvt. Ltd. Vs. State Trading Corporation of India & anr. 2009 (9) LJSOFT 130

Code of Civil Procedure, 1908 — Order XVIII Rule 4 (As amended by Amendment Act of 2002) — Recording of evidence.

After introduction of amendment in CPC in 2002 evidence has to be recorded in the trial court as per amended provision i.e. Examination in chief by way of filing affidavit, then witness to be cross examined by other side — Trial court has lost sight of the amendment — Sometime the party is allowed to lead oral evidence and sometime the parties are asked to lead evidence by way of affidavit and when objection is raised the same is rejected on the ground that it is the discretion of the Court — When a procedure is mandated as to how the evidence to be recorded in the trial court then it is expected that the trial judges to follow the same and not to behave as per their own whims and fancies — This practice is required to be deprecated and curbed down — Trial judge directed / instructed to follow the procedure strictly as provided under CPC and these directions are to be followed punctually and scrupulously. (See para 4)

Result : Petition allowed.

Kailash Ambadas Lad Vs. Manjusha Ashok Oza 2009 (9) LJSOFT (URC) (AUR) 45

Code of Civil Procedure, 1908 — Order XVIII Rule 4 — Examination of witnesses — Filing of affidavits.

Suit for possession — No party can in fact be directed to file affidavit of the witnesses at one and the same time because the party has a choice to decide as to number of witnesses to be examined in the court — There was no need for the trial court to have directed the defendants to file the affidavit of all witnesses which they want to examine — Impugned order quashed and set aside and the defendants are at liberty to file the affidavit of the

witnesses as they may choose to examine at the time of trial. (See para 8)

Result : Petition allowed.

Kawadu s/o Latari Ramteke & anr. Vs. Suresh s/o Latari Ramteke & ors. 2009 (9) LJSOFT (NAG) 99

Code of Civil Procedure, 1908 — Order XX Rule 10-A — Death of one of the defendants — Source of information — Authenticity of information.

Suit for recovery of loan filed by Bank — Defendant No.1 is borrower and other three defendants are guarantors — Defendant No.2 filed application pointing out that defendant No.3 had expired pending the suit and requested the trial Court to direct plaintiff-Bank to take steps to bring legal representatives of defendant no.3 on record — Application opposed by the Bank on the ground that unless authentic information from authenticate source comes on record the plaintiff is unable to make application — Application rejected on the ground that no death certificate of defendant No.3 has been placed on record and advocate for defendant No.3 had not given any such information — Very strange stand has been taken by the Bank and astonishing reasons are given by the trial Court — Though responsibility was put on the Advocate of the deceased defendant to bring that fact to the notice of the Court but it does not mean that the plaintiff cannot or should not take steps to bring legal representatives inspite of such knowledge from some other source — Trial Court should have directed the plaintiff-Bank to take note of information given by defendant No.2. (See para 4, 5, 6)

Result : Petition allowed.

Pramod Jamwal Vs. Bank of Maharashtra & ors. 2009 (9) LJSOFT (NAG) 118

Code of Civil Procedure, 1908 — Order XXI — Execution proceedings.

Execution of decree — Suit for possession instituted by Appellant was dismissed and the dismissal attained finality — Despite this the Appellant has persisted in filing repeated applications for execution — Even the High Court had allowed a Petition instituted by the Advocate General of the State against the Appellant u/s 2 of Maharashtra Vexatious Litigation (Prevention) Act — Appellant was in the habit of filing of “applications after applications” without any justification — Proceeding instituted before the Learned Single Judge again was one more in a line of untenable applications moved by the Appellant — Impugned order dismissing the application does not suffer from any error. (See para 2, 3, 4)

Result : Appeal dismissed.

Prakash Ganpat Sawant Vs. Ravindra Babaji Satam & ors. 2009 (9) LJSOFT 155

Code of Civil Procedure, 1908 — Order XXII Rule 4 — Property of female — Factum of possession — Claim of absolute ownership — Abatement of suit.

See Trambak Barku Patil Vs. Damu Chindhu Patil 2009 (9) LJSOFT (AUR) 30**Code of Civil Procedure, 1908 — Order XXVI Rule 9, 10-A — Appointment of Court Commissioner.**

Suit for restoration of possession and for removal of encroachment — Respondent filed an application under Order 26 Rule 10A r/w Section 151 of CPC stating that there is a dispute regarding the area and boundary of the field — Court Commissioner has been appointed for the specific purpose to measure the lands claimed by the parties and also to

take joint measurements of such lands — Contention that appointment of Court Commissioner would amount to collecting evidence for the respondent cannot be accepted — No jurisdictional error committed by the trial Court while passing the impugned order appointing a Commissioner for the purpose of carrying out the local investigation. (See para 4, 5)

Result : Petition dismissed.

Girish Vasantrao Bhoyar & anr. Vs. Nimbaji Warluji Bambal 2009 (9) LJSOFT (NAG) 86

Code of Civil Procedure, 1908 — Order XXX — Suit on behalf of Company — Power to sue.

See Hari Shree Enterprises Vs. Vikas Housing Ltd. 2009 (9) LJSOFT 153

Code of Civil Procedure, 1908 — Order XXXIX Rule 1, 2 — Section 35, 94 — Transfer of Property Act, 1882 — Section 52 — Development agreement — Temporary injunction — Frivolous proceedings — Costs — Doctrine of lis pendens.

1) Plaintiff on basis of development agreement seeking order of temporary injunction restraining defendant from transferring or creating third party interest in suit property — Suit is of 2008 whereas development agreements are of 2003 — Payment made by plaintiffs to defendant No.1 is Rs.11,000/- alone — Properties of defendant No.1 are made hostage and/or hold on by the plaintiffs for the substantial period of time — No substantial pleadings raised by plaintiffs as to what irreparable loss could be put to the plaintiffs in the case of refusal of their application — Prima facie case and balance of convenience weighs in favour of defendant

No.2 — Impugned order rejecting the application not liable to be interfered with. (See para 9, 12)

2) Frivolous proceedings — Utilisation of time with the assistance of the ad-judicatory forum needs to be considered to approach adjudicating forum by the various litigants, may be subject matter of scrutiny and finding to be recorded by the adjudicator — Time is required to be spent for adjudicating upon the rights of the parties and resolution of the issues brought before the Court — Costs of Rs.30000/- imposed on plaintiffs payable to State. (See para 14, 17)

3) Doctrine of lis pendens — Transaction entered into by defendant No.1 in favour of defendant No.2 during pendency of the suit — Section 52 of T.P. Act is capable and would operate accordingly — Court declined to impose any condition. (See para 22)

Result : Appeal dismissed.

Ramesh Bodhraj Nagpal (HUF) and anr. Vs. Smt.Prakashkaur Sardar Deelipsingh and anr. 2009 (9) LJSOFT (AUR) 198

Code of Civil Procedure, 1908 — Order XXXIX Rule 1, 2 — Goa, Daman and Diu (Protection from Eviction) of Mundkars Act, 1975 — Proposed construction — Temporary injunction.

Proposed new construction carried out by the respondent No.1 is at a distance of 8.5 metres from the outer wall of the house occupied by the petitioner — Rights of petitioner have not yet been crystallized before the authorities under the Mundkar Act where the applications for declaration of their rights of mundkarship are pending — Respondent No.1 that in case he attempts to do any further new construction in future he shall do so by obtaining permission from the Statutory Authority and

shall not claim any equities for having put up the construction in the disputed area — No infirmity in order passed by learned District Judge in allowing the appeal and dismissing the application for temporary injunction. (Paras 4 & 5)

Result : Petition dismissed.

Smt. Kamal Parwar Vs. Timotio Fernandes & anr. 2009 (9) LJSOFT (GOA) 60

Code of Civil Procedure, 1908 — Order XL Rule 1 — Maharashtra Co-operative Societies Act, 1960 — Section 91 — Redevelopment scheme — Obstruction by non-co-operative members — Vacating of premises — Temporary displacement — Appointment of Court Receiver.

Redevelopment scheme by Co-operative Housing Society — Out of 80 members, 54 members have already vacated their respective premises — Requisite members/ percentage, available at the relevant time — Petitioners not ready to vacate the premises which is affecting the further development of the Scheme — Respondent No.2 Developer had spent Rs. 3 crores for the project and also paying rent to all members who have shifted for their occupation charges — Merely because there are disputes or challenges pending as raised by the petitioners and such other members that itself cannot be the reason to stop the progress of the development which is at advance stage — Order appointing the Receiver to take possession is only for temporary displacement — Temporary accommodation would be provided to the Petitioners and the members will be put back in possession in the new building as per the Scheme — All the basic elements as required to pass such order is clearly borne out from the record itself — Order appointing the

Receiver to take possession was proper and rightly passed by the Co-operative Court and maintained by the Co-operative Appellate Court. (See para 7, 10, 13, 14, 16)

Result : Petitions dismissed.

Mahabir Nuniwal Vs. Neptune Co-operative Housing Society Ltd. & anr. 2009 (9) LJSOFT 124

Code of Civil Procedure, 1908 — Order XLI — Order XXXVII Rule 4 — Ex-parte decree — Setting aside of — Letters Patent Appeal — Maintainability of — Payment of costs by cheque — Effect of.

See Dev Sha Corporation Vs. Shree Ram Mills Ltd. 2009 (9) LJSOFT 135

Code of Civil Procedure, 1908 — Order XLI Rule 23-A — Motor accident — Compensation — Non-production of documents — Non-compliance of Rules. See Rangnath Trimbak Sonawane Vs. Baban Ganpat Mhaske 2009 (9) LJSOFT (AUR) 108

Code of Civil Procedure, 1908 — Order XLI Rule 32 — Trust property — Transfer of immovable property — Sanction for. See Shriram Mandir Sansthan Vs. Tulsiram s/o Bhagirath Lohiya 2009 (9) LJSOFT (NAG) 165

Code of Civil Procedure, 1908 — Section 2(2), 113 — Suspension, removal and dismissal of trustee — Interim order of suspension — Maintainability of appeal — Interpretation of statutes — Mischief Rule — Division Bench Reference.

See Mohd. Abdul Rasheed s/o Mohd. Abdul Razzak Vs. Deputy Charity Commissioner 2009 (9) LJSOFT (AUR) 75

Code of Civil Procedure, 1908 — Section 9 — Recovery proceedings — Jurisdiction of Civil Court — Exclusion of jurisdiction. Kinnariben Shantilal Patel Vs. Rajmal Premchand Surana 2009 (9) LJSOFT (AUR) 107

Code of Civil Procedure, 1908 — Section 9 — Compensation — Award of interest — Jurisdiction of Civil Court.

See Executive Engineer Vs. Bhagwan Yashwanta Kulkarni 2009 (9) LJSOFT (AUR) 185

Code of Civil Procedure, 1908 — Section 11 — Evidence Act, 1872 — Section 90 — Limitation Act, 1963 — Article 65 — Suit for possession and declaration — Limitation — Legal heirs — Proof of — Presumption as to document thirty years old — Pre-conditions for — Contents of document — Proof of — Principles of res-judicata.

1) Suit is for declaration of title and for possession — Deceased was a staunch worshipper of ‘Gurudatta’ and all the properties being his self-acquired properties — Plaintiff is the son of elder brother of deceased claimed to be his only heir is entitled to all the properties — Contended that deceased had renounced world at a young age and was a bachelor throughout his life — Defendants no.1 and 2 claimed that they are the children of deceased and hence are his class one heirs — No pleadings as regard marriage of deceased — Circumstantial evidence of joint residence, school record, children etc. missing — Defendants 1 and 2 failed to establish relationship with deceased — No question of they succeeding to property of deceased. (See para 13, 19, 20)

2) Principles of res-judicata — One of the pre-conditions for attraction of Section 11 of CPC

for an issue to be barred by res-judicata, is that it must arise between the same parties and decided by a court of competent jurisdiction — Section 11 does not encompass a situation where one of the parties to the subsequent suit was aware of the earlier suit and the question arising therein — Futile to submit that the plaintiff ought to have got himself pleaded to the earlier suit There is no compulsion on a person to get himself impleaded to any court proceedings and there cannot be any consequence of a person not volunteering for being impleaded to a suit. (See para 18)

3) Thirty years old document — One of the pre-conditions for raising presumption is that the same is produced from custody which the court in the particular case considers proper — Presumption is limited to the signature on the document, hand writing of the document and execution or attestation of the document — Defendants no.1 and 2 failed to how they got custody of the letters that were not addressed to them — Cannot be said that the said letters have come from proper custody — Defendants no.1 and 2 have not been able to examine the authors of any of the letters and the truth of contents of the letters remains unestablished — No presumption u/s 90 of Evidence Act can be raised. (See para 19)

4) Suit is for declaration of title and for possession — Defendant no.1 appointed receiver of the suit properties — As a Receiver he had no power vested in him to alienate or transfer any of the suit properties — Later, the appointment of defendant no.1 as Receiver was cancelled — Trial Court rightly held that sale of one of the suit properties by defendants no.1 and 2 to defendant no.4 is not valid. (See para 21)

5) Suit is for declaration of title and for possession — Suit would be governed by Article 65 of the Limitation Act — Period of

limitation provided therein is of twelve years and the time for filing the suit begins to run from the date on which the possession of the defendant becomes adverse to the plaintiff. (See para 22)

Result : Appeal dismissed.

Narendra Akash Maharaj Petkar & anr. Vs. Shahaji Baburao Petkar & ors. 2009 (9) LJSOFT 73

Code of Civil Procedure, 1908 — Section 13(b) — Order XXI Rule 22 — Execution proceedings — Defamation — Compensation — Foreign Judgment.

Plaintiff instituted proceedings before the Court of U.K. for seeking damages for libel and an injunction in respect of the publication of the defamatory article — Service of those proceedings was effected on person who according to the plaintiff, was the resident representative of the defendant in Great Britain and authorized to accept service of process — Defendant did not enter appearance in the proceedings in London — Leave has been sought of the court under the Order XXI Rule 22 of CPC for execution of decree of the High Court of Justice in the Queen’s Bench Division — Judgment is a judgment in default of the appearance of the defendant — There was no evidentiary material before the Trial Court in England — Decree not based on a consideration of evidence - documentary or oral and of the material on record — Judgment of the Foreign Court is not one which has been delivered on the merits of the case — Execution application as well as the notice under Order 21 Rule 22 of CPC dismissed. (See para 11, 12, 16, 17)

Result : Application dismissed.

Percy Shiavak Mistry Vs. Bennet Coleman & Company Ltd. 2009 (9) LJSOFT 98

Code of Civil Procedure, 1908 — Section 24 — Hindu Marriage Act, 1955 — Section 13, 19 — Divorce — Transfer of matrimonial proceedings.

Divorce petition filed by husband at Ratnagiri — Petitioner-wife staying at Jalna contended that her parents are aged and it would be difficult for her to undertake the journey on the date prescribed in the matter covering a distance of 650 KMs along with her parents or other relatives — Court at Jalna also has jurisdiction to entertain the petition as the marriage between parties was solemnised at Jalna — Convenience of the wife must be looked at in the matter of transfer of matrimonial proceedings — Proceedings in the Court at Ratnagiri transferred to the District Court at Jalna. (See para 8, 9)

Result : Petition allowed.

Shruti w/o Shriram Jangam Vs. Shriram s/o Balkrushn Jangam 2009 (9) LJSOFT (AUR) 175

Code of Civil Procedure, 1908 — Section 100 — Suit for possession — Limitation — Second appeal.

See Pandurang Doulu Patil Vs. Ramrao Dadu Patil since deceased by his LRs. 2009 (9) LJSOFT 92

Code of Civil Procedure, 1908 — Section 100-A, 16 (as amended by Act 22 of 2002) — Acquisition of land — Compensation — Ownership — Letters Patent Appeal — Maintainability of — Jurisdiction of Goa Bench of Bombay High Court — Applicability of Maharashtra State Legislature.

See Sanjay Z. Rane Vs. Saibai S. Dubaxi (since deceased) through her LRs. 2009 (9) LJSOFT (GOA) 35

Code of Civil Procedure, 1908 — Section 151 — Juridical possession — Proof of — Order of “Status-quo” — Inherent powers.

Suit for specific performance of agreement — Plaintiff claims to be in possession and claims to have put up construction on the suit property — Defendant No.41- Society also claims to be in possession and has got the Receiver appointed — Court cannot pass any order of “statusquo” unless the status of the suit property is admitted by the parties or shown to Court by photographs or otherwise — There is no admitted status quo by the parties in the suit property — One construction block has been put up by the Plaintiff on the suit property albeit despite the appointment of Court Receiver — Plaintiff has produced a photograph of the construction and also a photograph showing landscaping work on a portion of the suit premises near the “model flat” — Parties directed to maintain statusquo as shown in the photographs. (See para 23, 24, 25)

Result : Accordingly.

Vimal Builders Vs. Nand Kumar Anant Vaity & ors. 2009 (9) LJSOFT 164

Code of Criminal Procedure, 1973 — Section 111, 117 — Chapter proceedings — Security for keeping peace and good behaviour — Interim bond — Opportunity of being heard — Abuse of powers.

1) Chapter proceedings — Notice issued u/s 111 of Cr.P.C. on 24-3-2008 — Proceedings were fixed for hearing 6-4-2008. But the respondent passed orders on the same day i.e. 24-3-2008 purportedly u/s 116(3) of Cr.P.C. without giving any opportunity of being heard, directing the petitioners to execute an interim bond for good behaviour on conditions — At no point of time petitioners were given a chance to arrange for the bond — Conditions

imposed were such that it was impossible to get a bond from the Chairman with whom according to the petitioners they had a dispute — Law has been violated at every stage and the petitioners remained in illegal custody — Executive Magistrate tendering an apology to the Court seeking condonation of the error committed by him and stated that he had not exercised the power with any malice — Benefit of doubt given to the Magistrate on the ground that perhaps these Magistrates are not aware of the law — When a person is appointed or posted as an Assistant Commissioner of Police he is almost mechanically appointed as an Executive Magistrate and is given authority to execute powers under Chapter VIII of Cr.P.C. — They are not trained to act as Magistrate and had not undergone any training before they were given the powers of a Magistrate — State Government directed to immediately take steps to train its all Executive Magistrates so that they understand as to how the provisions of Chapter VIII of Cr.P.C. have to be applied. (See para 6, 8, 9)

2) Chapter proceedings — When the Magistrate takes action u/s 111 of Cr.P.C. he has no power to arrest and detain a person — His power is to require to show cause and if necessary start an inquiry — Even directing a person to give bond and on failure send him to jail cannot be done even at the interim stage unless some sort of inquiry is conducted with regard to truth of the information. (See para 6, 7)

Result : Accordingly.

Pravin Vijaykumar Taware & ors. Vs. Special Executive Magistrate, Baramati & anr. 2009 (9) LJSOFT 41

Code of Criminal Procedure, 1973 — Section 162, 164 — Statement made before Police

Patil — Admissibility of — Police Patil and Police Officer — Distinction between — Rules of precedent — Full Bench Reference.

See Rajeshwar s/o Hiran Mohurle (In Jail) Vs. State of Maharashtra 2009 (9) LJSOFT (NAG) 52

Code of Criminal Procedure, 1973 — Section 188 — Second marriage — Offence committed outside India — Absence of sanction — Quashing of criminal proceedings.

See Haresh N. Mirchandani Vs. Reshma Mirchandani 2009 (9) LJSOFT (URC) 1

Code of Criminal Procedure, 1973 — Section 198(3), 200, 204(2) — Indian Penal Code, 1860 — Section 494, 495 — Second marriage — Concealment of former marriage — Complainant — Locus standi — Aggrieved person — Issue of process — Quashing of criminal proceedings.

1) Marrying again during lifetime of wife — Complaint filed by mother of second wife — Second wife is not the aggrieved party and it is only the first wife who is aggrieved party and only she was competent to file a complaint u/s 494 IPC — Process issued against the accused for offence u/s 494 of IPC quashed and set aside. (See para 19, 20)

2) Concealment of former marriage from person with whom subsequent marriage is contracted — Complaint filed by mother of second wife — Second wife is working in U.K. and was not examined — Statement such as “earlier we were not knowing that the accused was married to another woman in New Zealand” is a vague statement and would not be sufficient to prove prima facie the ingredient of Section 495 IPC — Statement on oath made by the complainant is nothing short of hearsay and on the basis of such a statement, no process could have been issued

against the Accused u/s Section 495 of IPC — Process issued against the accused for offence u/s 495 of IPC quashed and set aside. (See para 12, 20)

3) Issue of process — Complainant did file any list of witnesses — Requirements of Section 204(2) of Cr.P.C. not mandatory but directory — Failure to submit the list before process was issued was a curable defect and could be corrected at an appropriate time. (See para 7, 8)

Result : Petition allowed.

Herculano Coelho Vs. Mrs. Antonia Pobrinha Dias e Faleiro & anr. 2009 (9) LJSOFT (URC) (GOA) 20

Code of Criminal Procedure, 1973 — Section 209, 475 — Indian Penal Code, 1860 — Section 302, 381 — Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1952 — Rule 3, 4, 5, 6, 7, 8 — Navy Act, 1957 — Section 3(13), 78, 93(1) — Murder — Committal order — Non-compliance of mandatory Rules — Naval offence — Jurisdiction as to place and offences — Appeal against conviction.

1) Appellant working as Midshipman charged for causing the murder of two of his colleagues while on board of ship INS Ranjit — Charge-sheet made out a Naval offence as defined u/s 3(13) of Navy Act — Offence was triable by the Court Martial or the ordinary Criminal Court — It was necessary for the learned Metropolitan Magistrate to comply with the procedure prescribed under the Rules of 1952 before he passed the committal order u/s 209 of Cr.P.C. — Said Rules being mandatory, non-compliance thereof vitiates the order of committal and resulted in lack of jurisdiction to try the case before the Sessions Court — Consequently the impugned order of conviction and sentence is vitiated and is a

nullity and is required to be set aside solely on this ground — Impugned order of conviction and sentence quashed and set aside and the matter remitted to the Metropolitan Magistrate directing to take appropriate steps as required under the Rules. (See para 15, 17)

2) Criminal appeal — Issue of lack of jurisdiction of the trial Court can be taken up for the first time before the appellate Court and it is required to be decided on merits — If it is found by the appellate Court that the trial Court lacked jurisdiction, the trial shall stand vitiated and the order of conviction and sentence would stand quashed and set aside. (See para 15)

Result : Appeal partly allowed.

Kanwardeepsingh Harbansingh Bedi Vs. State of Maharashtra 2009 (9) LJSOFT 67

Code of Criminal Procedure, 1973 — Section 227, 228 — Discharge of accused — Delay in pronouncing judgment — Non-consideration of the arguments.

1) Discharge of accused — Order passed after more than 7 months after the arguments were heard — Guidelines have been issued to subordinate Courts and other authorities with regard to the time for delivery of judgment — Simply delay made in passing the order, which he was not supposed, but does not render the order bad in law. (See para 4, 5, 6)

2) Discharge of accused — Only if the Session Judge finds that the accused needs to be discharged, he is required to give reasons — He is not required to give reasons when he proposes to frame the charge — Learned Session Judge has refused to discharge the accused — If he has failed to note about certain arguments advanced by the learned Counsel for the accused that will not and cannot vitiate the order at all — If the Session Judge simply proceeds to frame the charge that

would be enough — It would be assumed that after considering the arguments, he found that there was ground to frame the charge — Impugned order cannot be said to be bad for the reasons that it does not specifically deal with the arguments said to have been argued. (See para 7)

Result : Applications dismissed.

Anand B. Shirwaikar Vs. State (Through CBI, Panaji) 2009 (9) LJSOFT (URC) (GOA) 190

Code of Criminal Procedure, 1973 — Section 227, 228 — Discharge of accused — Abetment — Continuing unlawful activities
See Govind Sakharam Ubhe Vs. State of Maharashtra 2009 (9) LJSOFT 47

Code of Criminal Procedure, 1973 — Section 228 — Murder — Framing of charge — Medical evidence — Appeal against conviction.

See Santosh Bhau Humane Vs. State of Maharashtra 2009 (9) LJSOFT 15

Code of Criminal Procedure, 1973 — Section 272 — Language of Courts — Charge sheet in Marathi language — Demand of English translation.

Charge sheet is in Marathi language — Applicant filed application claiming that Marathi language is not known him and to his lawyer sought direction to provide English translation of the charge sheet — Vide notification dated 21-7-1998 State Government decided that the Marathi language shall be the only language of the all criminal courts other than High Court — Only the post mortem notes and evidence of experts are covered by in the exceptions carved out by the said notification — A charge sheet does not fall in the said exceptions — As a matter

of right the accused cannot claim English translation of charge sheet — Fact that the Advocate of accused cannot understand the language of the court is no ground to claim translation at the cost of the court or the State — Learned Sessions Judge was justified in rejecting the request for supply of English translation of the charge sheet. (See para 5, 6)

Result : Application dismissed.

Harinarayanan Punamchand Vyas Vs. State of Maharashtra 2009 (9) LJSOFT (URC) 22

Code of Criminal Procedure, 1973 — Section 320, 482 — Dishonour of cheque — Compounding of offence at the instance of accused.

See Gajanan Narayan Joshi Vs. Haridas Bhikulal Jobanputra 2009 (9) LJSOFT (URC) (NAG) 10

Code of Criminal Procedure, 1973 — Section 378(1) (As amended by the Cr.P.C. (Amendment) Act 2005) — Appeal against acquittal — Change of forum — Pending appeals — Applicability of amended provisions — Division Bench Reference — Principles of Statutory Interpretation.

1) Appeal against acquittal — Prior to the amendment, section 378 of Cr.P.C. provided for an appeal by the State Government against an order of acquittal passed by the original or the Appellate Forum — After the amendment an order of acquittal passed by a Magistrate in respect of a cognisable and non bailable offence can be questioned only by presenting an Appeal to the Court of Sessions and no appeal in that behalf can be filed in High Court — Absence of a saving clause by itself would not indicate that the Amendment would apply to pending proceedings as well — Something more in the substantive provisions itself was

necessary to deprive High Court of its jurisdiction to hear and dispose of the pending appeals — When an appeal was rightly filed and entertained by High Court in accordance with law in force on the date of its institution and when High Court is seized of the matter, it does not lose jurisdiction merely because section 378 is now amended — Section 378(1) as amended by the Cr.P.C. (Amendment) Act 2005 will not apply to appeals duly filed and entertained prior to the date of the Amendment Act coming into force i.e. 23rd June 2006. (See para 24, 25, 27)

2) Principles of Statutory Interpretation — New law bringing about a change in forum does not affect pending actions unless a provision is made in it for change over of proceedings or there is some other clear indication that pending actions are affected — Where the question is of change of forum it is not merely a matter of procedure — There must be something in the Amendment Act which takes away the jurisdiction of the Highest Court in the State to hear and finally dispose of the pending appeals. (See para 21, 22)

Result : Accordingly.

State of Maharashtra Vs. Vijay Waman Patil & Ors. 2009 (9) LJSOFT 16

Code of Criminal Procedure, 1973 — Section 389 — Dishonour of cheques — Appeal against conviction — Suspension of sentence — Ad-valorem Court fees — Payment of — Validity of.

See Gurukripa Traders Vs. Kailas Ramnarayan 2009 (9) LJSOFT 58

Section 438 — Anticipatory bail — Grant of — Offence u/s 406, 420, 417, 418 r/w Section 34 of IPC — Misappropriation of funds.

Swaranjayanti Gram Swarozgar Yojana — Allegation of misappropriation of funds by making disbursement during the period 19.3.2000 to 28.12.07 — Applicant worked as extension officer holding an additional charge from 18.12.07 to 24.6.08 — During the said period only one disbursement has taken place on 19.12.07 on the very next day after his taking over the additional charge — Prima facie it does not appear that the applicant would have committed the offence in connivance with other accused — Being a government employee there are no chances of the applicant running away from justice Applicant deserves to be granted anticipatory bail. (See para 1)

Result : Application allowed.

Revansidha Ramchandra Jeurgi Vs. State of Maharashtra 2009 (9) LJSOFT (URC) 2

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory bail — Grant of — Offence u/s 416, 420, 465, 467, 468, 471, 120-B of IPC — Forged document — Evidence in civil suit.

Applicant allegedly got flat transferred in her name on the basis of forged document — Applicant claimed that the complainant herself has executed the documents — Case founded on the premise that the complainant is wholly illiterate and cannot sign — In another Civil Suit categoric stand is taken by the complainant that old ration card bears her signature meaning thereby the complainant can sign — Entire premise on which the prosecution is founded appears prima facie to be erroneous — APP seeks time to file appropriate written reply — By an interim order directed that in the event of arrest the applicant shall be released on bail on

furnishing personal bond in the sum of Rs.10,000/- with one or two sureties in the like amount. (See para 1)

Result : Accordingly.

Kanchan K. Rathod Vs. State of Maharashtra 2009 (9) LJSOFT (URC) 4

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory bail — Grant of — Offence u/s 380 of IPC — Theft — Bank locker.

Gold ornaments missing from the locker — Applicants are employees of the Bank — Bank locker can be operated only when the key with the complainant and the key which is kept with the Bank is simultaneously used for opening the locker — No material on record to indicate that the complainant had deposited the gold jewelry, as claimed by her, in the locker — Interim order passed by High Court is confirmed. (See para 2, 3)

Result : Application allowed.

Vijay Nivrutti Taware & ors. Vs. State of Maharashtra 2009 (9) LJSOFT (URC) 50

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory bail — Grant of — Offences u/s 406, 408, 409, 420, 465, 468, 471, 120-B, 209 r/w 34 of IPC — Bank fraud — Fraudulent loan transactions — Unlawful disbursement of loan — Ex-Directors.

1) Applicant was one of the Ex-Director of the Bank — Allegations of disbursement loan without obtaining security and mortgage and by forging documents — Loans have been sanctioned by the Board in utter disregard to the by-laws of the Bank — Loan proposals are sanctioned either to the relatives of the Directors or to other borrowers — Applicant has not opposed any of the bogus loan cases during the meetings in which he attended and

signed the proceedings — Though applicant has not borrowed the loan for himself or for his relatives, still the applicant cannot escape from his responsibility/ liability for huge loss sustained to the bank due to non payment of loan amounts by the borrowers — No Director can escape from the responsibility unless it is demonstrated that the loan proposals were opposed by them in the meetings and they protested against the sanction of the loan proposals contrary to the policy of the Bank — Bank has been duped by the Directors, their relatives and borrowers without having any regard to the security of the bank or interest of the bank — Applicant was Director for considerable period and in case protection is granted there may be possibility that he may try to influence the prosecution witnesses — Bail application rejected. (See para 26 to 36)

2) Grant of anticipatory bail — Power is extraordinary in character — Such power may be exercised only in exceptional cases where it appears that a person is falsely implicated or a frivolous case is launched against him or “there are reasonable grounds for holding that a persons accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail” — Power is “unusual in nature” and is entrusted only to the higher echelons of judicial service i.e. a Court of Sessions and a High Court — Case law discussed. (See para 16 to 23)

Result : Application dismissed.

Dr. Sunil Gulabchand Jain Vs. State of Maharashtra & anr. 2009 (9) LJSOFT (AUR) 173

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offence u/s 307, 143, 144, 147, 149, 452, 342, 325, 506 and 427 of IPC.

Enmity between the two groups and the applicant belongs to one of the groups — Injury caused to the victim attributable to applicant is not a grievous hurt — Applicant is in custody since about last six months — All other co-accused are also granted bail and are released — Investigation is complete and charge sheet has been filed — Applicant is a student having no criminal antecedent — Bail granted. (See para 1)

Result : Application allowed.

Kishore Chabu Shedge Vs. State of Maharashtra 2009 (9) LJSoft (URC) 3

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offence u/s 376, 366, 363, 324, 323, 341, 506 r/w 34 of IPC.

Rape case — Prosecutrix had completed 16 years of age on the date of commission of the offence — Many material contradictions in the complaint and her supplementary statement on the material aspects of the matter — Investigation is completed and the charge sheet has been filed long back — Applicant is in custody for almost six months — Bail granted. (See para 5, 6)

Result : Application allowed.

Viky Karamsing Bahadur Vs. State of Maharashtra 2009 (9) LJSoft (URC) 6

Code of Criminal Procedure, 1973 — Section 441 — Bombay High Court Criminal Manual — Chapter I Para 14, 15 — Grant of bail — Furnishing of surety — Solvency certificate — Verification of solvency of sureties — Acceptance of surety.

1) Grant of bail — Irrespective of the amount of surety it is always not necessary for the Court to insist upon production of solvency certificate — Practice adopted by the Courts

of insisting upon production of solvency certificates in cases where the bond amount exceeds Rs.15,000/- is a practice of convenience — Court always has a power to make an enquiry itself on the solvency of the surety even when the surety amount exceeds Rs. 15,000/- without insisting upon production of solvency certificate — However the practice of insisting for solvency certificate where bail amount exceeds Rs.15,000/- has a sound basis. (See para 8)

2) Grant of bail — In strict sense there is no difference between an ordinary surety and a solvent surety as sub paragraph 1 of paragraph 14 of the criminal manual lays down that it is the duty of the Presiding Officer of the Court to verify whether the surety is solvent — Use of the words “solvent surety” in the order granting bail and distinction made by the learned Special Judge between a solvent surety and ordinary surety is of no significance. (See para 13)

3) Solvency certificate — Delay in issuance of — State Government directed to ensure that the concerned revenue authorities will endeavour to dispose of the applications for grant of solvency certificates as expeditiously as possible and preferably within a period of fifteen days from the date of filing the application. (See para 14)

Result : Accordingly.

Ganeshanan Lakshmanan and another Vs. State of Maharashtra 2009 (9) LJSoft 54

Code of Criminal Procedure, 1973 — Section 482 — Indian Penal Code, 1860 — Section 420 r/w Section 120-B — Quashing of criminal proceedings — Nature of dispute.

1) Quashing of criminal complaint — Dispute regarding goods sold and delivered and

payments allegedly not received for the same — Averments made in the complaint expressly state that the accused had mala fide intention at the inception of the offence — Case of intention to cheat is prima facie supported by the facts averred in the complaint — Investigation is in progress — Not a case where if the allegations made in the complaint are taken at their face value they do not prima facie disclose any offence — Ingredients of cheating are very much present — Power u/s 482 of Cr.P.C. cannot be used to stifle a legitimate investigation based on facts prima facie indicating commission of an offence which are averred in the complaint. (See para 33)

2) Quashing of criminal complaint — Whether a complaint discloses a criminal offence or it involves only a civil dispute depends on facts and circumstances of each case — Complaint may have civil profile but it may also have overwhelming criminal overtones — Merely because a complaint involves a commercial transaction it cannot be inferred that it contains a civil dispute if ingredients of a criminal offence are present — Where ingredients of cheating or some such offence are evident from a bare reading of the complaint, its criminal nature must be acknowledged.. (See para 21)

3) Quashing of criminal complaint — Pendency of civil suit — Commercial transaction or a contractual dispute apart from furnishing a cause of action for seeking remedy in civil law may also involve a criminal offence — Nature and scope of a civil proceeding is different from a criminal proceeding — Mere fact that the complaint relates to a commercial transaction or breach of contract for which a civil remedy is available or has been availed is not by itself a

ground to quash the criminal proceedings. (See para 27)

Result : Petition dismissed.

Prashant Jhunjunwala s/o. Late Shri Rajkumar Jhunjunwala Vs. Union Territory of Daman & Diu & ors. 2009 (9) LJSoft 55

Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheques — Commencement of arbitration proceedings — Effect of — Quashing of criminal proceedings. **See Sri Krishna Agencies Vs. State of A.P. 2009 (9) LJSoft (SC) 200**

Companies Act, 1956 — Section 22 — Identical names of two different companies — Rectification — Limitation — Lapse of period.

1) Rectification of name of company — Powers u/s 22 are discretionary powers which can be exercised suo motu or on an application filed by an aggrieved person — Where the Central Government has formed an opinion it can issue directions in terms of section 22(1)(b) within a period of 12 months to change the name of a subsequently registered company or by adopting a new name within three months from the date of direction — Period of 12 months is essence of invocation of powers in terms of section 22 vested in the appropriate Government — Central Government had lost its jurisdiction to pass appropriate order and to give direction as admittedly the period of twelve months had lapsed on the date of passing such order — Impugned order is quashed. (See para 10, 18)

2) Rectification of name of company — Bar of period stated in section 22 — Applicant cannot be said to be remediless — Section 22 does not in any way interferes or bars the remedies available under different Acts —

Applicant can always invoke the jurisdiction of the civil court under special or general law — Jurisdiction of the civil court is much wider in its scope and an appropriate remedy in law is available to an applicant. (See para 15)

Result : Petition allowed.

MRC Logistics Private Limited Vs. Regional Director, Western Region, Ministry of Corporate Affairs & anr. 2009 (9) LJSOFT 51

Companies Act, 1956 — Section 291 — Code of Civil Procedure, 1908 — Order XXX — Suit on behalf of Company — Power to sue.

Company which is a juristic person must itself decide to sue — Once that is done it would authorise one of its Directors who is the agent of the Company or its principal officers the Secretary of the Company or the Managing Director to file the Suit — Power to sue requires application of mind upon the particular cause of action — Suing in each case is a separate act — Blanket authority cannot be given to a particular Managing Director or Director to sign the papers and documents, including the power to sue — Power to sue must be separately given by the Company — Authority given to an individual as a Managing Director 6 years before filing of the Suit cannot be taken to be the authority given by the Company to file a particular action in law — No resolution of the Company to sue is shown — Contention that because K.V. Mohan is the Managing Director he does not need a resolution of the Company to sue cannot be accepted — K.V. Mohan, who has sought to represent the Company Four Season Farms Ltd. as a partner of the Plaintiff-Firm and who has taken out this application under his Affidavit has had no authority of the

Company to sue as such. (See para 11, 12)

Result : Chamber Summons dismissed.

Hari Shree Enterprises Vs. Vikas Housing Ltd. & ors. 2009 (9) LJSOFT 153

Companies Act, 1956 — Section 392, 391, 393, 394 — Scheme of arrangement — Demerger of companies — Assured supply of gas — Production Sharing Contract — Memorandum of Understanding/ Family Arrangement — Binding effect of — Enforceability of — Implementation of Scheme — Maintainability of petition u/s 392 — Jurisdiction of Company Court.

1) Scheme of arrangement — Demerger of companies — Scheme was approved and the parties have undertaken the exercise to have “suitable arrangements” for supply of gas for power projects of resulting companies and their affiliates — Demerged company and the four Resulting Companies inspite of their best efforts could not enter into a “suitable arrangement” as contemplated under clause 19 of the Scheme — Party cannot be rendered remedyless — RNRL was left with no choice than to approach the Company Judge to intervene in the matter — Company Court has ample power and jurisdiction to supervise the scheme as sanctioned under the Companies Act — Company Court rightly held that the application was maintainable. (See para 23, 33, 35)

2) Scheme of arrangement — Demerger of companies — Memorandum of Understanding/ Family Arrangement — Contended that Company Judge could not have referred to the MOU without the same being on record, in addition to the fact that the said MOU does not fall within the corporate domain — MOU having now tendered and taken on record can very well be taken into consideration though strictly

speaking it will not fall within the corporate domain but it does form the very foundation on the basis of which the parties were expected to enter into an agreement in consonance with what was agreed between the parties in the Memorandum of Understanding — Facts rather lift the corporate veil and denotes that the Memorandum of Understanding was considered when the Board meeting of RIL took place to consider the scheme of reorganisation of the business — RIL and its Board were fully aware of the settlement between the promoters and resolved in the Board meeting to reorganise the businesses of the Company in order to implement the settlement — Learned Company Judge rightly concluded that the MOU (Memorandum of Understanding/Family Arrangement) and its content are binding to both parties RIL and RNRL and all the concerned. (See para 306, 307, 308, 311)

3) Scheme of arrangement — Assured supply of gas — Price factor — No specific provision under the Production Sharing Contract to prevent the contractor to sell the gas at lesser price than the price fixed by the Government for valuation of gas to the extent of its share — Contractor has freedom to sell gas at arms length prices to the benefits of the parties to the Production Sharing Contract out of their share of profit gas to which Art. 21.6 of Production Sharing Contract applies. (See para 319)

4) Scheme of arrangement — Demerger of companies — Contracts which were entered into between the Government of India and Reliance Industries Ltd. before its demerger provides for a specific definition of the word “affiliate” — To follow the dictionary meaning of the word “affiliate” or as understood in common parlance and commercial transactions or recorded in the

proposed GSMA would be in breach of the said terms and conditions — Finding arrived at by the learned Company Judge on this issue not liable to be interfered with. (See para 322)

Reliance Industries Limited Vs. Reliance Natural Resources Limited 2009 (9) LJSOFT 44

Companies Act, 1956 — Section 433 — Winding up proceedings — Inability to pay debts.

1) Petitioner sought an order winding up the Respondent company inter-alia on the ground that the company is unable to pay its debts — Evidence belie the Defendants contention that the amounts were deposited as a security deposit and not as a trade deposit — Nothing on record which substantiates or even indicates possibility of allegation on petitioner — No bona-fide dispute regarding the sum of Rs. 4 crores — Company would be bound and liable to pay interest from the date of the first statutory notice wherein interest at 18 percent per annum was claimed — Company directed deposits a sum of Rs.4,21,00,000/- on or before 30.6.2009 and in the event of failing to deposit the said amount the petition shall stand admitted. (See para 7, 28, 29)

2) Winding up proceedings — Nothing on record which substantiates or even indicates the possibility of the allegations made by company — Contention that the allegations being serious in nature ought not to be ignored merely because there are no supporting documents in support thereof cannot be accepted — Otherwise all that would be required of any company in such a petition is to make allegations and thereafter contend that they would be substantiated in appropriate proceedings and this would render the provisions of sections 433 and 434 of Companies Act nugatory. (See para 11)

3) Winding up proceedings — Filing of suit by Petitioner in the Karnataka High Court for recovery of amount — Normally parties first file a petition for winding up and thereafter depending upon the order passed therein, decide whether or not to file a suit — That however is only a matter of practice and there is nothing in law which prevents a creditor from first filing a suit and thereafter a petition for winding up — Merely because a party first files a suit against the company does not warrant an inference that there is an admission on the part of such party that there are bona-fide disputes between the company and itself. (See para 24, 25)

Anupama Wine Distributors Vs. Tilaknagar Industries Ltd. 2009 (9) LJSOFT 156

Companies Act, 1956 — Section 434(1)(a) — Maharashtra Rent Control Act, 1999 — Section 55 — Winding up proceedings — Inability to pay debts — Leave and licence agreement — Breach of — Claim of damages.

1) Leave and licence agreement — Agreement terminated by the Company — Petitioner claimed amount of Rs.7,58,52,000/- being the licence fee for the balance term of the lock-in-period and also Rs.1,00,200/- paid towards stamp duty — Contention that said leave and licence agreements had not come into effect/existence and had been terminated prior to the commencement of the term thereof cannot be accepted — Agreements were executed by both the parties — Mere fact that they were to be performed at a later date cannot possibly lead to the conclusion that the agreements had not come into existence and that the parties were not bound by the terms thereof — Merely because obligations under an agreement are to be performed at a future date, it does not

follow that the agreement has not come into existence upon the execution thereof or upon the terms and conditions thereof being agreed upon. (See para 9)

2) Leave and licence agreement — Compulsorily registration of — Term “contention” in Section 55(2) refers to contentions of fact and not of law — Construction of the terms and conditions of a contract are questions of law — Court cannot be bound by an erroneous construction of the contract. (See para 15)

3) Winding up of the Company — Question whether the debt is undisputed or not cannot depend on the contention of the parties but will depend upon the decision of the Court — Merely because the company contends that the debt is disputed it cannot be termed to be undisputed and that it cannot be held that there is no bona-fide dispute in respect of the Petitioner’s claim — Where a company refuses to pay an amount held by the Court to be undisputed, on the ground that, according to it, the debt is disputed, it must be assumed that the company is deliberately refusing or is unable to pay the undisputed debt. (See para 36)

Re : Lonza India Pvt. Ltd. 2009 (9) LJSOFT 171

Constitution of India, 1950 — Article 14 — Establishment of new Institution — Grant of permission — Powers of Central Government — Scope of — Post-decisional opportunity of hearing — Principles of natural justice — Discrimination.

See Hindustani Education Society Vs. Union of India 2009 (9) LJSOFT (AUR) 188

Constitution of India, 1950 — Article 14, 19(1)(g), 226 — Tender — Contractual matters — Writ jurisdiction.

1) Tender for work of the Desilting of Major Nalla — Participation is restricted — Tender process restricts participation to only tenderers registered with M.C.G.M. in a particular class i.e. Class “A” and above — Tenderers registered with the Government of Maharashtra or other State Governments or Government of India can also tender for the work — In case of a tie the Contractors registered with M.C.G.M. would be preferred — In the absence of such registered Contractors, other Contractors can be considered for Award of the contract — Exclusion was based only on the circumstance that certain existing contractors had carried out their obligations in the previous year regularly and to the satisfaction of the Government — Substantial distinction bearing a just and reasonable relation to the object sought to be achieved — Petitioner cannot insist upon its tender being accepted merely because it is lowest — Not a case where the criteria chosen can be said to be whimsical, illusory and having absolutely no connection or nexus with the object that is sought to be achieved — Process and the decision cannot be interfered with and set aside in the limited jurisdiction of Court, more so, when the Petitioner has not alleged any mala fides. (See para 24, 25, 26, 28)

2) Tenders — Reasonableness and fairness of the decision taken by public bodies awarding contracts for performing public works — Powers of judicial review — Case law discussed. (See para 15)

3) Tenders — Any Government or an individual has got a right to enter into a contract with a particular person or to determine person or persons with whom he or it will deal — Fundamental right guaranteed under Article 19(1)(g) of the Constitution of India does not include within its import a right

to insist upon the Government for doing business with the citizen. (See para 22)

Result : Petition dismissed.

Kedarnath Construction Co. Vs Municipal Corporation of Greater Mumbai & ors. 2009 (9) LJSOFT 70

Constitution of India, 1950 — Article 14, 16(4), 39, 46 — Project affected persons (PAP) — Appointment of — Rehabilitation of — Priority quota — Advertising of posts — Requirement of — Full Bench Reference. **See Rajendra Pandurang Pagare Vs. State of Maharashtra 2009 (9) LJSOFT (AUR) 17**

Constitution of India, 1950 — Article 14, 21, 41, 226 — Secondary Schools Code, 2006 — Regulation 2.13, 3.2, 7.1, 7.3, 7.6, 8.1 — Permission to start new school — Unauthorised Classes — Subsequent recognition.

Petitioner running Secondary School challenging the order allowed respondent No.4 to start primary school for 1st Standard — Also contended that respondent No.4 was running unauthorised Classes from IInd to VIIth Standard and Classes of IXth and Xth — Pending the petition respondent No.4 approached respondent State authorities for regularizing their Classes and were granted permission to continue additional Classes — In view of the subsequent recognition nothing survives in the petition — Not only that the petitioner failed to justify the cause for opposing and/ or for cancelling permission granted by Government to respondent No.4 to start schools in the said locality. (See para 12)

Result : Petition dismissed.

Mankawati Shikshan Sanstha Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (AUR) 176

Constitution of India, 1950 — Article 21, 226 — Prisoners Act, 1900 — Section 29(1) — Removal of Prisoners Order, 1965 — Maharashtra Prison Manual — Assault on prisoners — Fundamental rights of prisoners — Transfer of under-trial prisoner — Powers of jail authorities.

1) Prisoners were allegedly brutally, inhumanly and savagely beaten up by the Jail authorities in the Arthur Road Prison — Inquiry was held by Sessions Judge pursuant to the order passed by High Court — Report of the Inquiry Judge shows that the force was not used for maintaining discipline but it was used for extraneous purpose, at least against some prisoners — He also found that the bricks and stones were not available as contended by the jail authority and story of jail authority was not true — Force was used against the under trial prisoners for no fault of theirs — Force was used excessively for extraneous reasons and law was also flouted — Even as a formality the Jail Manual was not followed — Conduct of the jail authorities particularly the Superintendent of the Jail cannot be condoned — Chief Secretary directed to initiate disciplinary inquiry against all the Officers involved in the incident for using excessive force and for using force for extraneous reason and if need be, in addition to departmental inquiry, criminal action be also initiated against the concerned Officers. (See para 13, 14, 23)

2) Prisoners mercilessly beaten in the Arthur Road Prison — Most of the prisoners received very serious injuries and were not treated for 20 days — Report of the Inquiry Judge shows that the injuries shown in the medical certificate issued by the Jail Doctors were manipulated in order to help the Jail Authority — Jail Doctors did not find injuries on the person of the prisoners which were found by

the Government Hospitals even after 20 to 23 days — Role of these doctors is reprehensible and shameful — Inquiry directed to be also initiated against the Jail Doctors for dereliction of duty and for fudging the record. (See para 15, 23)

3) Under trial prisoners — Right from the beginning of custody of an accused, it is the Magistrate in whose control the accused remains and the accused can be detained in such custody as Magistrate thinks fit — Once a charge sheet is filed, nobody has authority over the custody of an under trial except the court — Jail authority had no power at all to transfer the prisoner who had been confined to a particular jail by the trial court — They could only be transferred if the transfer was allowed by the Court conducting their trial — Inspector General (Prison) did not have any authority or jurisdiction to order the transfer of under trial prisoners — Transfer itself was illegal, improper and bad. (See para 19, 20)
Result : Accordingly.

Saeed Sohail Sheikh s/o Mr. Sohail Mehmood Sheikh Vs. State of Maharashtra Through Department of Home, Prison Section & ors. 2009 (9) LJSOFT (URC) 7

Constitution of India, 1950 — Article 226 — All Admission to Post Graduate Dental course — Counselling — Non-furnishing of requisite certificate on the fixed date.

Admission to Dental Post Graduate course — Candidates claiming the benefit of NT-1, NT-2, NT-3 and OBC were required to produce the Non-creamy layer certificate valid upto 31-3-2009 on or before 24-3-2009 the date for filling up of the preference form — Terms and conditions of the brochure were thus unambiguous and certain and are binding on all persons — No scope for not fulfilling the requirements as per the terms of the brochure

— Petitioner have received the certificate within two days of his application — It was expected of the Petitioner to act timely — Sickness of his brother-in-law could be a relevant consideration only if he had acted time and did not treat his admission to the course in such a casual manner — Petitioner cannot be permitted to take advantage of his own wrong — Candidate in that category must have been already given admission and the same cannot be disturbed at this stage. (See para 4, 5, 7)

Result : Petition dismissed.

Gorakhnath Balu Shinde Vs. State of Maharashtra & anr. 2009 (9) LJSOFT 103

Constitution of India, 1950 — Article 39-A, 225, 348(2), 350 — Language of proceedings — Translation of accompaniment — Marathi annexures without English translation.

See Vinayak Hari Kulkarni Vs. State of Maharashtra 2009 (9) LJSOFT 154

Constitution of India, 1950 — Article 226 — Dighi Port Development Project — Sanction of — Concept of public hearing — Environmental degradation — Public Interest Litigation — Delay and latches — Locus Standi — Maintainability of Petition.

1) Public Interest Litigation — Petitioner is a registered body which claims to promote and safeguard the interest of the villagers — Petitioners challenging the clearance for development of Dighi Port Development Project in terms of Coastal Regulations Zone Notification — Project likely to affect either way the environment, ecology etc. — Weight has to be given to public interest of the residents of that village — Very fact that so many Government Departments are involved in the process of clearance or issuing no objection certificates before starting and

commencing the project is sufficient indication to the importance of the matter — Objection raised by the Respondents in regard to the maintainability of the Petition or the locus of the Petitioner rejected. (See para 14)

2) Public Interest Litigation — Principle of delay and latches is appropriately applied in Writ Petitions dealing with individual interests — Such plea *stricto sensu* can hardly be applied to Public Interest Litigation unless and until the delay in approaching the Court is *mala fide* and its entertainment would imbalance the equities between the affected parties — Approach of the Court has to be somewhat liberal in relation to environmental matters — Successful environmental policies require many things, the most vital being the support of the common masses and that happens only if there is an ethical commitment to environmental values — Though there is some delay but it is not a case of patent inordinate delay where the Petitioners have slept over their rights totally and have approached the Court *mala fide*. (See para 15)

3) Petitioners challenging the clearance for development of Dighi Port Development Project — Compliance to the condition of public hearing is mandatory — Public hearing was held at Collector's office which is nearly 100 kms away from the site in question or village Dighi — Not a proper compliance to the requirements of law — However the Notification is not vitiated for this partial irregularity — State Government direct to conduct public consultation (public hearing) in all such cases relating to environmental clearance for notified projects at the site or nearby the area of the site. (See para 24)

4) Development of Dighi Port Development Project — Conditions stipulated in the impugned sanction and in relation to the water as well as welfare measures — Respondent

No.6 was expected to provide water scheme and ensure that water and electricity is supplied to the village — Respondents had to comply with the conditions prior to commissioning of the project — Though the construction of the project has been in progress now for a considerable period but Respondent No.6 has not taken the desired interest in taking steps for complying with the conditions — Mere assurances in contradiction to any steps on the site is an indication of Respondent No.6 of not complying with the conditions in their true spirit and substance — Respondent No.6 in particular and all the Authorities directed to ensure that the water supply scheme should be fully implemented within a period of six months and so should be the scheme for electricity supply as required under the conditions — There shall be a prohibition upon all the Respondents from commissioning the project at the Port without fully satisfying these conditions. (See para 28, 29, 30)

Result : Accordingly.

Dighi Koli Samaj Mumbai Rahivasi Sangh (Regd.) Vs. Union of India Through its Ministry of Environment & Forest & ors. 2009 (9) LJSOFT 13

Constitution of India, 1950 — Article 226 — Major Port Trusts Act, 1963 — Section 120 — Maharashtra Maritime Board Act, 1996 — Section 24, 105 — Levy of penalty and additional landing charges — Setting aside of — Limitation — Writ jurisdiction.

Petitioner company submitted a proposal to respondent No.1 seeking permission to use Mandwa jetty for unloading consignment of coal which was likely to arrive — Respondent No.1 issued a No Objection Certificate containing certain terms and conditions —

Petitioner was not entitled to use the jetty till the agreement was executed between the parties — Agreement remained unexecuted but Petitioner started utilising the said jetty on the basis of the NOC on the ground of urgency — Respondent No.1 imposed penalty and additional landing charges on the petitioner for not abiding the requisite conditions — As per the limitation provided under the Major Port Trusts Act the suit has to be filed within six months of the accrual of the cause of action and it has to be preceded by one month's notice — Within the aforesaid period of six months, the petitioner had neither approached this Court by way of any writ petition nor filed any civil suit — When petition was filed the limitation for filing the civil suit has also come to an end — Though period of limitation is not prescribed for filing a writ petition, High Court would be slow in exercising its extraordinary jurisdiction under Article 226 of the Constitution of India to entertain a claim which is otherwise time barred — Petitioner entered into an agreement for the subsequent periods without making any grievance in this behalf and requested the first respondent only to waive the penalty — Considering the conduct of the petitioner and allowing its claim to become time barred by not approaching the appropriate Court within the prescribed period of limitation, it is not entitled to any relief from High Court in its extraordinary jurisdiction under Article 226 of the Constitution of India. (See para 12, 13, 14)

Result : Petition dismissed.

Esquire Shipping and Trading Pvt. Ltd. Vs. Maharashtra Maritime Board & anr. 2009 (9) LJSOFT 102

Constitution of India, 1950 — Article 226 — Motor Spirit and High Speed Diesel

(Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 — Rule 7, 8 — Dealership Agreement — Enforcement of contractual rights — Writ jurisdiction — Maintainability of petition.

1) Dealership Agreement — On inspection the Officers of respondent No.2 alleged various malpractices and irregularities and gross violation of the terms and conditions of the agreement — Cancellation of dealership — Dispute relating the terms of private contract — Petition under Article 226 of the Constitution of India not maintainable for enforcing terms and conditions of the contract between the parties. (See para 12, 13)

2) Dealership Agreement — Dispute relating to the terms of the contract with statutory body — If alternative remedy is available then writ court ordinarily should not entertain the same. (See para 14)

Result : Petition dismissed.

Sopanrao Laxmanrao Mhaske & anr. Vs. Union of India & anr. 2009 (9) LJSOFT (AUR) 166

Constitution of India, 1950 — Article 226 — Post of Sweeper — Reservation for “Mehatar community”.

1) Post of Sweeper — Contention that the reservation was for the “Mehatar community” it was available for Muslims alone and not for “Bhangis” and “Walmikis”, who are Hindus and recognised as Scheduled Castes by the State of Maharashtra cannot be accepted — Scheduled Castes are found amongst the people who are “Hindus”, “Sikhs” or “Buddhists” — Those who practice “Islam” are not entitled to the reservations for Scheduled Castes as “Islam” is an egalitarian religion — Respondents who admittedly are “Muslims” are not entitled to be appointed as Sweepers by availing of the reservations for

the Sweepers as stipulated in the advertisement — Appointments of respondent Nos.3 to 6 to the posts of Sweeper quashed and set aside. (See para 9, 11, 23)

2) Post of Sweeper — 13 posts were vacant and reserving all the posts for “Mehatar community” in itself is contrary to law — Reservations of posts can be only for a certain percentage of the posts which are vacant and not for the entire strength — There cannot be 100% reservations for any category. (See para 8)

3) Service law — Reservation of post of Sweeper for “Mehatar community” — Communal reservation is wholly impermissible under our constitutional scheme. (See para 10)

Result : Petition allowed.

Anand s/o Ramesh Chavre Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (URC) (AUR) 163

Constitution of India, 1950 — Article 226 — UCO Bank Officer Employees (Conduct) Regulation, 1976 — Rule 3 — Dismissal from service — Departmental enquiry — Principles of natural justice.

Petitioner was working as Senior Manager with Respondent Bank — Charged for misconduct — After departmental enquiry the disciplinary authority inflicted penalty of reduction of five increments in the time scale of pay and dismissal from service — However enquiry officer has not considered the relevant aspects while submitting his report to the Disciplinary Authority — Disciplinary Authority, has not considered the relevant facts and circumstances — Appellate Authority was required to consider the evidence produced on record by the delinquent and its Judgment should have been based on the basis of material on record — Enquiry

officer or disciplinary authority or Appellate Authority has not considered all important documents on which delinquent employee has relied — Violation of principles of natural justice — Order of dismissal cannot be sustained — Only charges proved against Petitioner are connected with unauthorisedly allowing security transactions stopped by Zonal Office — Penalty imposed by disciplinary authority reducing five increments in time scale of pay shall stand regarding the said charge — As the petitioner has already retired by way of superannuation there is no question of passing the order of reinstatement — Respondents directed to pay back wages at 30 per cent and all retiral dues to Petitioner after taking into account penalty regarding withholding of five increments. (See para 28 to 32)

Result : Accordingly.

P.A. Karkhanis Vs. Uco Bank & ors. 2009 (9) LJSOFT 38

Constitution of India, 1950 — Article 226 — Arbitration award — Adjudication and determination of stamp duty — Issuance of certificate — Alternate remedy — Maintainability of petition.

See Hari Shanker Singhania Vs. State of Maharashtra 2009 (9) LJSOFT 66

Constitution of India, 1950 — Article 226 — Promotional post — Qualifications — Seniority — Suppression of material facts — Writ jurisdiction.

See Madhukar Pandurang Gadade Vs. State of Maharashtra 2009 (9) LJSOFT (AUR) 62

Constitution of India, 1950 — Article 226 — Allotment of Ration shop — Revision — Maintainability of — Forum — Jurisdiction of Single Judge — Principles of natural

justice.

See Smt.Savitri Chandrakesh Pal-II Vs. State of Maharashtra 2009 (9) LJSOFT 134

Constitution of India, 1950 — Article 226, 141, 142 — Reserved post — Invalidation of caste claim — Protection of services — Full Bench Reference.

See Vandana Bharat Kauthalikar Vs. State of Maharashtra 2009 (9) LJSOFT (URC) 9

Constitution of India, 1950 — Article 226, 227 — Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5 — Appointment of Head Master — Non-implementation of orders — Obligation of authorities — Writ jurisdiction.

Non-compliance of the directions directing School Management to appoint the petitioner as Head Master — Pending implementation of the order, the petitioner has retired — If the authorities found that the school management was not implementing their orders, the authorities were not powerless to take coercive measures, like; stopping payment of grant, salary of the staff etc. until their orders are implemented — None of the authorities took any coercive step to seek implementation of their orders almost for a period more than a year — Principal Secretaries of the Law and Judiciary Department as well as that of School Education Department directed to issue directions to all the subordinate authorities impressing upon them that their duty does not end with the passing of the order — It is also their obligation to seek implementation of their order. (See para 17, 20)

Result : Accordingly.

Madhukar Dattatraya Gholap Vs. State of Maharashtra & ors. 2009 (9) LJSOFT 116

Constitution of India, 1950 — Article 226, 227 — Quasi-judicial Proceedings — Procedure for — Parameters to be followed.

Dispute regarding allotment of ration shop — Two orders of the revisional authority placed on record, one draft order allowing revision and another signed order rejecting the revision — None of these orders were dictated by the Hon'ble Minister himself who had heard revision application — Both draft orders running counter to each other were prepared by the Desk Officer who was not present at the time of hearing and was completely unaware of the rival contentions canvassed by the parties — Pursuant to the order passed by High Court the State Government constituted a committee to streamline the procedure of hearing and deciding quasi-judicial proceedings by the officers of the State of Maharashtra including the Hon'ble Ministers of the respective departments — Said committee submitted its report and was accepted by High Court by consent of the parties — High Court in exercise of powers conferred under Articles 226 and 227 of the Constitution of India prescribed the procedure to be adopted by quasi-judicial authorities including the Ministers, Secretaries, officials and litigants while hearing and determining appeals, revisions, review applications and interim applications etc. — Procedural guidelines and parameters as mentioned in para 17 and 18 of the Judgment shall also be applicable to all quasi-judicial authorities in respect of hearing of appeals, revisions, review applications/ interlocutory applications, where there are no specific rules prescribed for hearing under a specific law like Maharashtra Co-operative Societies Act, Bombay Tenancy and Agricultural Lands Act, etc. (See para 17, 18, 19)

Result : Accordingly.

Smt.Savitri Chandrakesh Pal-I Vs. State of Maharashtra & ors. 2009 (9) LJSOFT 136

Constitution of India, 1950 — Article 226, 227 — Right to perform the puja — Public Interest Litigation — Transfer of the Review Petition.

Suit for declaration — Right to perform the puja and also to demand dakshina — Suit came to be dismissed by the learned Trial Court and the First Appeal was also dismissed by the learned District Court — Second Appeal came to be dismissed by the learned Single Judge — Review petition was filed — After dismissal of Review Petition, the present application is filed for listing the Public Interest Litigation and for transfer of the Review Petition from the Bench of the learned Single Judge — Such a request would not be maintainable — Review Petition has been dismissed and the Petitioner is entitled to take recourse to legal remedies available to him in accordance with law — Filing of Public Interest Litigation is an abuse of the process of the Court and cannot be entertained by the Court. (See para 2, 3)

Result : Petition dismissed.

Venkatesh Pradyumnacharya Varakhedakar since deceased by his LRs. Vs. Maharashtra State & ors. 2009 (9) LJSOFT 140

Constitution of India, 1950 — Article 226, 227 — Misappropriation of amount — Withholding of pension — Departmental enquiry — Penalties — Principles of natural justice — Quantum of punishment — Judicial review.

See Masuood Alam Khan-Pathan Vs. State of Maharashtra 2009 (9) LJSOFT 69

Constitution of India, 1950 — Article 226, 227 — Enhancement of compensation — Reference — Scope of — “Person interested” — Impleading of — Limitation — Letters Patent Appeal — Maintainability of.
See Chintaman Barbaji Dupare Vs. Vithabai Deoraoji Wahane 2009 (9) LJSOFT (NAG) 139

Constitution of India, 1950 — Article 226, 311 — Dismissal from service — Criminal misconduct — Corruption charges — Acquittal in criminal proceedings.
See Maj (Ret.) Babu Thomas Vs. Goa Shipyard Ltd. 2009 (9) LJSOFT (GOA) 81

Contract Act, 1872 — Section 64 — Appointment of Arbitrator — No claim certificate — Effect of — Plea of undue influence.
See Ashoka Buildcon Pvt. Ltd. Vs. Maharashtra State Road Development Corporation 2009 (9) LJSOFT 122

Contract Act, 1872 — Section 72 — Cooperative Housing Society — Transfer fees — Taxability of — Principles of mutuality.
See Sind Coop. Housing Society Vs. Income Tax Officer 2009 (9) LJSOFT (URC) 11

Contract Act, 1872 — Section 151, 152 — Marine Insurance Act, 1963 — Section 19, 20 — Sinking of barge entrusted for repairs — Claim of damages — Liability of bailee — Insurance policy — Suppression of material facts.

1) Sinking of a barge entrusted for major repairs to the yard of defendant No.2 — Barge was handed over to plaintiff 2 by plaintiff 1 by agreement — Position of defendant no.2 as a repairer is that of a bailee — In all cases of bailment the bailee is bound to take as much

care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances — In the absence of any negligence on behalf of defendant no.2 the plaintiff no.2 would not be entitled to recover any damages from defendant no.2 — There was no privity of contract between plaintiff no.1 and defendant no.2 — Plaintiff no.1 was not entitled to recover any damages from defendant no.2 — Dismissal of suit against defendant no.2 could not be faulted. (See para 7, 10)

2) Sinking of a barge — Insurance Policy was obtained by misrepresentation of facts — Facts were completely suppressed that the barge was under major overhaul and was not a seagoing vessel — Fact that the barge was salvaged a week prior to the actual sinking was also not disclosed — Had the defendant no.1 known these facts they would not have certainly insured the barge for the value it did — Non-disclosure of material facts would render the policy repudiable — Defendant no.1 was entitled to avoid or repudiate the policy obtained by suppressing material facts. (See para 15)

Result : Appeal dismissed.

Rajaram N.S. Bandekar & Company Pvt. Ltd. & anr. Vs. Oriental Insurance Company Ltd. & anr. 2009 (9) LJSOFT (GOA) 199

Contract Act, 1872 — Section 230 — Admiralty suit — Liability of agent of disclosed principal — Issuance of Bills of Lading — Adverse inference.

1) Suit for recovery of amount — Plaintiffs joined defendant No.8 in their capacity as purchaser of the suit goods — It was the duty of the plaintiffs to serve defendant No.8 — No effective steps were taken by the plaintiffs to serve defendant No.8 — Suit will have to

be dismissed against defendant No.8 for want of prosecution. (See para 20)

2) Suit for recovery of amount — Defendant No.4 were the carriers and defendant No.6 were the shippers — Defendant No.4 acted on the basis of instructions of defendant No.6 and delivered the goods to CLT Taiwan — Defendant No.5 was the agent of the disclosed principal and as such defendant No.5 cannot be made liable in accordance with the provisions of Section 230 of the Indian Contract Act. (See para 28, 40)

3) Arrangement between plaintiffs and defendant No.8 was such that bills of lading were to be received by the defendant No.8 on payment of costs — No efforts were made by the plaintiffs to investigate as to how the goods came to be delivered to defendant No.8 when the bills of lading were lying with the bankers — Adverse inference will have to be drawn against the plaintiffs for not placing before the Court appropriate evidence. (See para 29)

4) Suit for recovery of amount — Defendant No.4 were the carriers and defendant No.6 were the shippers — Defendant No.4 came out with case that defendant No.6 had directed them to deliver the goods to CLT Taiwan — Defendant No.6 came out with case that Evertrans Shipping Services Ltd. issued separate Bill of Lading and arranged to deliver the goods to CLT Taiwan — Plaintiffs should have lead evidence to show that there was collusion between all the organisations involved in the matter and that is how the plaintiffs have been subjected to fraud — Plaintiffs have chosen not to join Express Talent Holdings Ltd. as also CTT Taiwan Ltd. as party defendants — These two organisations were necessary parties and non-joining of these two parties atleast at after filing of written statement by Defendant No.6

resulted in non joinder of necessary party. (See para 29, 40)

Result : Suit dismissed.

Satnam Overseas Ltd. & anr. Vs. m.v. OOCL ABILITY & ors. 2009 (9) LJSOFT 117

Contract Labour (Regulation and Abolition) Act, 1970 — Section 2(1)(a) — Contract labour — Termination of services — Appropriate Government — Jurisdiction of Labour Court.

See Duryodhan Hiranman Ingle Vs. Indian Council Agriculture Research 2009 (9) LJSOFT (NAG) 79

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 12 — Contract Labour — Employer-employee relationship — Maintainability of complaint.

See V.I.P. Industries Limited Vs. Athar Jameel 2009 (9) LJSOFT (NAG) 8

Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1952 — Rule 3, 4, 5, 6, 7, 8 — Murder — Naval offence — Committal order — Non-compliance of mandatory Rules — Jurisdiction as to place and offences.

See Kanwardeepsingh Harbansingh Bedi Vs. State of Maharashtra 2009 (9) LJSOFT 67

Customs Act, 1962 — Section 18(2)(a), 27 — Central Excise Rules, 1944 — Rule 9(B) — Confiscation and seizure — Provisional assessment — Refund of duty — Redemption fine — Doctrine of unjust enrichment.

1) Confiscation and seizure — Where an amount is deposited pursuant to provisional assessment, will the doctrine of unjust enrichment be applicable to refund consequent upon final assessment? (Yes) (See para 25)

2) Where the order of confiscation is set aside and the assessee had earlier deposited an amount towards the value of the goods which amount was adjusted partly towards duty and partly towards fine, will the doctrine of unjust enrichment apply? (Yes) (See para 25)

3) Confiscation and seizure — Fine is in the nature of re-compensation to the State for the assessee having committed a wrong — Dine basically is for a wrong done and is not a duty, tax, cess, fees or the like which can be passed on to a consumer — Principles of ‘unjust enrichment’ would not arise in a case of redemption fine. (See para 27, 28)

Result : Accordingly.

United Spirits Limited Vs. Commissioner of Customs (Import) 2009 (9) LJSOFT 31

Customs Act, 1962 — Section 108, 135(1)(a), 135(1)(b) — Imports and Exports (Control) Act, 1947 — Section 5 — Indian Penal Code, 1860 — Section 120-B — Evidence Act, 1872 — Section 30 — Criminal conspiracy — Retracted confessional statements of co-accused — Appeal against acquittal.

Conviction cannot be based only on a retracted statement of 1st respondent u/s 108 of Customs Act — Nothing on record to corroborate what is stated in the confessional statement — Retracted statements u/s 108 of Customs Act of the co-accused whose trial has been separated cannot be used as a piece of evidence to draw assurance or to corroborate the retracted statement of the 1st respondent — Order of acquittal not liable to be interfered with. (See para 16, 20, 21)

Result : Appeal dismissed.

Asst. Collector of Customs (Pre.) Bombay Vs. Ahmed Abdulkarim & Anr. 2009 (9) LJSOFT 179

Development Control Regulations for Greater Bombay, 1991 — Regulation 33(7) — Re-development of building — Delay — Cancellation of No Objection Certificate — Interim reliefs — Grant of injunction. **See Avarsekar & Sons Private Limited Vs. Dr. Dhananjay Shivdas Varade 2009 (9) LJSOFT 101**

Easement Act, 1882 — Section 60(b) — Trust property — Transfer of immovable property — Sanction for.

See Shriram Mandir Sansthan Vs. Tulsiram s/o Bhagirath Lohiya 2009 (9) LJSOFT (NAG) 165

Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(e), 8-F — Recovery of arrears of PF contributions — Liability of Managing Director — Attachment of property.

Arrears of account of Provident Fund Dues/ interest/cost — Recovery of — Considering the definition of “principal employer” as defined u/s 2(e) the word “owner” or “occupier” has to be used disjunctively and in cases where the owner of factory is a company it is the company which is the principal employer and not a director — No recovery could be made from the personal property of the petitioner being the Managing Director of the company — Impugned notice-cum-Order issued u/s 8F quashed and set aside and Respondent no.1 is directed to refund the amount recovered from the petitioner. (See para 10, 12)

Result : Petition allowed.

Vimalkumar Ravji Shah Vs. Employees Provident Fund Organisation, Solapur & Ors. 2009 (9) LJSOFT 94

Essential Commodities Act, 1955 — Section 3 — Allotment of Ration shop — Revision — Maintainability of — Forum — Jurisdiction of Single Judge — Principles of natural justice.

See Smt. Savitri Chandrakesh Pal-II Vs. State of Maharashtra 2009 (9) LJSOFT 134

Evidence Act, 1872 — Section 9 — Kidnaping — Rape — Minor girl — Identification of accused.

See Dinesh Dhaniram Bhoute Vs. State of Maharashtra 2009 (9) LJSOFT (NAG) 97

Evidence Act, 1872 — Section 24, 25 — Statement made before Police Patil — Admissibility of — Police Patil and Police Officer — Distinction between — Rules of precedent — Full Bench Reference.

See Rajeshwar s/o Hiranman Mohurle (In Jail) Vs. State of Maharashtra 2009 (9) LJSOFT (NAG) 52

Evidence Act, 1872 — Section 24, 106 — Murder — Circumstantial evidence — Extra-judicial confession.

See Satish Kumar Agarwal Vs. State 2009 (9) LJSOFT 19

Evidence Act, 1872 — Section 30 — Criminal conspiracy — Retracted confessional statements of co-accused — Appeal against acquittal.

See Asst. Collector of Customs (Pre.) Vs. Ahmed Abdulkarim 2009 (9) LJSOFT 179

Evidence Act, 1872 — Section 32, 113-A, 113-B — Dowry death — Abetment to suicide — Presumption — Ill-treatment — Dying declaration.

See Sushama Suresh Nigudkar Vs. State of Maharashtra 2009 (9) LJSOFT 183

Evidence Act, 1872 — Section 90 — Suit for possession and declaration — Presumption as to document thirty years old — Pre-conditions for — Contents of document — Proof of — Principles of res-judicata.

See Narendra Akash Maharaj Petkar Vs. Shahaji Baburao Petkar 2009 (9) LJSOFT 73

Evidence Act, 1872 — Section 138 — Direction of re-examination.

Suit for recovery of dues — After cross-examination of witness due to oversight the plaintiff could not verify the books of accounts/ledger — Application was moved to recall the witness for his re-examination — Directions of re-examination not restricted to clarification of ambiguities which arise in cross-examination but it is under control of the Court to allow to put the questions which are necessary for that purpose in accordance with other provisions — It is merely a technical irregularity which can be cured by calling the witness for re-examination which will not amount to an illegality — Impugned order quashed and set aside and the application is allowed. (See para 5, 6)

Result : Petition allowed.

Amardeep Textiles Vs. Popatrao Sheshrao Kolhe 2009 (9) LJSOFT (URC) (AUR) 53

Goa, Daman and Diu (Administration) Act, 1962 — Letters Patent Appeal — Maintainability of — Jurisdiction of Goa Bench of Bombay High Court — Applicability of Maharashtra State Legislature.

See Sanjay Z. Rane Vs. Saibai S. Dubaxi (since deceased) through her LRs. 2009 (9) LJSOFT (GOA) 35

Goa Daman & Diu Building (Lease, Rent & Eviction) Control Act, 1968 — Section 23 — Eviction proceedings — Arrears of rent.

Plaintiffs filed the suit on the ground of arrears of rent — At that time Goa Rent Control Act was not enforced in the village — There was no other defence taken by the Defendants except mundkarship — Said plea was negatived first by the Mamlatdar and finally by the Administrative Tribunal — Claim of the Plaintiffs was rightly decreed by the trial Court — There was no dispute on the identify of the suit room — First Appellate Court erred in holding that there was no clear identity of the suit premises — Said conclusion appears to be based on warped logic and is perverse and needs to be set aside. (See para 4, 5)

Result : Appeal allowed.

Julia Rodrigues w/o Carlos Rodrigues (since deceased) & ors. Vs. Narayan Naique s/o. Yesso Naik & anr. 2009 (9) LJSOFT (GOA) 161

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 23 — Eviction proceedings — Bonafide requirement — Subsequent events.

Eviction application filed stating that the landlady did not have any other accommodation and she was occupying the house belonging to her sister who intended to come down and stay there — Landlady had a flat of her own on the first floor of the same building — Said flat was under the occupation of other person when the application was filed but it was vacant from 8.9.1991 — This was a subsequent development and the Courts

below had to take note of — Though landlady contended that she had given it as a gift to her adopted daughter at the time of marriage but she did not produce any document of transfer — She admitted that no Gift Deed was executed in favour of the said daughter — Tenants proved that the landlady had premises of her own and that too on the first floor of the same building — Landlady could not have been extended the benefit of Section 23 by ordering the recovery of possession of the suit flat in her favour — Impugned orders set aside. (See para 11, 12)

Result : Petition allowed.

John Manuel Vaz & anr. Vs. Mrs. Iria Maria dos Milagres E Ditosa da Costa alias Iria da Costa & ors. 2009 (9) LJSOFT (GOA) 23

Goa, Daman and Diu Land Acquisition Rules 1972 — Rule 4 — Acquisition of land — Public purpose — Allegations of malafides — Objections — Extension of time for hearing. *See George L. Fernandes Vs. State of Goa 2009 (9) LJSOFT (GOA) 34*

Goa, Daman and Diu (Protection from Eviction) of Mundkars Act, 1975 — Proposed construction — Temporary injunction. See Kamal Parwar Vs. Timotio Fernandes 2009 (9) LJSOFT (GOA) 60

Goa, Daman and Diu Reorganisation Act, 1987 — Letters Patent Appeal — Maintainability of — Jurisdiction of Goa Bench of Bombay High Court — Applicability of Maharashtra State Legislature. See Sanjay Z. Rane Vs. Saibai S. Dubaxi (since deceased) through her LRs. 2009 (9) LJSOFT (GOA) 35

Goa, Daman and Diu Reorganization Act, 1987 — Section 20(3) — Language of proceedings — Common High Court for two States and union territories. See Vinayak Hari Kulkarni Vs. State of Maharashtra 2009 (9) LJSOFT 154

Goa Shipyard Officer's Conduct Discipline and Appeal Rules, 1979 — Rule 23, 27, 29, 31 — Constitution of India, 1950 — Article 226, 311 — Dismissal from service — Criminal misconduct — Corruption charges — Acquittal in criminal proceedings.

1) Petitioner charged for misconduct on the allegation of collecting/accepting illegal gratification from one Labour Contractor — Criminal Court acquitted the petitioner in relation to the charge of demand and acceptance of illegal gratification — Criminal Courts verdict came much later in point of time after passing of the order by the disciplinary authority — In the departmental inquiry, strict proof required for proving a Criminal case beyond reasonable doubt is not the requirement to prove the delinquency of the delinquent — Enquiry Officer/disciplinary authority on the basis of preponderance of probabilities in the evidence led before it had come to the conclusion that the charges particularly concerning the demand and acceptance of illegal gratification against the petitioner are proved — Simply because the complainant took twist and turns before the Criminal Court it would not be prudent to interfere with the findings of the guilt of the petitioner in relation to such charge in departmental inquiry. (See para 12)

2) Service law — Rules indicate that there is no provision for giving show cause notice or hearing to the petitioner on the punishment — Notice of the respondent reveals a

requisition, though superfluous, to show cause as to why strict disciplinary action including dispensing with service should not be taken — Phrase “dispensing with service” means and includes, both, removal from service without any disqualification of future employment elsewhere or dismissal, within the meaning of major penalties under Rule 27 — Petitioner was aware that he was subjected to departmental proceeding for major penalties and was furnished with the report of the Enquiry officer thereafter — Cannot be said that any prejudice was caused to the petitioner upon imposition of the penalty of dismissal prescribed under the said rule. (See para 13, 14)

Result : Petition dismissed.

Maj (Ret.) Babu Thomas Vs. Goa Shipyard Limited 2009 (9) LJSOFT (GOA) 81

Guardians and Wards Act, 1890 — Section 19-B, 25 — Custody of minor child — Welfare of child.

Custody of minor son aged 11 years presently staying with appellant-wife — Question is of the custody and not appointing guardian — Paramount consideration is only welfare of child and not the legal rights of the parties — For selection of a guardian of a minor the best interest of the child is the basic consideration to which even the rights of parents must sometimes yield — Husband had the bad vices he has nobody to look after him — Two children who are with him, are maintained by wife of his brother — Their welfare is already in lurch as they became average in their studies — Progress record of third child with wife establishes that there was recurring progress in the education, brilliancy and understanding — Allegations of infidelity or illicit relations hurled at the wife found to be the product of

fertile mind of the husband not associated with any acceptable evidence — On the sole ground the custody of the minor child cannot be restored to the father — Evidence shows that welfare of the child to be paramount aspect will be more looked taken care by the wife than husband — Impugned order quashed and set aside. (See para 14, 18, 25, 26)

Result : Appeal allowed.

Shamal w/o Sharad Baride Vs. Sharad s/o Baburao Baride 2009 (9) LJSOFT (AUR) 100

High Court of Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981 — Section 3, 4 — Letters patent appeal — Maintainability of.

See Arlinda Dias Vs. Margao Co-operative Housing Society Ltd. 2009 (9) LJSOFT (GOA) 37

Hindu Marriage Act, 1955 — Section 13, 19 — Divorce — Transfer of matrimonial proceedings.

See Shruti Shriram Jangam Vs. Shriram Balkrushn Jangam 2009 (9) LJSOFT (AUR) 175

Hindu Marriage Act, 1955 — Section 24 — Interim maintenance — Enhancement of — Absence of provisions.

Interim maintenance is an order which is meant for providing subsistence during the pendency of proceedings — Enhancement or the reduction in the interim maintenance can be sought by an application, if there is change of circumstances or extraordinary long delay in disposal of matter, even though there is no express statutory provision to pass such order — Impugned order rejecting the application on the ground that there is no provision of

enhancement of maintenance amount in interim application liable to be quashed and set aside — Petitioner entitled to move fresh application in the Family Court for enhancement of interim maintenance. (See para 6)

Result : Petition allowed.

Smt. Snehal w/o Sanjay Bapat Vs. Sanjay s/o Madhusudan Bapat 2009 (9) LJSOFT (NAG) 127

Hindu Succession Act, 1956 — Section 14 — Code of Civil Procedure, 1908 — Order XXII Rule 4 — Property of female — Factum of possession — Claim of absolute ownership — Abatement of suit.

1) Widow of the original property owner was in possession of property after his demise — Before the commencement of Hindu Succession Act she had admittedly sold her share and was not in possession of the property — Widow was not having any right in property on the date on which Act of 1956 came into force — She could not get any advantage from coming into force of the Act of 1956 — Purchaser from a Hindu widow who does not have actual or constructive possession of property prior to commencement of Hindu Succession Act cannot claim the benefit of Section 14 and ask for treating the property prior to 1956 as an absolute property of the Hindu widow. (See para 11)

2) Abatement of suit — Almost legal heirs of half of the respondents are not brought on record — Decree of possession on title cannot be said to be divisible — It cannot be executed in favour of some of the co-owners and remain un-executed against remaining, when there is no case or evidence of partition between the respondents inter se and holding of separate

portions of property by each of them — Appeal dismissed as a whole as abated. (See para 12, 14)

Result : Appeal dismissed.

Trambak Barku Patil Vs. Damu Chindhu Patil & anr. 2009 (9) LJSOFT (AUR) 30

Hyderabad Tenancy and Agricultural Lands Act, 1950 — Section 5, 8 — Transfer of Property Act, 1882 — Section 107 — Suit for possession — Issue of tenancy — Lease.

Petitioners filed suit for recovery of possession stating that they have purchased the land by sale deed — Defendants stated that they are tenants of the land — Issue of tenancy was raised and refereed to the Tenancy Authority — Courts have concurrently held that from 1955-56 the defendants are in possession of the property as Bataidar (cultivator on crop share basis) — No registered document or any lease deed is required as per the Section 5 — There can be oral lease accompanied by delivery of possession — No illegality is committed in holding the respondent as tenant. (See para 6, 7)

Result : Petition dismissed.

Ramji s/o. Dhondji Dhumal & ors. Vs. Mahadu Jalbaji Dhumal & ors. 2009 (9) LJSOFT (AUR) 87

Imports and Exports (Control) Act, 1947 — Section 5 — Criminal conspiracy — Retracted confessional statements of co-accused — Appeal against acquittal.

See Asst. Collector of Customs (Pre.) Bombay Vs. Ahmed Abdulkarim 2009 (9) LJSOFT 179

Income Tax Act, 1961 — Double Taxation Avoidance Agreement, 1958 (DTAA) — Technical supervision charges — Exemption

from tax — ‘Management charges’ — Scope and meaning of.

Respondent-assessee non-resident company registered and incorporated in Sweden — Respondent entered into agreement with VSNL to render consultancy services in implementation of project in India — Management charges whether relating to business management or technical management would be outside the scope of exemption under Article III of DTAA — Management charges are not to be treated as commercial profits — Amounts received by the assessee for executing the aforesaid work was nothing but management fees which cannot be considered as ‘commercial profits’ under Article III of the DTAA — Tribunal erred in holding that the technical service fees received by the assessee are commercial profits covered under Article III of 1958 — Referred question answered in the negative that is, in favour of the revenue and against the assessee. (See para 13, 15, 17)

Result : Accordingly.

Commissioner of Income-tax, Bombay City XII, Bombay Vs. Swedish Telecoms International AB 2009 (9) LJSOFT 46

Income Tax Act, 1961 — Section 32 — Lease of assets — Claim of depreciation — Term “Use” — Meaning of.

Assessee is in the business of leasing — Breakers were purchased and were leased out before the end of the financial year and the assessee had received the lease rentals for the same — Act of the lessee in giving the assets on lease amount to Use of the assets considering the business of the assessee — Fact whether the lessee had put to use the leased equipment would be irrelevant as long as the machinery in fact had been given on

lease before the end of the financial year as then it can be said that the assessee for the purpose of business had “used” the leased equipments — Tribunal rightly allowed the assessee's claim of depreciation. (See para 5, 10) Result : Appeal dismissed.

Commissioner of Income Tax-3 Vs. Kotak Mahindra Finance Ltd. 2009 (9) LJSOFT (URC) 132

Income Tax Act, 1961 — Section 32(3)(b), 148 — Re-opening of assessment beyond four years — Depreciation on Goodwill. Claim of depreciation of Goodwill — Notes and the schedule annexed to the Balance Sheet shows that all the facts have been fully disclosed by the assessee — Contention of revenue that the petitioner has failed to disclose the nature of the goodwill is liable to be rejected — Ingredients of section 147 not fulfilled — Reopening of the assessment after the expiry of 4 years cannot be sustained. (See para 12, 14)

Result : Petition allowed.

Supreme Treves Pvt. Ltd. Vs. Deputy Commissioner of Income-tax-10(2) & ors. 2009 (9) LJSOFT (URC) 170

Income Tax Act, 1961 — Section 80HHC, 143(3), 263 — Deductions - Illegible business profits.

Assessee - partnership firm engaged in business of manufacture and sale of processed ore — A.O. considered the truck lease income, machinery lease income and service charges as eligible for deduction — If income under the said 3 heads is not operational income, the same needs to be treated in the manner as stipulated in Section 80HHC explanation (baa)(1) — CIT is justified in recording that the treatment accorded to the said income by

the A.O. is erroneous and has prejudiced the Revenue — Unless and until ITAT in appeal found that profits from these three activities also constituted business receipt or operational income, it could not have allowed the appeal filed by the assessee — Said aspect not gone into at all by the ITAT and mechanically the Judgment in case of Alfa Laval India Ltd. vs. Deputy Commissioner of Income-Tax (2004 (4) LJSOFT 96) has been followed though it is not applicable — Impugned order passed by ITAT and also the order passed u/s 263 by CIT set aside and matter remanded back to CIT for taking fresh decision in accordance with law. (See para 6 to 11) Result : Appeal partly allowed.

Commissioner of Income Tax Vs. Damodar Mangalji Mining Company 2009 (9) LJSOFT (GOA) 33

Income Tax Act, 1961 — Section 80P — Maharashtra Co-operative Societies Act, 1960 — Section 64, 67, 110 — Maharashtra Co-operative Societies Rules, 1961 — Rule 90 — Contract Act, 1872 — Section 72 — Cooperative Housing Society — Transfer fees — Taxability of — Principles of mutuality.

1) Co-operative Housing Society — There is no commerciality involved — Subscription and or contributions received by the members can only be expended for the purposes of maintenance and providing other privileges, advantages and conveniences to its members in terms of its bye-laws — Class of members are clearly identifiable — In terms of the bye laws it is only the members who have a right to share in the surplus — No part of the funds, as provided in section 64 can be paid by way of bonus or dividend or otherwise distributed among its members except as provided therein

— All the tests of mutuality is satisfied — Principle of mutuality will apply to a cooperative Housing Society which has its predominant activity, the maintenance of the property of the society — Any part of transfer fees received by the assessee societies - whether from outgoing or incoming members - is not liable to tax on the ground of mutuality. (See para 28, 29)

2) Cooperative Housing Society — Transfer fees — Payments are made under the bye-laws which constitutes a contract between the society and its members — If amounts is received more than permissible under the notification under pressure or coercion or contrary to Government directions, then considering section 72 of the Contract Act, that amount will have to be refunded — If the society retains the amount in excess of binding Government notification or the bye-laws that amount will be exigible to tax as it has an element of profiteering. (See para 20, 22)

3) Cooperative Housing Society — There is no legal bar to earn profits but the profit must come from a commercial activity in the nature of trade, business or the like in which event the assessee then will have to pay tax on such profits — Charging of transfer fees as per bye-laws has no element of trading or commerciality — There therefore being no taint of commerciality, the question of earning profits would not arise when the housing society from the funds received applies the moneys received towards maintenance of the society and providing the members with usual privileges, advantages and conveniences. (See para 24)

Result : Accordingly.

Sind Cooperative Housing Society Vs. Income Tax Officer 2009 (9) LJSOFT (URC) 11

Income Tax Act, 1961 — Section 140-A, 143, 234 — Capital gains tax — Interest.

Capital gains — Assessee sold the property on 19.6.1995 — Even if the action of the assessee in not paying the advance tax on capital gains in full with the second installment due on 15.9.1995 is held to be in violation of first proviso to Section 234C(1)(b)(ii) it is apparent that as the impugned action has been initiated u/s 143(1)(a) the same is unsustainable. (See para 6)

Result : Accordingly.

Commissioner of Income Tax Vs. Hindustan Hotels Ltd. & anr. 2009 (9) LJSOFT (GOA) 27

Income Tax Act, 1961 — Sections 143(1)(a), 148 — Voluntary Disclosure of Income Scheme (VDIS) — Jewellery declared and sold — Hawala transaction — Proof of.

Assessee declared diamond jewellery under VDIS, 1997 — Said declaration was accepted by the department and a certificate was issued to the assessee under VDIS — Said jewellery was subsequently sold to the purchaser who had a business of trade in diamond jewellery — Revenue department contended that the income derived and recorded from the transaction was not due to actual transfer of stock and that based on the confessions of the purchaser, which was later retracted, there existed a Hawala transaction — VDIS 1997 certificate issued by the department is valid and subsisting and no proceedings have been initiated so far to cancel the certificate — Assessee has received the consideration which is duly accounted for — Mere fact that the jewellery sold by the assessee is not found with the purchaser cannot be a ground to hold that the transaction was bogus — Tribunal was justified in deleting the addition amount made on account of alleged unaccounted income

from sale of jewellery which are declared under VDIS 1997. (See para 12, 16, 17, 19)
Result : Appeal dismissed.

Commissioner of Income Tax-21 Vs. Uttamchand Jain C/o.Kailash Chand Jain & Co. 2009 (9) LJSOFT 24

Income Tax Act, 1961 — Section 147, 148 — Reopening of assessment — Reason to believe.

Notice issued u/s 148 on 30/3/2007 to reopen the assessment for AY 2002-03 — Reopening of the assessment is based on the materials which were already on record at the time of passing the assessment order u/s 143(3) — Assessing officer had allowed deduction on the two items in question only after considering the explanation given by the petitioner — Reopening of the assessment based on the materials already considered and adjudicated would amount to reviewing the assessment order by reappreciating the material on record which is not contemplated u/s 147 — Opinion to the contrary formed by the assessing officer on the basis of the very same material would be mere change of opinion and the reopening of the assessment based on mere change of opinion cannot be sustained — Impugned notice quashed and set aside. (See para 20, 23)

Result : Petition allowed.

Cartini India Limited (Formerly Godrej Appliances Ltd.) Vs. Additional Commissioner of Income Tax & ors. 2009 (9) LJSOFT 128

Income Tax Act, 1961 — Section 260-A — Limitation Act, 1963 — Section 5 — Delay in filing appeal before High Court — Condonation of delay — Powers of High Court.

Delay of 575 days in filing the above Appeal

under Section 260-A of I.T. Act — Condonation of delay — Apex Court has held that the High Court has no power to condone delay in filing Appeal u/s 35-G of the Excise Act — Section 260-A of I.T. Act is pari materia with Section 35-G of Excise Act — High Court has no power to condone delay u/s 260-A of I.T. Act — Notice of motion seeking condonation of delay is liable to be dismissed. (See para 6, 7)

Result : Notice of motion dismissed.

Commissioner of Income Tax Vs. Grasim Industries Ltd. 2009 (9) LJSOFT (URC) 18

Income Tax Act, 1961 — Section 260-A, 268-A — Departmental Appeals — Monetary limits — CBDT Circular — Retrospective effect of — Pending appeals.

CBDT Circular dated 15-5-2008 — No Appeals should be filed in the cases involving tax effect less than Rs.4 lacs notwithstanding the issue being of recurring nature — Board has rightly taken said decision so as to reduce burden of the department as well as that of the tribunals and courts — Same policy for old matters needs to be adopted by the Department so as to achieve the object of the policy laid down by the CBDT — CBDT Circular dated 15-5-2008 would be applicable to the pending cases requiring department to withdraw cases wherein the tax effect is less than the prescribed monetary limits — Said Circular would be applicable to the cases pending before High Court either for admission or for final disposal and that it is binding on Revenue — All Appeals having tax effect less than Rs.4 lakhs are dismissed. (See par 8, 11, 13)

Result : Appeals dismissed.

Commissioner of Income Tax - III Vs. Madhukar K. Inamdar H.U.F. 2009 (9) LJSOFT (URC) 25

Indian Medicine Central Council Act, 1970 — Section 13-A — Constitution of India, 1950 — Article 14 — Establishment of new Institution — Grant of permission — Powers of Central Government — Scope of — Post-decisional opportunity of hearing — Principles of natural justice — Discrimination.

1) Starting of an Ayurved College and Hospital — CCIM is the Council constituted under the Act of 1970 and is the ultimate authority for setting norms for establishing a Medical College — It is the Council which must evaluate whether a new college meets the exacting standards stipulated and the Government has to act on its recommendations — Central Government is not expected u/s 13-A to send its own team to assess for itself whether the institution/college complies with the requirements — That task is to be performed by the CCIM and the Central Government can only approve or disapprove such scheme — Procedure adopted by the Central Government in sending its own team is not in consonance with the provisions of the Act. (See para 9, 13)

2) Principles of natural justice — Cancellation of Letter of Intent — Post-decisional hearing granted by Respondents is not envisaged by the provisions of the Act — It cannot be a substitute for a pre-decisional hearing — Where a pre-decisional hearing is conceived and is not afforded, the defect cannot be cured by a post-decisional hearing — Post-decisional opportunity of hearing does not subserve the rules of natural justice. (See para 10)

3) Grant of permission for the college set up by the Pratishtan of which a Member of Parliament was the Chairperson although there

were several deficiencies in the proposal — Grant of permission for commencing a college without completion of the building or other infrastructural necessities indicates the unholy haste with which the decision was taken by the Central Government — Conduct of Central Government smacks of malafides and is discriminatory. (See para 14, 15)

Result : Petition allowed.

Hindustani Education Society & anr. Vs. Union of India & ors. 2009 (9) LJSOFT (AUR) 188

Indian Penal Code, 1860 — Section 120-B — *Criminal conspiracy — Retracted confessional statements of co-accused — Appeal against acquittal.*

See Asst. Collector of Customs (Pre.) Bombay Vs. Ahmed Abdulkarim 2009 (9) LJSOFT 179

Indian Penal Code, 1860 — Section 302 r/w Section 34 — Murder — Circumstantial evidence — Last seen together — Absence of motive — Appeal against conviction.

Murder trial — Circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime — There must be something more establishing connectivity between the accused and the crime — Prosecution evidence itself establishes that the deceased and the accused were friends — Prosecution has not been able to establish motive — Though conduct of accused raises strong suspicion against them but that suspicion, however strong, can not take the place of proof — Prosecution has not been able to establish the circumstances conclusively connecting the accused with the crime — Conviction of accused is

unsustainable and deserves to be set aside. (See para 12, 13)

Result : Appeal allowed.

Satish s/o Shrawan Hirudkar & Anr. Vs. State of Maharashtra 2009 (9) LJSOFT (NAG) 68

Indian Penal Code, 1860 — Section 302 — Code of Criminal Procedure, 1973 — Section 228 — Murder — Framing of charge — Medical evidence — Appeal against conviction.

1) Accused and deceased were neighbours — Appellant (A-1) was abusing the family members of deceased and there were some exchange of words — Appellant suddenly removed a knife from his pocket and gave two blows of the same on the abdomen of deceased — Persons present at site those conducting the investigation and the Doctors agreed that the Appellant's act resulted in the death of the deceased — Blows administered by the Appellant were fatal — Contents of the C.A. Report are also indicative of the fact that it was the Appellant alone who inflicted the knife blows — Version is consistent throughout — Conclusion reached by Trial Court that there is no discrepancy or contradiction in the ocular and medical evidence cannot be said to be erroneous — Conviction confirmed. (See para 26)

2) Murder trial — Framing of charges — Appellant alongwith four other persons charged with the offences punishable u/s 147 to 149 r/w Section 302 r/w Section 34 of IPC and u/s 323 r/w. Section 34 of IPC — Contended that as the other accused have been acquitted the Appellant alone cannot be convicted u/s 302 of IPC considering the charge framed — Held that Appellant is not prejudiced at all and was aware that there is a

specific role attributed to him by the prosecution — Charges are framed with sufficient clarity and set out the allegations that the accused have to meet — In the absence of serious prejudice and consequent failure of justice, mere omission to frame a specific charge cannot be said to be fatal — Further, it is not the law that for collective acts, individuals cannot be singled out and convicted so also sentenced. (See para 16, 17)

3) Murder — Intention — Nature of injuries — Medical opinion — Appellant came armed with the knife and the nature of injury sustained by the deceased so also weapon used are indicative of the fact that the Appellant wanted to kill the deceased — Doctors have stated that injuries are inflicted on vital parts of the body and can cause death — Suggestion that the medical evidence does not indicate that the injuries are sufficient in the ordinary course of nature to cause death does not mean that the case will not fall under Section 302 of IPC — Merely because such a sentence does not appear does not mean that the medical evidence must be discarded completely. (See para 29)

Result : Appeal dismissed.

Santosh Bhau Humane Vs. State of Maharashtra 2009 (9) LJSOFT 15

Indian Penal Code, 1860 — Section 302 — Evidence Act, 1872 — Section 24, 106 — Murder — Circumstantial evidence — Extra-judicial confession — Appeal against conviction.

1) Appellant charged for committing murder of his wife and two daughters by throttling while they were fast asleep and attempted to end his life but he survived — Written confession made by the accused in the form of chit and the oral confessions made to doctor

— All the confessions were voluntary and a conviction can be based on extra judicial confessions made by Appellant — Prosecution has proved these confessions — Failure of the accused to explain as to how and in what circumstances his wife and two daughters were murdered is an additional link in the chain of circumstances — Conviction confirmed. (See para 15, 16)

2) Criminal appeal — Delay — Appeal pending for the last about 20 years — When the Trial court completed the trial within a period of two years there is no justification why the appeal should remain pending for more than 20 years — It is imperative for the Bar and the Bench to work out appropriate methodology so as to ensure that in future such appeals do not remain pending for more than 3 to 5 years. (See para 19)

Result : Appeal dismissed.

Satish Kumar Agarwal Vs. State 2009 (9) LJSOFT 19

Indian Penal Code, 1860 — Section 302, 304-I — Murder — Intention — Appeal against conviction.

Murder trial — Altercation between the accused and deceased on account of quarrel which had preceded between their children while playing — There was hot exchange of words between them and the neighbours pacified them — Thereafter deceased went for washing her clothes and when she was putting clothes on string for drying the accused came from behind and poured kerosene on her person and by throwing burning matchstick set her ablaze — Evidence on record shows that the act of the accused was not pre-meditated — However accused intended to cause injuries to deceased which were likely to cause her death — Offence u/s

304(I) of IPC made out against the accused. (See para 13)

Result : Appeal partly allowed.

Ramabai w/o Rajkumar Surwade Vs. State of Maharashtra 2009 (9) LJSOFT (URC) (NAG) 74

Indian Penal Code, 1860 — Section 302, 381 — Murder — Committal order — Non-compliance of mandatory Rules — Naval offence — Jurisdiction as to place and offences — Appeal against conviction.

See Kanwardeepsingh Harbansingh Bedi Vs. State of Maharashtra 2009 (9) LJSOFT 67

Indian Penal Code, 1860 — Section 304-B, 498-A r/w Section 34 — Evidence Act, 1872 — Section 32, 113-A, 113-B — Dowry death — Abetment to suicide — Presumption — Ill-treatment — Dying declaration — Appeal against conviction.

1) Deceased poured kerosene on herself and set herself ablaze — In the dying declaration she stated that she poured kerosene on herself and set her on fire on account of quarrel which had taken place between her husband and her sister-in-law — Cause of quarrel also was not dowry but some internal dispute — Every quarrel between husband and wife and relatives cannot be treated as a cause of dowry death or harassment or cruelty u/s 498-A of IPC — Cannot be said that the appellants had instigated or abetted the deceased to commit suicide — Appellants entitled to get benefit of doubt. (See para 27)

2) Dying declaration recorded by the Special Metropolitan Magistrate — Though the victim had given replies in Marathi, he had taken down the same in English as he was not conversant in writing Marathi though he understood the language very well — It is a

common knowledge that many persons understand Marathi though they cannot write in Marathi — Sessions Court erred in discarding his testimony or in finding fault in his procedure of recording answers in English though they were replied in Marathi. (See para 21)

3) Dowry — Customary payments or other ceremonies as are prevalent in different societies are not covered by the expression “Dowry” — Evidence shows that there was a custom in the community that before offering respect to the Gods, bridegroom is supposed to express his wish to his father-in-law and that it is not necessary that every such wish is to be fulfilled — Even assuming without admitting that such a demand for scooter was made by bride-groom it would not fall within the definition of the word “Dowry”. (See para 26)

Result : Appeal allowed.

Sushama Suresh Nigudkar & anr. Vs. State of Maharashtra 2009 (9) LJSOFT 183

Indian Penal Code, 1860 — Section 307, 324, 323 r/w Section 34 — Attempt to murder — Common intention — Appreciation of evidence — Appeal against conviction.

1) Common intention to commit murder — Common intention can be formed at any stage of the occurrence — Only precondition is that formation of the common intention must precede commission of the offending act — Presence and participation of each member is essential but each of them need not actually perform an overt act — Some may contribute by keeping a vigil or preventing rescuers from intervening — There was no pre-concert between these two groups, though the motive for both groups was the same — Conclusion of trial Court that all the accused were present

at the scene of occurrence from the beginning and shared common intention cannot be upheld. (See para 16, 17)

2) Attempt to murder — Nature of the injuries suffered by the victims and site of the injuries alone cannot determine the nature of offence committed by the culprits — Intention has to be gathered from all the circumstances and not merely from the consequences of the acts of the perpetrator — Factors such as the motive, the weapon used, the manner of commission of the offence and the site where the injuries are inflicted, furnish clue as to the intention of the perpetrator but the decisive factor is the intention of the offender — Not necessary that in every case bodily injury capable of causing death has to be inflicted, if an overt act towards commission of murder is established, the offence is complete, even if no injury is caused — Person commits an offence u/s 307 of IPC if he has an intention to commit murder and performs some overt act for accomplishing that object. (See para 19)

3) Appreciation of evidence — Court has to consider effect of inconsistencies, exaggerations and embellishments appearing in the evidence — Normal inconsistencies appear in the evidence of even a truthful witness — Normal discrepancies which do not materially affect credibility of a witness nor create any infirmity in the prosecution case are generally ignored — Only those inconsistencies which tend to show that the version of the incident narrated by the witness is improbable and affects the very fabric of the prosecution case, corrodes evidentiary value of the testimony of a witness — Though the evidence of injured witness stands on a different footing but the general principles of appreciation of evidence applies to the

appreciation of the evidence of injured witnesses — Court has to consider cumulative effect of the evidence to ascertain whether testimony of the prosecution witnesses is reliable or deserves to be discarded. (See para 15)

Result : Appeals partly allowed.

Chagan s/o Kisan Koli Vs. State of Maharashtra & anr. 2009 (9) LJSOFT (AUR) 204

Indian Penal Code, 1860 — Section 307, 498-A — Attempt to murder — Appeal against conviction.

Appellant allegedly under influence of alcohol poured kerosene on his wife and set her on fire by using ignited matchstick — She raised shouts and thereafter realizing what he has done the appellant tried to rescue his wife — Initiation to take her to the hospital for medical treatment in itself cannot be construed to accept the defence of the accused that he had nothing to do with the incident and that it was the own act of his wife to set herself on fire — It is the specific case narrated by the victim that it was her husband-accused no.1 who set her on fire after pouring kerosene on her person — Nowhere evidence found that she herself set on fire — Conviction confirmed. (See para 5, 6)

Result : Appeal dismissed.

Sanjay Bhila Mandawade Vs. State of Maharashtra 2009 (9) LJSOFT 59

Indian Penal Code, 1860 — Section 363, 376 — Evidence Act, 1872 — Section 9 — Kidnaping — Rape — Minor girl — Identification of accused.

Kidnaping and rape — Relevant witnesses turned hostile to the prosecution — Prosecutrix has stated in cross examination

that all the persons had covered their faces by clothes — However in examination in chief she stated about the identification of appellant and the said discrepancy was not explained and clarified by re-examining that witness — Her categorical admission that at night she could not identify any person and she did not state name of any person to the police, would demolish her case and mentioning of the name of the appellant in the F.I.R. would loose its significance — Evidence of prosecutrix not sufficient for basing conviction of the appellant without corroboration from other sources which is lacking — Judgment of conviction and sentence liable to be quashed and set aside. (See para 22 to 25)

Result : Appeal allowed.

Dinesh s/o Dhaniram Bhoute Vs. State of Maharashtra 2009 (9) LJSOFT (NAG) 97

Indian Penal Code, 1860 — Section 420 r/w Section 120-B — Quashing of criminal proceedings — Nature of dispute.

See Prashant Jhunjhunwala Vs. Union Territory of Daman & Diu 2009 (9) LJSOFT 55

Indian Penal Code, 1860 — Section 494 — Code of Criminal Procedure, 1973 — Section 188 — Second marriage — Divorce — Exparte foreign judgment — Binding effect of — Offence committed outside India — Absence of sanction — Quashing of criminal proceedings.

Offence u/s 494 of IPC — Marrying again during lifetime of husband or wife — Regarding the decree of divorce the exparte foreign judgment obtained by the petitioner from the Court of United States of America not binding and is not conclusive — Marriage was subsisting — Absence of sanction u/s 188 of Cr.P.C. cannot be considered as a ground

for quashing the complaint — Sanction u/s 188 of Cr.P.C. can be obtained any time before the trial commences — No case is made out for quashing the complaint. (See para 4, 5, 6)
Result : Petition dismissed.

Haresh N. Mirchandani Vs. Reshma Mirchandani and anr. 2009 (9) LJSOFT (URC) 1

Indian Penal Code, 1860 — Section 494, 495 — *Second marriage — Concealment of former marriage — Complainant — Locus standi — Aggrieved person — Issue of process — Quashing of criminal proceedings.*

See Herculano Coelho Vs. Antonia Pobrinha Dias e Faleiro 2009 (9) LJSOFT (URC) (GOA) 20

Industrial Disputes Act, 1947 — Section 2(a) — *Contract labour — Termination of services — Appropriate Government — Jurisdiction of Labour Court.*

See Duryodhan Hiranman Ingole Vs. Indian Council Agriculture Research 2009 (9) LJSOFT (NAG) 79

Industrial Disputes Act, 1947 — Section 2(k), 25-O — *Co-operative Mill — Winding up proceedings — Closure of unit — Liquidation — Claim of workers — Applicability of I.D. Act.*

See Nagpur Vinkar Sahakari Soot Girni Maryadit Vs. Rashtriya Mill Mazdoor Sangh 2009 (9) LJSOFT (NAG) 158

Industrial Disputes Act, 1947 — Section 2(oo)(bb), 25-F — *Daily wage — Dismissal from service — Employment Guarantee Scheme.*

Termination of services — Daily rated labourers employed under the Employment Guarantee Scheme — Services were

temporary and on daily rated basis on the unsanctioned posts and for the particular and specific project — Merely completion of 240 days in Calendar year preceding to their termination will not give any right to them and it is not incumbent upon the petitioners to comply with the provisions of Section 25-F of I.D. Act — Since the cases are covered u/s 2(oo)(bb) the compliance of provisions of Section 25-F of I.D. Act will not be attracted — Impugned order granting reinstatement set aside. (See para 22, 23)

Result : Petitions allowed.

State of Maharashtra & anr. Vs. Balaji Raosaheb Shinde & anr. 2009 (9) LJSOFT (AUR) 40

Industrial Disputes Act, 1947 — Section 2(oo), 11, 25F — *Desertion of post — Termination of service — Retrenchment — Habitual absence — Absence of enquiry — Back-wages.*

1) *Termination of services on the grounds of desertion of post — Workman was arrested by the police and it was beyond his control to work during the said period — Immediately on his release on bail he had reported to work and had informed his superior officers about his detention — However, without ascertaining whether the said statement is correct or not his services were terminated — Though Habitual absence is a misconduct within the meaning of Clause 24(f) of the Standing Orders but the said misconduct has to be established — Order of termination does not refer to previous absenteeism — No opportunity was given to the workman either by issuing a show cause notice or by holding departmental enquiry — Striking off the name of the workman is not covered in any of the Section 2(oo) and it amounts to retrenchment u/s 25-F — Company had not complied with*

the provisions of Section 25-F before issuing order of termination — Striking off the name of a worker from the Rolls is illegal and non-compliance of Section 25-F renders such retrenchment void-ab-initio — Finding recorded by the Labour Court that the termination was legal will have to be set aside. (See para 9, 10)

2) *Grant of back wages — Though Labour Court has not framed specifically issue of back wages, both the parties have led evidence on that issue, the workman has been cross-examined — Merely because a separate issue has not been framed in respect of back wages no prejudice is caused to the employer — Case need not be remanded back only on that ground particularly, when thirty years have passed since the services were terminated. (See para 12, 13)*

3) *Grant of back wages — Workman made specific averment that he was unemployed and reiterated his stand in his evidence — Burden was on part of the company to establish that he was gainfully employed — Merely because he was having a badge and rick driving licence and was plying an auto rickshaw, could not be that he was gainfully employed — Company has not brought on record any evidence to show that he was working elsewhere after his services were terminated — Ends of justice would be met if the employer is directed to pay lump sum amount to the workman quantified at Rupees Eight lakhs towards full and final settlement of his claim. (See para 14)*

Result : Petitions partly allowed.

Maruti Bhanudas Kamble Vs. Bajaj Auto Ltd., Pune & Anr. 2009 (9) LJSOFT 32

Industrial Disputes Act, 1947 — Section 10(1), 12(5) — *Limitation Act, 1963 — Article 137 — Termination of services —*

Delay in seeking reference — Refusal to make reference — Validity of.

Termination of services — Appropriate Government refused to make reference on the ground that the dispute has been raised belatedly over 9 years of said termination without any explanation for such delay — Provisions of Art. 137 of the Schedule to Limitation Act are not applicable to the proceedings under the I.D. Act and the relief under it cannot be denied to the workmen merely on the ground of delay — It was not open for respondent No.1 to refuse to make reference alleging delay on the part of petitioner in raising dispute — Order passed by the respondent No.1 is liable to be quashed and set aside — Respondent No.1 directed to make reference within one month. (See para 9, 10, 11)

Result : Petition allowed.

Balasaheb Ambadas Gunde Vs. Union of India & ors. 2009 (9) LJSOFT (URC) (AUR) 12

Industrial Disputes Act, 1947 — Section 25-O(5) — *Closure of undertaking — Procedure for — Time frame — Whether mandatory.*

Closure of undertaking — Permission granted by Commissioner of Labour — Dispute referred to the Industrial Tribunal u/s 25-O(5) pursuant to the application made by Workers-Union — Reference not decided within one year from the date when permission to close down was granted by the Labour Commissioner — Though Industrial Court is expected to decide that reference within 30 days or within one year from the date of original Order but that time-frame would be only directory and not mandatory — Merely because reference not decided within the frame work, it does not fail — To hold it otherwise would cause injustice to the workers

class — Contention that Industrial Court had become functus officio and has no longer jurisdiction to continue the reference proceedings cannot be accepted. (See para 16, 18)

Result : Petition dismissed.

Universal Ferro and Allied Chemicals Ltd. Vs. Maharashtra Ferrio Alloys Mazdoor Sangh & anr. 2009 (9) LJSOFT (NAG) 133

Interest Act, 1978 — Section 3 — Refund of excise duty — Claim of interest.

See Mahavir Metal Mart Vs. Union of India 2009 (9) LJSOFT 114

Land Acquisition Act, 1894 — Section 3(b), 18 — Code of Civil Procedure, 1908 — Order I Rule 10 — Constitution of India, 1950 — Article 226, 227 — Enhancement of compensation — Reference — Scope of — “Person interested” — Impleading of — Limitation — Letters Patent Appeal — Maintainability of.

1) Letters Patent Appeal — Writ petition was filed under Articles 226 and 227 of the Constitution of India by respondent no.1 herself seeking writ of Certiorari to quash the order passed by the Reference Court — Issue regarding jurisdiction of the Reference Court to allow the application for intervention arose in the writ petition — Petition was maintainable, both under Articles 226 and 227 of the Constitution of India — Rejecting the preliminary objection held that the appeal is maintainable. (See para 14)

2) Acquisition of land — Enhancement of compensation — Appellant sought reference u/s 18 — Respondent no.1 filed an application under Order I Rule 10 of CPC seeking permission to intervene on the ground that she was co-owner of the acquired land and was necessary party to the reference proceedings

— Jurisdiction of the Reference Court is limited — It can decide objection in terms of reference made to it and cannot widen the scope of the reference — Respondent no.1 candidly admitted that she had received compensation but her case was that it was meagre — She could not have sought impleadment in the reference sought by the appellant — Moreover permitting respondent no.1 to be joined as party would amount to permitting her to seek reference for higher compensation after the expiry of period prescribed u/s 18(2) which is not permissible under the Act — Reference Court was perfectly justified in dismissing the application — Learned Single Judge has exercised jurisdiction illegally by setting aside the order — Impugned judgment quashed and set aside and the order passed by the Reference Court is maintained. (See para 35, 36)

Result : Appeal allowed.

Chintaman s/o Barbaji Dupare Vs. Vithabai w/o Deoraoji Wahane & ors. 2009 (9) LJSOFT (NAG) 139

Land Acquisition Act, 1894 — Section 4, 6 — Goa, Daman and Diu Land Acquisition Rules 1972 — Rule 4 — Acquisition of land — Public purpose — Allegations of malafides — Objections — Extension of time for hearing.

1) Acquisition of land — Construction of a bridge connecting two villages is a public purpose — Public need of one more bridge across river Sal was felt long back and the State is the best judge to answer the relevant issue — No malafides found involved in it — Cost of the proposed bridge is not relevant much less germane to the decision making process under the L.A. Act — Objections raised by the petitioner have been duly considered by the L.A.O. and the State — No

irregularities in the procedure for acquisition nor any case of malafide to warrant judicial interference in the acquisition proceedings. (See para 26, 27)

2) Acquisition of land — Rules of 1972 prescribes procedure for hearing the objections u/s 5(A) — Once Collector i.e. the L.A.O. submits his report u/s 5(A) to the Government the enquiry or the investigation u/s 4(2) comes to an end — L.A.O. ceases to exercise powers under Rule 4(2) — L.A.O. could not have extended time for hearing the objections after giving report u/s 5(A) of L.A. Act — Objections based on technicalities and entertaining of such objections after the prescribed period particularly after giving of the report u/s 5(A) was not within his powers of L.A.O. (See para 19, 20)

3) Acquisition of land — Time element incorporated in the provisions governing the process of land acquisition with a view to achieve public interest by accomplishing the public purpose involved thereunder within the given time frame — Nobody, even the State may, have any liberty to tinker with such time frame by resorting to waiver of the statutory mandate. (See para 21)

Result : Petition dismissed.

George L. Fernandes Vs. State of Goa & ors. 2009 (9) LJSOFT (GOA) 34

Land Acquisition Act, 1894 — Section 6, 11-A — Land acquisition proceedings — Limitation — Locus standi — Rules of precedent — Pendency of reference before the larger Bench — Effect of.

See Madhao Atulchandra Bapat Vs. State of Maharashtra 2009 (9) LJSOFT (NAG) 77

Land Acquisition Act, 1894 — Section 18 — Enhancement of compensation.

Acquisition of land — Determination of

market value — May not be possible for a party to produce before the Court the sale instance of the very year in which the suit land became subject matter of acquisition — Court will have to consider whether effort was made by the party to place before the Court the rate in respect of a particular land, may be in the year in which the land is sought to be acquired or nearabout time when the land is sought to be acquired — Procedure for acquisition of the land commenced in 1978 and the land acquisition award came to be passed on 11-10-1983 and declared on 22-2-1984 — Of the sale instances are quoted of the year 1983 or thereabout one may not be in a position to discard them. (See para 7)

Result : Appeal dismissed.

State of Maharashtra & anr. Vs. Shrimant Govindrao Narayanrao Ghorpade 2009 (9) LJSOFT 111

Land Acquisition Act, 1894 — Section 18 — Enhancement of compensation — Determination of market value.

Acquisition of land for percolation tank — Acquisition of land — All sale deeds in respect of lands from the same locality and the dates of sale deeds are near about the date of issuing Notification u/s 4 not considered — Considering the sale instance produced by the Appellants the claimants are entitled to compensation in respect of acquired land at the rate of Rs.40,000/- per Hecter. (See para 7, 8)

Result : Appeal partly allowed.

Damu Motiram Rathod & ors. Vs. State of Maharashtra 2009 (9) LJSOFT (AUR) 157

Land Acquisition Act, 1894 — Section 18 — Enhancement of compensation — Determination of market value — Comparable sales instances.

1) Acquisition of land — Determination of market value — Sale deeds referred by the S.L.A.O. in his award — Material relied upon by the Land Acquisition Officer cannot be relied upon by the Court unless the same is produced and proved before the Court — Said sale deeds cannot be accepted because neither the purchaser nor the seller are examined as witnesses nor the certified copies are produced on record. (See para 8)

2) Acquisition of land — Determination of market value — Sale deed of adjacent land available on record and the same can be considered for fixing the market value of the acquired land — Evidence shows that acquired land is situated on high way and surrounding to the lands under acquisition there is Gram Panchayat Office, school, junior college, hospital, banks etc. — Claimant entitled to compensation in respect of acquired land at the rate of Rs.34,000/- per Acre — Appellant also entitled to additional benefits as per the amended provisions of the Land Acquisition Act on enhanced compensation. (See para 10)

Result : Appeal partly allowed.

Bilkis Bano w/o Abdul Razzak Vs. State of Maharashtra & anr. 2009 (9) LJSOFT (AUR) 159

Land Acquisition Act, 1894 — Section 18 — Reference — Enhancement of compensation — Dispute about the area acquired.

1) Reference — There are 4 types of disputes which can be referred to the Civil Court for determination viz. (i) as to the measurement of the land, (ii) as to the amount of compensation, (iii) as to the person to whom the compensation is payable or (iv) as to the apportionment of the compensation among the persons interested — Reference Court should

have considered the submissions made by the claimant in respect of dispute about the area acquired by the SLAO. (See para 12)

2) Acquisition of land — Dispute about the area acquired — Surveyor was appointed from D.I.L.R. Office which is a Office run by the Government — Report submitted by Government Officer showing that the acquired land is 3 Hectar and 75 Rs. — Reference Court erred in awarding compensation in respect of 2 Hectors and 40 Rs only. (See para 11)

Result : Appeal partly allowed.

Deorao s/o Gunajirao Tathe Patil Vs. State of Maharashtra & anr. 2009 (9) LJSOFT (AUR) 149

Land Acquisition Act, 1894 — Section 18, 23, 54 — Acquisition of land — Compensation — Determination of market value — Ready reckoner — Severance compensation — Government Resolution dated 31/10/1994 — Applicability of.

1) Acquisition of land — Determination of market value — Government has laid down a policy for offering compensation to the owners of the land which has been acquired for public purposes — GR dated 31/10/1994 clearly stated that compensation for acquired land is to be granted on basis of valuation of land by way of sale purchase transaction method and valuation as per ready reckoner, whichever was higher — When the State Government has laid down a policy in its GR dated 31/10/1994 it is bound by the same — Nothing improper for the Reference Court to rely upon such a policy — Reference Court did not commit any error in fixing the market rate by following the GR dated 31/10/1994 — Poor financial condition of the Municipal Corporation is no ground to deny market rate — However since the Notification was published on 7/12/1989 the Reference Court

could not have relied upon the ready reckoner giving the market rate applicable for the year 1992 — It was necessary for the Reference Court to decide the market rate as in December, 1989 and not in 1992 — Market rate reduced from Rs.600/- per sq. mtr. to Rs. 500/- per sq. mtr. (See para 10, 15)

2) Acquisition of land — Severance of land — Compensation for unacquired land — Marketability cannot be assessed unless there was evidence that it has an independent access from any of the roads surrounding the plot — Nothing to show that area of 344 sq. mtrs. has an independent access and could be used by the owners — Reference Court rightly held that an area admeasuring 344 sq. mtrs. has been lost by the claimants and they are entitled for compensation on the ground of severance. (See para 16)

Result : Accordingly.

Shalini Vaman Godbole Vs. Special Land Acquisition Officer, Special Unit, Solapur and ors. 2009 (9) LJSOFT 36

Land Acquisition Act, 1894 — Section 18, 25 — Code of Civil Procedure, 1908 — Section 100-A, 16 (as amended by Act 22 of 2002) — Maharashtra High Court (Hearing of Writ Petitions, by Division Bench and Abolition of Letters Patent Appeals) Act, 1986 — Section 3, 8, 11 — Goa, Daman and Diu (Administration) Act, 1962 — Goa, Daman and Diu Reorganisation Act, 1987 — Benami Transactions (Prohibition) Act, 1988 — Section 3, 4 — Bar under — Acquisition of land — Compensation — Ownership — Letters Patent Appeal — Maintainability of — Jurisdiction of Goa Bench of Bombay High Court — Applicability of Maharashtra State Legislature.

1) Acquisition of land — Compensation — Entitlement to — Trial Court fixed the matter

for filing of written statement on a number of occasions but neither of the parties chose to file any written statement or statement of claim — Parties preferred to adduce evidence without any pleadings and also after considering the examination-in-chief, proceeded to cross examine the other side willingly, without any protest — No grievance about any prejudice for absence of such pleadings was made by the parties — Having willingly participated in the trial, a losing party cannot be permitted to turn around and contend that the pleadings ought to have been insisted upon by the trial Court. (See para 37)

2) Benami properties — Zaidev purchased the properties in Court auction conducted in 1940 benami in the name of Rauji Rane — After death of Zaidev in 1956 when inventory proceedings were taken up Rauji was appointed as an Administrator — Rauji declared the properties purchased by him to be the properties of Zaidev — Said properties were partitioned as properties of Zaidev in inventory proceedings — Benami transaction, if any, ceased to be in existence in 1957 — When 1988 Act came into force, no benami transaction was open for any scrutiny — There is no question of any bar of 1988 Act being pressed into service. (See para 35)

3) Letters Patent Appeal — Permanent bench of Bombay High Court came to be established at Panaji, Goa from 30.10.1982 when The High Court of Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act came into force — Section 3 of the said Act extends jurisdiction of Bombay High Court to Union territory of Goa, Daman and Diu — Section 4 mentions that on and from the appointed day, all jurisdiction, powers and authority as, under the law, in force in respect of said territories immediately before the appointed day exercisable by Court of Judicial

Commissioner shall be available to Bombay High Court — Though Section 3 uses the word “jurisdiction”, it only extends territorial jurisdiction of Bombay High Court to Union territories of Goa, Daman and Diu — Section 13 of 1981 Act enables the Central Government to make appropriate provisions not inconsistent with 1981 Act for the purposes of removal of difficulties — Section 13 read with the Removal of Difficulties Order cannot be stretched to mean that the jurisdiction conferred upon the Bombay High Court by Letters Patent of 1865, as amended, has also been extended to Union territory of Goa, Daman and Diu. (See para 45)

4) Letters Patent Appeal — Decision of Maharashtra State Legislature and its enactment to abolish LPAs in Maharashtra will apply and hold good only in so far as area of State of Maharashtra is concerned — Unless decision to abolish LPAs in Goa State is taken by the Goa State Legislature and law to that effect is passed, it cannot be said that jurisdiction of the common High Court to entertain LPAs, if available at Goa, ceases automatically because of Maharashtra enactment. (See para 46)

Result : Appeal dismissed.

Sanjay Z. Rane & ors. Vs. Smt. Saibai S. Dubaxi (since deceased) through her LRs. 2009 (9) LJSOFT (GOA) 35

Land Acquisition Act, 1894 — Section 23 — Enhancement of compensation — Determination of market value.

1) Acquisition of large plot of land — It cannot be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the market value of the acquired land — Where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison

of the prices paid for small plots of land — However, in such cases necessary deductions/adjustments have to be made while determining the prices. (See para 9)

2) Acquisition of land — Fixation of compensation — Rate in the sale deed comes to Rs.5,00,000/- per Hecter of dry land — Considering the smallness of land 2/3 amount deducted for fixing the market value of acquired lands — Irrigated land fetches considerably higher value in the market than the value of dry crop land — As the acquired land being Bagayat land the figure is rounded up to the tune of Rs.2,00,000/- per Hecter. (See para 11)

Result : Appeals partly allowed.

Trivendibai Kishnrao Ghadge deceased through LRs. & anr. Vs. State of Maharashtra 2009 (9) LJSOFT (AUR) 189

Land Acquisition Act, 1894 — Section 28, 23(1A), 28, 34 — Acquisition of land — Determination of market value — Enhancement of compensation — Grant of interest.

1) Acquisition of land — Enhancement of compensation — Reference Court mainly relied on two sale instances the lands under same are situated within the vicinity of the lands acquired — However Reference Court failed to appreciate that lands involved under said sale deeds are agricultural lands having no “NA” potentiality whereas the acquired land is situated within the vicinity of developed area and having “NA” potentiality — Reference Court erred in concluding that market value determined by S.L.A.O. as on the date of issuing notification u/s 4 is true market value on the basis of said sale instances — Average of sale deeds comes to Rs.371.86 — Deducting 40% towards development charges and further 40% deductions towards

smallness of the lands the claimants are entitled to enhanced compensation in respect of acquired land at the rate of Rs.75/- per sq. meter. (See para 24, 25)

2) Acquisition of land — Amount for additional component — Possession taken before the issuance of notification u/s 4 — Claimants are entitled 12% component payable u/s 23(1-A) from the date of notification u/s 4 till the date of award. (See para 28, 29, 30)

3) Compensation — Award of interest — Liability of State to pay interest ceases when amount of compensation is paid to the claimant — Amount already paid to the claimants will not carry any further interest at the time of adjusting the total compensation payable to the claimants — Claimants are entitled to interest u/s 28 from the date of possession onwards on the enhanced compensation. (See para 31, 32)

Result : Accordingly.

Jafarali Mithabhai Hirani (Died) through L.Rs. & ors. Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (AUR) 167

Land Acquisition Act, 1894 — Section 34 — Code of Civil Procedure, 1908 — Section 9 — Limitation Act, 1963 — Article 113 Compensation — Award of interest — Jurisdiction of Civil Court.

1) Acquisition of land — Compensation amount fixed by the LAO not challenged — Plaintiffs confined their claims to the extent of grant of interest in terms of Section 34 of L.A. Act — Language of the Statute unambiguously binds the Collector to comply payment of interest — Statutory Authority having not acted in conformity with the principles laid down under the statute — Jurisdiction of civil court, by any implication, shall not be treated as barred — Scheme of

Land Acquisition Act in the light of Section 34 thereof will not bar the jurisdiction of the Civil Court to entertain demand of interest. (See para 9, 11, 13)

2) Acquisition of land — Claims for grant of interest in terms — Provisions of Article 113 of Limitation Act would be applicable which provide a period of three years — Award is dt.13.12.2001 while the suits are filed on 30-9-2002 within ten months — Claims are within limitation. (See para 15)

Result : Appeal dismissed.

Executive Engineer, Osmanabad Medium Project Division Vs. Bhagwan s/o Yashwanta Kulkarni & anr. 2009 (9) LJSOFT (AUR) 185

Land Acquisition Act, 1894 — Section 54 — Enhancement of compensation — Reference — Appeal — Nature of land.

Acquisition of land — Determination of market value — Reference Court treated the acquired land as dry land on the basis of 7/12 extract — Award of SLAO refers to existence of the well in the property which indicated that the lands were irrigated — Modifying the award the order granting the amount of compensation at Rs.12950/- set aside instead thereof the claimants are held entitled to receive Rs.46500/- as compensation. (See para 3, 4)

Result : Appeal allowed.

Raghunath Baba Pathare & ors. Vs. State of Maharashtra 2009 (9) LJSOFT (AUR) 169

Land Acquisition Act, 1894 — Section 54 — Limitation Act, 1963 — Section 5 — Reference — Delay in filing Appeal — Condonation of delay.

Acquisition of land — Compensation — Application filed by State for condonation of

delay of 1336 days in preferring appeals against the award of the Reference Court — Papers were received in the office of Government Pleader on 18.8.2004 whereas appeal came to be filed on 15.6.2008 — No explanation for this four years delay — Applicant failed to file affidavit on behalf of acquiring body to explain the delay in supplying typed copies of judgment and award passed by the reference Court to the office of Government Pleader — Also there is no explanation for providing court fees to the Government Pleader after two and half year from the date of impugned order — Applicant failed to explain the sufficient cause — Application dismissed with cost of Rs.1000/- — Said cost to be recovered from the officer who is responsible for delay. (See para 4, 5)
Result : Application dismissed.

State of Maharashtra Vs. Dattu Mahadev Markad & ors. 2009 (9) LJSOFT (AUR) 131

Letters Patent — Clause 15 — Code of Civil Procedure, 1908 — Order XLI — Order XXXVII Rule 4 — Ex-parte decree — Setting aside of — Letters Patent Appeal — Maintainability of — Payment of costs by cheque — Effect of.

1) Appeal against the judgment of the learned Single Judge setting aside the ex parte decree — Order setting aside a decree under order 37 Rule 4 of CPC is not appealable under Order 43 Rule 1 of CPC — However order setting aside a decree whether on the ground that it is ex parte or otherwise is a judgment within the meaning of clause 15 of the Letters Patent of High Court — Appeal maintainable. (See para 6)

2) Appeal against the judgment of the learned Single Judge setting aside the ex parte decree

— Costs of Rs. 15,000/- imposed on Respondents was paid by them by way of a cheque which the appellants accepted and retained without demur and without raising any objection — Appeal was filed about two months after receiving the costs by way of cheque — It is not permissible to approbate or reprobate by adopting one part of the order and refusing another part — Appellants having received the benefits of the order are not entitled to maintain the appeal. (See para 8)

3) Payment by cheque — Cheque, unless dishonoured, is payment — Payment takes effect from the delivery of the cheque but may be defeated for failure of the condition i.e., non payment on maturity — Receiving a cheque amounts to a conditional acceptance of payment. (See para 8)
Result : Appeal dismissed.

Dev Sha Corporation Vs. Shree Ram Mills Ltd. 2009 (9) LJSOFT 135

Limitation Act, 1963 — Article 65 — Code of Civil Procedure, 1908 — Order VI Rule 1, 2 — Rules of pleadings — Plea of adverse possession — Burden of proof — Possession of land — Proof of.

1) Rules of pleadings — Plaintiff has based his claim on title as well as adverse possession — Both the pleas are mutually inconsistent — There is no bar as such to take mutually inconsistent pleas — However in order to claim adverse possession plaintiff has to renounce his earlier plea based on the title — Plaintiff has not pleaded and proved the renouncement of his former plea — It is not clear as to when the later plea in respect of adverse possession begins to operate. (See para 16, 17, 19)

2) Plea of adverse possession is not a pure

question of law but a blended one of fact and law — Concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner — Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them — Person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed — Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature — Person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. (See para 13, 14, 15)
Result : Appeal dismissed.

Rama Kashinath Dhumal (died) through L.Rs. Vs. Laxman Deorao Dhumal & ors. 2009 (9) LJSOFT (AUR) 191

Limitation Act, 1963 — Article 65 — Suit for possession and declaration — Limitation. **See Narendra Akash Maharaj Petkar Vs. Shahaji Baburao Petkar 2009 (9) LJSOFT 73**

Limitation Act, 1963 — Article 113 — Compensation — Award of interest — Jurisdiction of Civil Court. **See Executive Engineer Vs. Bhagwan Yashwanta Kulkarni 2009 (9) LJSOFT (AUR) 185**

Limitation Act, 1963 — Article 137 — Termination of services — Delay in seeking reference — Refusal to make reference — Validity of.

See Balasaheb Ambadas Gunde Vs. Union of India 2009 (9) LJSOFT (URC) (AUR) 12

Limitation Act, 1963 — Section 3 — Suit for possession — Limitation — Second appeal. **See Pandurang Doulu Patil Vs. Ramrao Dadu Patil since deceased by his LRs. 2009 (9) LJSOFT 92**

Limitation Act, 1963 — Section 5 — Delay in filing appeal before High Court — Condonation of delay — Powers of High Court.

See Commissioner of Income Tax Vs. Grasim Industries Limited 2009 (9) LJSOFT (URC) 18

Limitation Act, 1963 — Section 5 — Reference — Delay in filing Appeal — Condonation of delay.

See State of Maharashtra Vs. Dattu Mahadev Markad 2009 (9) LJSOFT (AUR) 131

Limitation Act, 1963 — Section 18 — Article 1 — Recovery of amount — Limitation — Effect of acknowledgment in writing — Incorporation of document by reference.

Transactions in securities pertaining to the period between 9.2.2005 to 18.3.2005 — Petition was filed on 3.4.2008 i.e. after a period of more than three years — Petitioner relied upon the ledger maintained by the company — Question is whether opening balance constitutes “last item admitted or proved as entered in account” within meaning of Article 1 of Limitation Act — Ledger account was an enclosure to a letter addressed

by the company — Ledger was incorporated by reference in a letter which is signed by the company and therefore constituted an acknowledgement of liability within the meaning of Section 18 of Limitation Act — Acknowledgement therein would therefore be one in writing and signed by the company. (See 8 to 11)

Result : Accordingly.

Haresh P. Jashnani Karta of Haresh P. Hashnani HUF Vs. Satco Securities & Financial Services L. 2009 (9) LJSOFT 115

M.P. Public Trusts Act, 1951 — Section 14 — Code of Civil Procedure, 1908 — Order XLI Rule 32 — Bombay Public Trusts Act, 1950 — Section 19, 70 — Easement Act, 1882 — Section 60(b) — Trust property — Transfer of immovable property — Sanction for.

1) Dispute relating to 20 Gunthas of land belonging to Appellant-Sansthan — Change Report filed by Appellants for recording immovable properties standing on 20 gunthas land in Public Trust Register as belonging to the Sansthan was accepted — Respondent-Ashram filed appeal u/s 70 of B.P. Trust Act — Joint Charity Commissioner held that in 1958 the Sansthan had passed a resolution and permitted the Ashram to use the said immovable properties in 20 Gunthas — Held that various reasons given by Assistant Charity Commissioner for recording a finding in favour of Sansthan are not even discussed by the Joint Charity Commissioner or then by the Additional District Judge — Resolution as filed does not show that the said resolution itself was to be treated as a transfer of land — Trustees only recorded their no objection for grant of land but did not pass resolution — They also resolved to move Collector as without previous permission of Collector such

transfer would not have taken place — Resolution was executory and does not have the effect of granting the land to the Ashram — Resolution cannot operate either as lease or as license — As the Resolution does not have effect on donation of 20 Gunthas of land to Ashram and there was no question of drawing any adverse inference against Sansthan for not examining its President — Impugned judgment quashed and set aside.. (See para 27, 29, 30)

2) Appellate proceedings — Obligation of appellate Court which is writing a judgment of reversible — Appellate Court has to come in close quarter with the reasons of trial Court and thereafter only it can record its reasons for differing with those findings. (See para 28)

3) Public Trust — Transfer of land — Contended that because of Section 60(b) of the Easement Act licence has become irrevocable — Rejecting the contention held that Section 14 of M.P. Trust Act is negatively worded and is prohibitory — Section 14 prohibits grant of lease by Trust if period thereof is to exceed seven years — No transfer shall be valid and previous sanction of Registrar in the matter is essential — Any act resulting into grant of irrevocable license is contrary to Section 14. (See para 24)

Result : Appeals allowed.

Shriram Mandir Sansthan Vs. Tulsiram s/o Bhagirath Lohiya & ors. 2009 (9) LJSOFT (NAG) 165

Maharashtra Civil Service (Pension) Rules, 1982 — Rule 27 — Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 — Rules 5, 8(18), 8(20) — Constitution of India, 1950 — Article 226, 227 — Misappropriation of amount — Withholding of pension — Departmental enquiry — Penalties — Principles of natural justice — Quantum of

punishment — Judicial review.

1) Petitioner was working as the Administrative Officer — Misappropriation of some amount was revealed at the time of audit of the Hospital account — After departmental enquiry 50% pension payable to petitioner was directed be withheld — Charges leveled against the Petitioner were not serious in nature like corruption but were of mere negligence — No financial gain was received by the Petitioner due to his negligence — Competent authority ought to have diluted the punishment while taking decision considering the fact that it was a case for inflicting minor penalty had the petitioner been in employment — Petitioner has been deprived of his right to have pension to the extent of 50% for the period of 18 years and also the loss of 50% Gratuity — State has recovered more than 3 times of the alleged loss suffered by it — Long period of time and advance age of petitioner prevents Court from remitting matter back in interest of justice — Ends of justice would be met by accepting undertaking petitioner shall be entitled to full pension with prospective effect w.e.f. 1-4-2009. (See para 21, 22, 28, 33)

2) Departmental enquiry — Rule 8(20) requires the Enquiry Officer to draw attention of the delinquent to the adverse material brought on record by the employer — However delinquent is not entitled to have his attention called to any material unless the material in question is prejudicial to his case either directly or indirectly — Procedure of putting questions to the Petitioner on the incriminating circumstances was not followed — Where there is violation of natural justice no resultant or independent prejudice need be shown, as the denial of natural justice is, in itself, sufficient prejudice) It is no answer to say that even with observance of natural

justice the same conclusion could have been reached — It is not necessary to set out the substantial prejudice suffered by the petitioner due to non-compliance of the natural justice flowing from sub-rule 20 of Rule 8 which has direct effect on the legality and validity of the departmental enquiry as such. (See para 14, 15)

3) Quantum of punishment — Judicial review — Legal parameters have undergone sea change — Wednesbury principle of unreasonableness has been replaced by doctrine of proportionality — While reviewing punishment if the Court is satisfied that Wednesbury principles are violated, it should, normally, remit the matter to the administrator for a fresh decision as to the quantum of punishment — Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and in such extreme or rare cases, the Court can substitute its own view as to the quantum of punishment. (See para 24, 25)

Result : Petition partly allowed.

Masuood Alam Khan-Pathan Vs. State of Maharashtra & ors. 2009 (9) LJSOFT 69

Maharashtra Co-operative Societies Act, 1960 — Section 64, 67, 110 — Maharashtra Co-operative Societies Rules, 1961 — Rule 90 — Cooperative Housing Society — Transfer fees — Taxability of — Principles of mutuality.

See Sind Coop. Housing Society Vs. Income Tax Officer 2009 (9) LJSOFT (URC) 11

Maharashtra Co-operative Societies Act, 1960 — Section 73(1AB), 78, 152, 154 — Non-furnishing of a bond — Appointment of administrator — Alternate remedy — Maintainability of petition.

Appointment of administrator — Upon failure by elected members to furnish bond within fifteen days of assuming the office they shall be deemed to have vacated the office — It is by deeming fiction that the member loses his office and right to hold it — No order of such vacation as such would be necessary and they cease to hold such office by operation of law — Whenever disqualification occurs u/s 73(1AB) the Registrar would be required to take steps u/s 78 — There is only one order under u/s 78 after the deemed vacation of the office and there is no separate order u/s 73(1AB) — Appeal was rightly entertained by the Joint Registrar and the order passed by him is not without jurisdiction — Revision against an order of the Joint Registrar can be filed before the Government — Remedy is both adequate and efficacious — Petition cannot be entertained. (See para 8, 9, 11, 12) Result : Petition dismissed.

Dilip s/o Devaji Yenorkar Vs. Divisional Joint Registrar, Co-operative Societies & ors. 2009 (9) LJSOFT (NAG) 76

Maharashtra Co-operative Societies Act, 1960 — Section 102, 78, 91, 103, 105, 78 — Industrial Disputes Act, 1947 — Section 2(k), 25-O — Co-operative Mill — Winding up proceedings — Closure of unit — Liquidation — Claim of workers — Applicability of I.D. Act.

1) Employer is a co-operative society established with object of running a Spinning Mill in cooperative sector — Winding up of the cooperative mill — When life of employer/society is at peril and jeopardized, Mill which does not have an independent existence, cannot continue — Interim order of winding up u/s 102(1) of MCS Act reveals that the cooperative Mill had lost its share capital completely and was not possessing any funds

to meet even day-to-day expenditure — After winding up is ordered and Liquidator proceeds to realise the assets of society, the society is incapable of incurring any fresh liabilities — Relationship as employer and employee ceased to exist after passing of order of winding up and in any case after 8/10/1996 when beneficial running of Mills was rendered impossible — Direction to pay salary and claims for period subsequent to 8/10/1996 is unsustainable — Impugned order of Industrial Court granting wages and other benefits for period subsequent to 8/10/1996 is quashed and said ULP Complaint is dismissed. (See para 16, 25)

2) Co-operative mill — Liquidation — MCS Act is special enactment dealing with birth i.e. incorporation, life i.e. regulation or conduct and death i.e. dissolution or liquidation of an artificial person viz. a cooperative society — An industrial dispute as defined in Section 2(k) of I.D. Act is not a dispute for the purposes of Section 91 of MCS Act — Liquidation is putting an end to the existence of an artificial person i.e. Cooperative Mill and not its closure as contemplated by I.D. Act — I.D. Act can deal with closure when employer is still available and hence relationship of employer and employee can continue — Where the employer is already dead or incapacitated and hence law is unable to impose any obligations or duties upon him, Section 25-O of I.D. Act cannot bring back to life such employer and relationship — Order of winding up has reached finality in terms of MCS Act — No scope to apply Section 25-O(1) of I.D. Act which does not regulate said liquidation. (See para 14 to 19)

3) Co-operative society — Provision for permission u/s 107 of MCS Act is made for administrative reasons and not to defeat the legal rights of anybody. (See para 23)

4) Claim of workers — Production of calculations and charts — Merely marking of documents as exhibit is not sufficient to read its contents — Person who prepared the document or did the calculation work, the basis for such calculations ought to have been produced by Union — In the absence of same the Industrial Court had rightly not relied upon these documents. (See para 24)

Nagpur Vinkar Sahakari Soot Girni Maryadit Vs. Rashtriya Mill Mazdoor Sangh & ors. 2009 (9) LJSOFT (NAG) 158

Maharashtra Co-operative Societies Act, 1960 — Section 91 — Redevelopment scheme — Obstruction by non-co-operative members — Vacating of premises — Temporary displacement — Appointment of Court Receiver.

See Mahabir Nuniwal Vs. Neptune Co-operative Housing Society Ltd. 2009 (9) LJSOFT 124

Maharashtra Co-operative Societies Act, 1960 — Section 164 — High Court of Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981 — Section 3, 4 — Collapse of wall — Claim of compensation — Suit against society — Absence of notice — Letters patent appeal — Maintainability of.

1) Letters Patent Appeal — Provisions of the High Court of Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act use the word “jurisdiction” in Section 3 and Section 4 with different connotation — Jurisdiction of Bombay High Court to entertain LPA is not available to it in Goa State — Letters patent appeal not maintainable. (See para 11)

2) Suit filed by respondents - Co-operative Society against the appellants for recovery of

compensation for collapse of the supporting wall raised by them and consequential damage to two buildings raised by them — Property of the appellants and the Society is on slope of hill — Evidence shows that the collapse was not due to weakness of construction of the retaining wall or staircase but was on account of acts of cutting of hill and seepage of water in the open (uncovered) portion of the hill on the west end which rendered the retaining wall weak — Society permitted the situation prevailing in 1983 to continue to exist without any protest or objection and deteriorate further — Society was supposed to watch the retaining wall regularly and get it inspected through experts to find out its strength and retaining power — Appellants alone cannot be held responsible for the said land slide and collapse of retaining wall — Society cannot recover 100 percent compensation from the appellants and the liability needed to be apportioned equally between them — Judgment and Decree is warranting modification but, as LPA is not tenable, no relief on these lines can be given to the appellants. (See para 17, 19)

3) Suit filed by the appellants for direction to the Respondent-Society to demolish the portion of buildings which had become dilapidated — Alleged negligence pointed out by the appellants is negligence of Society in discharging its obligation and not undertaking its business — Contention that said omission or negligence of the Society was not touching the business of the Society cannot be accepted — Notice u/s 164 of the Maharashtra Co-operatives Societies Act was essential. (See para 20)

Result : Appeals dismissed.

Mrs. Arlinda Dias & anr. Vs. Margao Co-operative Housing Society Ltd. & ors. 2009 (9) LJSOFT (GOA) 37

Maharashtra Control of Organised Crime Act, 1999 — Section 2(1)(d), 3(1)(ii), 3(2), 3(4) — Code of Criminal Procedure, 1973 — Section 227, 228 — Discharge of accused — Abetment — Continuing unlawful activities

1) Application for discharge — Offences under MCOC Act — Appellant had taken part in the negotiations of the extortion amount from a witness and he had accepted the amount on behalf of the syndicate — Appellant actively participated and facilitated in continuing the unlawful activities and commission of the organized crime in pursuance to a deep rooted conspiracy — Appellant's intimacy with the son of Guru Satam, his phoning the son and relative of Guru Satam for settling the amount of extortion, his being present when settlement talks were going on, his being present when money was to be handed over and his accepting the money and handing it over to Guru Satam's son and the fact that Mr. 'X' stopped receiving threats from that date, are sufficient to prima facie indicate the appellant's complicity — Appellant prima facie abetted the unlawful activities of the organized crime syndicate headed by Guru Satam — Learned Special Judge rightly rejected the discharge application. (See para 30, 46)

2) Organized crime syndicate — Continuing unlawful activity — Stress is on the unlawful activities committed by the organized crime syndicate — Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate — Contention that the appellant cannot be tried for offences under the MCOC Act since against the appellant only one charge-sheet is filed cannot be accepted. (See para 31 to 39)

3) Offences under MCOC Act — Grant of

sanction — Name of appellant not mentioned in the approval granted u/s 23(1)(a) — Section 23(1)(a) provides a safeguard that no investigation should be commenced without the approval of the concerned authorities — Once such approval is obtained an investigation is commenced — Those who are subsequently found to be involved in the commission of the organized crime can be proceeded against once sanction is obtained against them u/s 23(2) — Non inclusion of the accused in the approval u/s 23(1)(a) not fatal to the investigation qua that accused. (See para 45)

4) Discharge of accused — Considerations for bail and considerations for discharge differ — Fact that the appellant was released on bail has no relevance to the question whether he could be discharged or not. (See para 46)

5) Discharge of accused — Scope of Section 227 of Cr.P.C. — Court has power to sift the materials collected by the prosecution to find out whether there is prima facie case against the accused or not — Enquiry must not be directed to find out whether the case will end in conviction — Though roving enquiry is not permissible, the court can consider whether the material collected by the prosecution is accepted as it is without being subjected to cross-examination gives rise to strong and grave suspicion for presuming that the accused has committed the offence and that un rebutted material will lead to a conviction — If two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, the court will be within its right to discharge the accused — Suspicion has to be strong and grave suspicion leading the court to presume that the accused has committed an offence — While basic infirmities and broad probabilities can be considered, the court cannot make a

roving enquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial — Probative value of the material cannot be gone into at that stage. (See para 25)

Result : Appeal dismissed.

Govind Sakharam Ubhe Vs. State of Maharashtra 2009 (9) LJSOFT 47

Maharashtra Control of Organised Crime Act, 1999 — Section 10 — Precedence of trial by Special Courts — Sessions Case to remain in abeyance — Role of public prosecutor.

1) Petition challenging the order allowing the application praying that trial of Sessions Case be kept in abeyance till conclusion of MCOC Special Case — Contended that application u/s 10 of MCOC Act could not have been filed by the investigating officer and it should have been filed by the public prosecutor — Rejecting the contention held that a public prosecutor has a very important role to play under the scheme of the MCOCA but there is no scope for the public prosecutor to exercise any discretion when it comes to Section 10 of the MCOCA — Provisions concerning bail and, submission of report praying for extension of time to complete investigation resulting in extending the custody of the accused cannot be equated with Section 10 — Section 10 contains a mandate and it does not refer to the public prosecutor — No discretion is left to a court where an application is made u/s 10 — Sessions Court committed no illegality in following the mandate of Section 10 of MCOC Act and it was duty bound to do so. (See para 15, 18)

2) Application filed u/s 10 of MCOC Act before the Sessions Court — Contention that application has to be made in the Special Court cannot be accepted otherwise it will lead to

an absurd result of one coordinate court staying a case pending in another court. (See para 16)

Result : Petitions dismissed.

Dashrath Bapu Shinde & ors. Vs. State of Maharashtra 2009 (9) LJSOFT 89

Maharashtra Educational Institutions (Management) Act, 1976 — Section 3(1), 3(4), 4(1) — Taking over the Management — Appointment of Administrator — Power of Director — Approval — Principles of natural justice.

Director of Education forwarded a proposal in regard to the State Government — Decision taken by the State Government amounts to decision u/s. 3(1) — On the basis thereof impugned orders were issued for taking over management of the School and also appointed an Administrator — Section 3(1) requires the Director to take a decision and pass appropriate order and at this stage, the State Government has no role to play — As the impugned order is based on the decision already taken by the State Government the right of appeal u/s. 3(4) before the State Government provided to the Management is futile and without purpose — Procedure undertaken is inconsistent with the provisions of the Act and cannot be sustained in law — Impugned orders passed by the Director of Education quashed and set aside. (See para 9, 10, 11)

Result : Petition allowed.

Shri Ramchandra Samaj Seva Samitee & anr. Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (NAG) 125

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5 — Maharashtra Employees of Private Schools (Conditions of Service)

Rules, 1981 — Rule 3 — Appointment of Head — Qualification for — Relaxation.

1) Appointment of Head-mistress — Rule 3(1)(b) requires total full-time teaching experience after graduation of five years out of which two years is required to be after acquiring Bachelor's degree — Rule does not provide that the said experience has to be continuous — If there is any break or not, would not be of much relevance while computing the total experience. (See para 17)

2) Appointment of Head-mistress — Application for relaxation would be required only when there is no person with the teaching experience mentioned in Rule 3(1)(b) available on the staff of the school or if the qualified person though available and eligible relinquishes his claim for the post of Head. (See para 18)

3) Appointment of petitioner to the post of Head-mistress — Petitioner was eligible and since she was from the teaching staff of the said school, there was no requirement to advertise the post — Question of prior permission or ex-post-facto sanction would not be of much relevance. (See para 20)

4) Appointment of Head-mistress — Qualifications — Relevant date would be date of promotion and not the date of allowing the appeal — Tribunal erred in directing the appointment of respondent no.3 as Head Mistress on the ground that on the date on which the appeal is allowed she fulfils the necessary qualification. (See para 27)

Result : Petition allowed.

Alka Ramesh Rao Patil Vs. Nutan Mahila Sarvodaya Balvikas Sanstha, Pachora & ors. 2009 (9) LJSoft (AUR) 195

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5 — Appointment of Head Master

— *Non-implementation of orders — Obligation of authorities — Writ jurisdiction. See Madhukar Dattatraya Gholap Vs. State of Maharashtra 2009 (9) LJSoft 116*

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5, 9, 11 — Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 9 — Termination of services — Framing of issues. Termination of services — Nature of appointment — Specific case made out by the first respondent that he was appointed on probation period for 2 years and was in continuous service of 3 years — No proper issue was framed whether the appointment was on purely temporary basis or was on the permanent and vacant post — No discussion found in the order of Tribunal as to how the alleged order of termination is illegal or legal — If proper issues are not framed for the adjudication of the dispute and the reasoning recorded is a cursory reasoning without considering the documents on record, then such orders are bad orders in the eye of law which require to be quashed and set aside. (See para 6)

Result : Petition allowed.

Rayat Shikshan Sanstha & anr. Vs. Shahaji Gajendra Kadam & ors. 2009 (9) LJSoft (URC) (AUR) 39

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5(2) — Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 6 — Appointment by relaxation of conditions — Claim of deemed permanency — Reduction in rank — Jurisdiction of School Tribunal — Maintainability of complaint.

1) Claim of deemed permanency — One must be eligible to hold the post, he must be duly qualified as prescribed under Rule 6 r/w Schedule 'B' of MEPS Rules and the post, in which he is appointed, is a permanent vacant post — Person appointed by relaxing the qualification as contemplated by Schedule 'B' is not entitled to claim permanency merely because he was assured by the institution that he would be continued till he acquires the prescribed qualifications. (See para 13)

2) Appointment of teachers — Rule 6 provides for minimum qualifications — First proviso to Rule 6 provides for relaxation of qualification of teachers in the "secondary schools" only — "Secondary schools" cannot be equated with "junior colleges/higher secondary schools" insofar as qualifications for teachers is concerned — Respondent no.1 cannot claim any benefit of the first proviso to Rule 6 of MEPS Rules. (See para 12)

3) Respondent no.1 was appointed as full time teacher only for academic years 1991-92, 1992-93 and 1993-94 — Thereafter he was never appointed as full time teacher in view of the fact that certain divisions were closed and no sufficient workload was available — Appointing a full time teacher as a part timer or on clock hour basis in view of reduction of divisions or workload would not amount to reduction in rank — Reduction of workload cannot be treated as reduction in rank — Appeal filed by respondent no.1 u/s 9 of MEPS Act itself was not maintainable — Impugned judgment deserves to be set aside. (See para 16)

Result : Petition allowed.

Maharashtra Seva Sangh & anr. Vs. Shaikh Jamalchand & anr. 2009 (9) LJSoft 145

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5(2) — Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 6 — Termination of services — Appointment by relaxing the qualification — Claim of permanency.

1) Appointment as full time teacher on permanent vacancy — Petitioner was admittedly not holding the prescribed qualification provided for under rule 6 r/w Schedule B-III of MEPS Rules — Petitioner was not holding the prescribed qualification till he was removed from the services — He acquired the prescribed qualification only after his termination — Though petitioner was appointed on permanent vacancy he cannot claim deemed permanency u/s 5(2) of MEPS Act — Merely because an undertaking was given by the respondent-institution to the effect that they would not terminate the services of the petitioner till he acquires the qualification, would not help the petitioner to contend that his termination was illegal. (See para 5)

2) Appointment of teachers — Rule 6 provides for minimum qualifications — First proviso to Rule 6 provides for relaxation of qualification of teachers in the "secondary schools" only — First proviso to rule 6 of the MEPS Rules does not apply to the teachers of the junior colleges — Government Resolution dated 6.5.1976 relied by petitioner cannot run counter to section 5 of MEPS Act. (See para 5)

Result : Petition dismissed.

Sawale Motiram Shridhar Vs. Maharashtra Seva Sangh & ors. 2009 (9) LJSoft 146

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5(3) — Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 28(1) — Probationer — Termination of services.

Petitioner was appointed as Assistant Teacher on probation of two years — Termination of services on the ground that her performance during the probation was not satisfactory — Neither one month's notice was given nor the salary in lieu of this period was given to her along with termination order — No material to show that the notice and cheque towards salary of one month were actually sent by registered post acknowledgment due and she had refused to accept it — Issuance of notice or payment of salary in lieu of notice is mandatory provision u/s 5(3) — As the mandatory procedure u/s 5(3) has not been followed the order of termination is invalid and is liable to be set aside. (See para 5 to 9)
Result : Petition allowed.

Rehana Begum d/o Sk. Safdar Vs. Khwaja Baba Urdu Education Society & ors. 2009 (9) LJSOFT (NAG) 174

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9 — Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12 — Promotion to the post of Headmaster — Seniority — Fixation of — Jurisdiction of Education Officer.

Promotion to the post of Headmaster — Once promotion is granted and appointment is made the Education Officer will have no jurisdiction to fix the seniority and thus demote a person already promoted — Education Officer could not have entertained a complaint about the

seniority and decide to refix the seniority once petitioner was already appointed on a promotional post — Only remedy available to the a person who feels that he has been superseded was to file an appeal u/s 9 to the School Tribunal — Decision of the Education officer is patently illegal. (See para 5)
Result : Petition allowed.

Bhagwant Sheshrao Borale Vs. Education Officer (Secondary) & ors. 2009 (9) LJSOFT (NAG) 43

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9 — Termination of services — Reinstatement — Approval — Effective date of.

Termination of services — Appeal filed by petitioner was allowed by the School Tribunal granting reinstatement with full backwages — Petitioner consequently came to be reinstated but approval was granted from the date on which the petitioner came to be reinstated — Since reinstatement has been ordered by the School Tribunal by quashing the termination order the petitioner is deemed to be in continuous service — Management has already shouldered its responsibility to pay the backwages — In the light of qualification which the petitioner was possessing the approval also need to be continuous — Approval is required to be granted from the date of his termination. (See para 4, 5)
Result : Petition allowed.

Vijaykumar Tukaram Kasale Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (AUR) 120

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,

1977 — Section 9 — Code for Special Schools for Physically Handicapped Students — Clause 43, 77, 82 — Schools for Physical Handicapped Students — Termination of service — Violation of procedure.

1) Appointment of Special Teachers to conduct classes from Ist to IVth Standards of orthopaedically handicapped students — Criterion of holding qualification as prescribed in Govt. Resolution dated 18-8-2004 applies only the date when the said G.R. was issued — Said Govt. Resolution would not have a retrospective effect — Person duly qualified under the previous Code would not be rendered unfit if the person concerned does not hold qualifications as per the said G.R. (See para 14)

2) Petitioner appointed as a Special Teacher — Petitioner was a permanent teacher, he could not have been dismissed from service without holding a proper enquiry against him — No charge-sheet was issued, no enquiry was held, no opportunity was given to the petitioner to defend himself against the charges levelled in the termination order nor in any enquiry, the petitioner was found guilty of the charges, — Termination order was issued President of the Society and not by the School Committee — Termination order is per se illegal and without any authority and is liable to be quashed and set aside — Petitioner entitled to be reinstated to the post of Special Teacher from the date of termination with continuity of service and all benefits including full back wages. (See para 18, 19, 20)

3) Back wages — Termination order was issued by the respondent no.2 who claims to be President of the Society without following the procedure laid down in law and without taking the Managing Committee of the School

into confidence and because of disputes in management — Would be unjust if the Management of the Society is required to bear the burden of the back wages — Management entitled to recover the amount of back wages from the respondent no.2. (See para 21, 22)

Result : Petition allowed.

Sanjay Haribhai Indane Vs. Rashtirya Apang Association & ors. 2009 (9) LJSOFT (NAG) 151

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9 — Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 9(9)(a) — Termination of services — Reserved post — Back-wages.

1) Appointment to the posts of Lecturers reserved for Scheduled Tribe category candidate — At the relevant time candidate belonging to specified category was not available — Respondent came to be inducted in service who belongs to VJNT category — Such appointment is not expected to be temporary — Tribunal rightly held that initial appointment of Respondent not permissible on year to year basis and shall be construed as a regular appointment. (See para 10)

2) Back-wages — Respondent is out of employment on completion of initial period of appointment — Respondent has not rendered services to the Institution during the intervening period as the Respondent has secured employment, though on temporary basis, with other educational Institution — During the intervening period the Management had to engage another employee to carry out functions of Respondent — Institution cannot be burdened with the salary

of Respondent — During the intervening period Respondent was gainfully employed — Order passed by the School Tribunal directing petitioner - Management to pay back wages quashed and set aside. (See para 11)

Result : Petition partly allowed.

Shivaji Shikshan Sanstha & anr. Vs. Ram s/o Dnyanoba Latpate & ors. 2009 (9) LJSOFT (AUR) 177

Maharashtra High Court (Hearing of Writ Petitions, by Division Bench and Abolition of Letters Patent Appeals) Act, 1986 — Section 3, 8, 11 — Acquisition of land — Compensation — Ownership — Letters Patent Appeal — Maintainability of — Jurisdiction of Goa Bench of Bombay High Court — Applicability of Maharashtra State Legislature.

See Sanjay Z. Rane Vs. Saibai S. Dubaxi (since deceased) through her LRs. 2009 (9) LJSOFT (GOA) 35

Maharashtra Housing and Area Development Act, 1976 — Section 95-A — Development Control Regulations for Greater Bombay, 1991 — Regulation 33(7) — Re-development of building — Delay — Cancellation of No Objection Certificate — Interim reliefs — Grant of injunction.

Agreement for development of property — No progress carried out in the work since a No Objection Certificate for redevelopment was issued on 24-8-1995 — No Objection Certificate cancelled on 18-11-2006 — Appellants institute a suit for specific performance after fifteen months after the termination of the agreement — Project involved redevelopment of a building which is an “A” category cessed structure and was in existence since 1940 — Material before the Court shows that tenants have evidently lost

faith in the capacity of the Appellant to carry out the work — No steps were taken by the Appellant for the redevelopment of the property though the vendors had obtained the consents of 70% of the tenants — Redevelopment as envisaged in the agreement cannot be carried out by the Appellant since the No Objection Certificate granted to it stands revoked — Exercise of discretion by the Learned Single Judge for declining the grant of interim relief in favour of the Appellant should not be disturbed. (See para 13)

Result : Appeals dismissed.

Avarsekar & Sons Private Limited Vs. Dr. Dhananjay Shivdas Varade & ors. 2009 (9) LJSOFT 101

Maharashtra Land Revenue Code, 1966 — Section 157 — Suit for redemption, possession and mesne profits — Nature of transaction — Interpretation of documents — Mutation entries — Second appeal.

See Eknath S/o Bandu Malve Vs. Somnath Bhagwat Malve 2009 (9) LJSOFT (AUR) 201

Maharashtra Local Authority Members’ Disqualification Rules, 1987 — Rule 6(4), 7 — Maharashtra Local Authority Members’ Disqualification Act, 1986 — Section 3(1)(a) — Municipal Councillor — Disqualification on the ground of defection — Post-poll conduct — Election reference petition — Verification of — Procedural defects — Curable defects.

1) Reference election petition — Petition verified on solemn affirmation stating that the contents of the para Nos.1 to 14 were true and correct to the best of his knowledge and information — Each of the paragraph not separately verified on solemn affirmation —

Not stated as to which of the paragraphs were based on his personal knowledge and which of the paragraphs were based upon information received by him — Verification was of omnibus nature — Purposive interpretation of the Rules would make it amply clear that Rule 6(4) is of directory nature — Mere use of expression “shall” in Rule 6(4) will not make it mandatory — Unless there is penal consequence provided for, mere such expression does not ordinarily make the Rule mandatory — Collector or Commissioner may permit rectification of the curable defects — Reference Petition should not have been dismissed by the Collector more so when another amended petition alongwith affidavit and attested documents was also presented — Impugned order is quashed and the Reference Petition stands restored and the petitioner be allowed to rectify the procedural deficiencies viz. verification of the petition, filing of the affidavit and attested documents as sought. (See para 17, 18, 19)

2) Reference election petition — Procedural cobwebs are not meant to frustrate the object for which the enactment has been made — Procedure is in the aid of the authority and in order to facilitate smooth working of the quasi-judicial nature. (See para 15)

Result : Petition allowed.

Manoj Bansilal Biyani Vs. Sameer Krishnadhan Karr & anr. 2009 (9) LJSOFT (AUR) 63

Maharashtra Maritime Board Act, 1996 — Section 24, 105 — Levy of penalty and additional landing charges — Setting aside of — Limitation — Writ jurisdiction.

See Esquire Shipping and Trading Pvt. Ltd. Vs. Maharashtra Maritime Board 2009 (9) LJSOFT 102

Maharashtra Motor Vehicles Rules, 1989 — Rule 254(5) — Motor accident — Compensation — Non-production of documents — Non-compliance of Rules. See Rangnath Trimbak Sonawane Vs. Baban Ganpat Mhaske 2009 (9) LJSOFT (AUR) 108

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 — Section 16, 44(1)(a), 55-A — President of Municipal Council — Removal of — Unauthorised constructions — Disqualification.

1) Petitioner got elected as a Municipal Councillor in the year 2006 — Alleged unauthorised premises of the petitioner were in existence since 1980 — Petitioner was doing hotel business in the premises by obtaining proper and due licences from the concerned Authorities — Matter was pending in the Court in which there were more than 50 such structures under consideration — Petitioner’s construction was demolished admittedly even prior to the show cause notice and the order of the High Court — Petitioner admittedly has not constructed or erected any illegal construction, during his tenure of office as Councillor or the President of the Council — Non-removal or demolition of unauthorised 25 years old structure by the President cannot be said to be “misconduct” or “disgraceful conduct” specially when the same was not in existence when the show cause notice was issued — Show cause notice and the impugned order consequential orders quashed and set aside. (See para 36, 37, 38)

2) Municipal Councillor — Disqualification — Show cause notice issued by invoking Section 55A & B/(7)(A) r/w Section 44(1)(a) — When show cause notice was issued the petitioner was holding the charge of the

President of the Council — Section 44 basically deals with the removal of the Councillor — Provisions of Section 44 as invoked for disqualification of the President and the whole action as initiated is void and impermissible. (See para 28)

Result : Petition allowed.

Ramdas Bhikaji Darade Vs. Hon'ble Minister of State, Ministry of Urban Development & ors. 2009 (9) LJSOFT 113

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 — Section 21(4) — Code of Civil Procedure, 1908 — Order I Rule 3 — Election petition — Parties to the Petition — “Necessary parties” — Scope of — Term “any other candidate”.

1) Elections of Municipal Council — Petitioners joined as party being the persons against whom allegations in respect of corrupt practice are levelled — Concept of proper party is alien to election law — Provisions of Order 1 Rule 3 of CPC in respect of joinder of parties cannot be made applicable to the election petitions presented u/s 21 of Municipalities Act — Term “any other candidate” as described in Section 21(4)(c) of Municipalities Act shall have to mean necessarily a candidate at the election which is called in question by presenting petition and not a contesting candidate from any other ward — Petitioners not being the candidates from the concerned ward which is subject matter of challenge cannot be considered to be necessary or proper parties to the petition — Impugned order rejecting the application tendered by the petitioners quashed and set aside and the names of the petitioners be struck off from the election petitions. (See para 9, 10, 11)

2) Elections of Municipal Council — Election

petitions — Challenge is to be dealt with in a manner provided by the law made by the Legislature of the State i.e. Municipal Act — No other deviation in procedure can be adopted. (See para 8)

Result : Petitions allowed.

Manoj Bansilal Biyani & anr. Vs. Sunil Murlidhar Chaudhari & ors. 2009 (9) LJSOFT (AUR) 181

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 — Section 44, 55-A, 55-B — Removal of President and Vice President by Government — Disqualification — Non-speaking order — Principles of natural justice. 1) Petitioner was elected as a President of the Municipal Council — Removal of — All the acts alleged in respect of allotment of the property are of the year 1976 — Alleged construction raised that to with permission was also prior to his getting elected — Since the date of assumption of office of the Councillor by the petitioner in 2001 till 2008 there is absolutely no action initiated by the Municipal Council to evict the petitioner — No act alleged to have been committed by the petitioner during his continuance as a Councillor or President of the Municipal Council which calls for action u/s 55-A and 55-B — Impugned order passed by the Chief Minister quashed and set aside. (See para 15, 17)

2) Removal of the President of the Municipal Council — Show cause notice was issued in respect of acts amounting to disgraceful conduct — However details or particulars in respect of such acts have not been noted — Deciding authority without recording any reason has held the petitioner responsible for disgraceful conduct — It has not been demonstrated in the order as to what are those

acts which the petitioner committed during his continuance of office as the President of the Municipal Council for which action is called for under sections 55A and 55B — Deciding authority is bound to record reasons in support of the order — Failure to record such reasons amounts to violation of principles of natural justice. (See para 16)

Result : Petition allowed.

Dattatraya s/o Adinath Bandgar Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (AUR) 126

Maharashtra Private Forests (Acquisition) Act, 1975 — Section 6, 22-A — Felling of trees — Permission for — Holding of land — Partition deed.

Permission for felling trees granted as the petitioners are tribals — In revision the authority held that the partition effected on 7.9.1974 could not be considered as the mutation entries were effected in the revenue records on 12.11.1980 much after the Forests Act came into force — It was held that petitioner held more than 12 hectares of land and therefore that land vested in the government as forest land — Controversy hinges on whether a partition had taken place in 1974 — Petitioners were directed to produce the deed of partition — Affidavit filed by one of the panchas before whom the deed of partition was effected — However this document was not before the Additional Commissioner — Would be appropriate to remand the matter to the Additional Commissioner for him to consider the effect the deed of partition. (See para 7, 8, 9)

Result : Petition allowed.

Narayan Mahadu Bhokate since deceased by his LRs Maruti Narayan Bhokate & Ors. Vs. State of Maharashtra 2009 (9) LJSOFT 196

LJSOFT COMPUTER CASE FINDER

Most exhaustive
coverage of Bombay
High Court Judgments
giving parallel citations
of all the journals.

Maharashtra Project Affected Persons Rehabilitation Act, 1999 — Section 6, 10(6), 27 — Constitution of India, 1950 — Article 14, 16(4), 39, 46 — Project affected persons (PAP) — Appointment of — Rehabilitation of — Priority quota — Advertising of posts — Requirement of — Full Bench Reference. 1) Project affected persons — Priority quota — Quota of 5% fixed is nothing but a horizontal reservation and not right to be appointed without competing with the candidates from that category — In consonance with the equality rule enshrined under Articles 14 and 16 of the Constitution, the candidates from project affected persons category are required to compete amongst themselves in accordance with the relevant recruitment rules and the best amongst them would be entitled to be appointed — Appointments of the persons only on the basis of the seniority in the register maintained by the respective Collectors would violate the mandate of Article 14 and 16 of the Constitution of India. (See para 20, 21, 28) 2) Project affected persons — Priority quota

— District-wise reservation not permissible under the Constitution — Candidates from the other districts, who are project affected persons, would also be entitled to compete with the candidates who are sponsored by the Collector — In order to ensure the equality of opportunity which is guaranteed in the matter of employment under Article 16 of the Constitution it would be necessary that the posts reserved for project affected persons are advertised so that all the eligible candidates can submit their applications and get an opportunity to compete with others in their category — Project affected persons cannot be appointed without advertising the posts ignoring their qualifications and merit. (See para 41, 42)

3) Discrimination — Article 14 of the Constitution recognizes equality amongst equals and not equality amongst unequals — Preferential treatment to the disadvantaged groups is always permissible under Article 14 of the Constitution. (See para 33)

4) Project affected persons — An affected person does not come on the roads on the execution of the projects — Duty is cast upon the State Government for complete rehabilitation — Person whose land has been acquired for the project is also entitled to get land in the benefited zone on the conditions stipulated u/s 16 — Contention that a person whose name appears in the register maintained by the Collector, must be given an appointment on the basis of seniority in the register, without calling him for interview or competing with others cannot be accepted. (See para 38)

Result : Accordingly

Rajendra Pandurang Pagare & anr. Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (AUR) 17

Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 — Schedule IV Item 5, 6, 9 — Section 28 — Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 12 — Contract Labour — Employer-employee relationship — Maintainability of complaint.

Petitioner engaged contractors for the work of gardening — Since the contractors did not employ more than 20 labourers licences were not required — Absence of a licence would lead to only penal consequences under the Act but would not result in snapping the relationship between the principal employer and the contractors or creating a direct link between the principal employer and the employees — No material before the Industrial Court to show that employee-employer relationship existed between the respondent-workmen and the petitioner and that the contractors were a mere facade — Industrial Court erred in concluding merely on the basis of absence of licence by the contractor that the respondent-workmen were the direct employees of the petitioner — Impugned order directing petitioner to absorb services complainants before him and to regularize them with all consequential benefits, cannot be sustained. (See para 23, 27, 28)

Result : Petition allowed.

V.I.P. Industries Limited Vs. Athar Jameel & ors. 2009 (9) LJSOFT (NAG) 8

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 11 — Trade Union — Recognition of.

Respondent No.1 filed application for recognition as recognised Union of the Respondent No.2 company — Opposed by Petitioner-Union — Impugned judgment

allowing the application found to be contradictory on facts and conclusions — Reasoning given by the learned Judge not in line and conformity with the conclusions — Report of the Investigating Officer shows that there were nearly 171 common members — Said finding not held to be erroneous or illegal by the Industrial Court and if that be so then either of the parties would have less than the required strength of 30% of membership and none of the Unions could get recognition — Impugned order set aside and the matter remanded back. (See para 8, 10, 11)

Result : Petition partly allowed.

Bharatiya Kamgar Sena Vs. Chefair Employees Guild 2009 (9) LJSOFT 29

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44 — Termination of services — Order of remand — Industrial Court — Power to review its own order — Revisional jurisdiction.

Termination of services — Labour Court allowed the complaint granting reinstatement with full back wages — In revision the Industrial Court initially allowed the revision and matter was remanded for fresh trial — Later respondent-workman preferred a review application — There is no procedural illegality which could vitiate the earlier order of remand — Tribunal had a power to remand and had not committed any illegality or mistake which could vitiate the order — Even if at all the learned judge found that he did not consider the particular facts on record, the judgment will at the most be said to be erroneous and erroneous judgment cannot be set aside in review — Review was on merit and on merit no review is permissible — Judgment passed in review application recalling the earlier order of remand was not proper and is set

aside. (See para 7, 10)

Result : Petition allowed.

Executive Engineer, Lower Wana Project Division, Wardha & ors. Vs. Vasant Nattuji Kosare & anr. 2009 (9) LJSOFT (NAG) 57

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28 — Industrial Disputes Act, 1947 — Section 2(a) — Contract Labour (Regulation and Abolition) Act, 1970 — Section 2(1)(a) — Contract labour — Termination of services — Appropriate Government — Jurisdiction of Labour Court.

1) Termination of services — Appropriate Government — Research carried on by the respondents is for the benefit of agriculturists and not for the purpose of only non-material gain of knowledge — Whatever may be the higher objective with which the Institution is established, if the workmen employed have to put up a work, which would be akin to an industry, they would be covered by the industrial law — They cannot be said to have joined the Institution as missionaries with an altruistic object and furthering knowledge of mankind but for them, it is a means of survival — Respondents are industry and that the appropriate Government in respect of the respondents was the Government of State of Maharashtra — Reference made before the Labour Court was competent. (See para 32, 33)

2) Termination of services — Petitioners employed as labourers and that they have put in 240 days of continuous service within a period of 12 months preceding the date of termination — Labour Court held that the petitioners were engaged as agricultural labourers and their services were illegally terminated and that they were not employees

of the contractor — Said findings were confirmed by Industrial Court — Once it is held that the termination of petitioners was illegal it would follow that they would have to be reinstated in service — As the services were terminated orally over 18 years ago it would be improper and cruel to direct the parties to go back to the Trial Court and plead and prove entitlement of the petitioners to back wages for such a long time — Rather than granting them back wages it would be appropriate if each of them is directed to be paid a lump sum of Rs.5,000/- in lieu of back wages. (See para 34, 35)

Result : Petition allowed.

Duryodhan Hiranman Ingole & ors. Vs. Indian Council Agriculture Research & anr. 2009 (9) LJSOFT (NAG) 79

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28 — Schedule IV Item 1(a), 1(f) — M. S.R.T.C. Staff Discipline and Appeal Procedure — Dismissal from services — Fresh reappointment — Maintainability of complaint — Principles of estoppel.

1) Respondent working as Conductor dismissed from service on account of misconduct of remaining absent from duty — Respondent filed appeal contended that since he was detained in jail in Criminal Case he could not remain present on duty and later he was acquitted by the High Court — First appellate authority rejected the said appeal — In the second appeal the second appellate authority modified the order, directing that the respondent be reappointed as fresh Conductor without giving him any benefit of his past service — Respondent joined the duty as a fresh Conductor — Thereafter the respondent herein filed Complaint before the Labour Court — As the reappointment was not at the

instance of the respondent the principle of estoppel cannot be invoked — Absentism was due to circumstances beyond his control — Cannot be said that the respondent cannot agitate and persuade his legal right after joining the service as fresh Conductor — Principle of estoppel cannot deprive the respondent to pursue his legal right by approaching the Labour Court. (See para 11)
2) Respondent working as Conductor dismissed from service on account of misconduct of remaining absent from duty — Respondent was detained in jail in criminal case and later he was acquitted by the High Court — Absence of the respondent was for the reasons beyond his control and he cannot be punished without any fault — Labour Court rightly held that the dismissal is illegal and the respondent is entitled for continuity in service — Also as the respondent was ready and willing to work but was not allowed to do so unlawfully the respondent is entitled for the benefits of back wages from the period 10.7.1989 to 25.4.1991, “as if he has worked” during the said period. (See para 13, 19)
Result : Petition dismissed.

Maharashtra State Road Transport Corporation, through its Divisional Controller, Ahmednagar Vs. Alfred James Gamare 2009 (9) LJSOFT (AUR) 96

Maharashtra Regional & Town Planning Act, 1966 — Section 126 — Land Acquisition Act, 1894 — Section 6, 11-A — Land acquisition proceedings — Limitation — Locus standi — Rules of precedent — Pendency of reference before the larger Bench — Effect of.

1) Acquisition of land — Acquisition proceedings under the MRTP Act — Applicability of Section 11-A of L.A. Act providing time limit of two years for passing

award from the date of publication of notification u/s 6 of L.A. Act — Apex Court in the case of Sant Joginder Singh held that Section 11-A of L.A. is not applicable to the proceedings under the MRTP Act — In the subsequent decision in the case of Girnar-I, the Apex Court referred the decision in Sant Joginder Singh’s case for re-consideration to the three Judges’ Bench, which in turn, again referred the said issue to the five Judges’ Bench without declaring the law on the subject — Law laid down by the Apex Court in Sant Joginder Singh’s case under Article 141 of the Constitution continues to hold field — Award passed by the SLAO is sustainable in law. (See para 20, 33, 36, 37)

2) Rules of precedent — Effect of the law declared by the Apex Court during pendency of the reference in this regard before the larger Bench of the Apex Court — Justice between the parties should not be kept in suspended animation — Decision of the Supreme Court referred to larger Bench and sought to be examined does not make the law already laid down not binding on the High Court till the authoritative pronouncement is delivered by the larger Bench of Supreme Court. (See para 36)

3) Acquisition of land — Conduct of the petitioner deprecate who has invoked the extra-ordinary jurisdiction of High Court under Article 226 of the Constitution after accepting the compensation for the land in question and after filing reference u/s 18 of L.A. Act for enhancement of compensation — Petitioner has no locus to file the petition nor he is competent to question the legality of the award. (See para 40)
Result : Petition dismissed.

Madhao s/o Atulchandra Bapat Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (NAG) 77

Maharashtra Regional and Town Planning Act, 1966 — Section 55 — Validity of — Unauthorized temporary structure — Removal of — Principles of natural justice.

Unauthorized temporary structure — Action for removal or discontinuance of — Party is given 15 days notice to meet the case of the local planning authority on being served with the Notice u/s 55 — Section 55 when read in isolation or in conjunction with other provisions cannot be held to be ultravires as within 15 days period the person who is served with such notice can always approach the competent authority (planning authority) and establish that the said construction is authorised — Challenge to Section 55 of MRTP Act is without any foundation. (See para 6, 7)

Result : Petition dismissed.

Fehmida Abubakar Varakaya Vs. State of Maharashtra & Ors. 2009 (9) LJSOFT 202

Maharashtra Rent Control Act, 1999 — Section 55 — Winding up proceedings — Inability to pay debts — Leave and licence agreement — Breach of — Claim of damages. *See Lonza India Pvt. Ltd. (Re:) 2009 (9) LJSOFT 171*

Maharashtra Revenue Patels (Abolition of Office) Act, 1962 — Section 3 — Suit for possession — Limitation — Second appeal. *See Pandurang Doulu Patil Vs. Ramrao Dadu Patil since deceased by his LRs. 2009 (9) LJSOFT 92*

Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukata Jati), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificates Act, 2000 — Constitution

of India, 1950 — Article 226, 141, 142 — Reserved post — Invalidation of caste claim — Protection of services — Full Bench Reference.

1) Whether an employee is entitled to protection of his employment in view of Government Resolution dated 15th June 1995 even after his caste claim on the basis of which he was appointed is found to be invalid? (No) (See para 6)

2) Whether employment of such an employee can be protected in the light of the provisions of Act of 2000? (No) (See para 6)

Result : Accordingly.

Vandana Bharat Kauthalikar Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (URC) 9

Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975 — Clause 24 — Essential Commodities Act, 1955 — Section 3 — Constitution of India, 1950 — Article 226 — Bombay High Court (Appellate Side) Rules, 1960 — Rule 18 — Allotment of Ration shop — Revision — Maintainability of — Forum — Jurisdiction of Single Judge — Principles of natural justice.

1) Hearing of writ petitions under Bombay High Court Appellate Side Rules — Appropriate bench — Any decree or order passed by any subordinate Court or quasi judicial Tribunal in any suit or proceedings is to be dealt with by a Single Judge — Preliminary objection challenging jurisdiction of the Single Judge stands overruled. (See para 23, 24)

2) Allotment of rationing shop — Revision filed under clause 30 of Maharashtra Foodgrains Rationing (Second) Order is

maintainable before the State Government against the order passed by the Commissioner. (See para 30)

3) Allotment of rationing shop — Revision — Since the revisional authority has set aside the order the order of the lower authority merged in the revisional order — Submission that the order of the lower authority would hold the field in the event revisional order is set aside needs to be rejected being without any substance. (See para 33)

4) Allotment of rationing shop — Agreement relating to the shop premises which was shown to be available for running ration shop was for a duration of seven years — Said period has expired and the agreement is not in existence — One cannot presume renewal of the agreement in absence of positive evidence — No material on record to suggest that the shop premises of the petitioner is still available for opening and running ration shop — Once the agreement has expired possession of the subject shop cannot be said to be legal and valid — Cannot be concluded that the shop premises is still legally available with the petitioner for running the ration shop, if allotted — Respondent No.1 directed to issue fresh advertisement inviting fresh applications. (See para 35)

5) Allotment of rationing shop — State Government has laid down the guidelines prescribing eligibility criteria for allotting ration shops — Persons answering the eligibility criteria according to the priority fixed can only be considered for allotting ration shop — Persons dehors the guidelines have no independent right to have business or avocation in the form of running ration shop — Economic and social justice as envisaged in the Preamble of the Constitution is sought

to be achieved and there is a reasonable nexus between the object and the prescription of the eligibility criteria as prescribed in the guidelines. (See para 39)

Result : Rule made absolute.

Smt.Savitri Chandrakesh Pal-II Vs. State of Maharashtra 2009 (9) LJSOFT 134

Maharashtra Suits Valuation (Determination of Value of the Land for Jurisdictional Purposes) Rules, 1983 — Rule 2 — Bombay Court Fees Act, 1959 — Section 6 — Suit for partition — Valuation.

Suit for partition and separate possession of land — Suit property has to be valued for the purpose of jurisdiction as well as for the purpose of payment of Court Fee — Suit lands are held on permanent settlement — For the purpose of court fee the value of the property shall be equal to 40 times survey assessment — For the purpose of jurisdiction the value shall be equal to 200 times the assessment payable — When claim of the plaintiff is to the extent of 1/5th share in the suit property, she will have to pay 1/5th of the total court fees which would be required to be paid if suit would be for possession of complete property — Suit could not have been valued for the purpose of jurisdiction or for the court fee on the basis of market value — Impugned order is liable to be set aside.. (See para 4, 5)

Result : Petition allowed.

Radhabai wd/o Mahadeo Thakur Vs. Gajanan Shriram Akone & ors. 2009 (9) LJSOFT (NAG) 123

Maharashtra Universities Act, 1994 — Section 59 — Termination of services — Delay in filing appeal — Condonation of delay.

Termination of services — Appeal not filed

within the period of 30 days — Respondent No.1 filed application for condonation of delay contending that he was bonafidely pursuing his remedy before respondent No.3 to get his grievances decided — No reason shown by petitioner which could disclose that respondent No.1 was malafidely pursuing some other remedy or then there was any negligence on his part in pursuing such remedy — No infirmity in the impugned order condoning the delay in filing appeal — However some costs ought to have been awarded — Respondent No.1 directed to pay costs of Rs. 1,000/- to the petitioner for getting the delay condoned. (See para 4, 5)

Result : Accordingly.

Kisanrao Khobragade Education Society & anr. Vs. Bhojraj s/o Kevalram Motghare & ors. 2009 (9) LJSOFT (NAG) 82

Maharashtra Village Police Act, 1967 — Section 6(iv) — Evidence Act, 1872 — Section 24, 25 — Code of Criminal Procedure, 1973 — Section 162, 164 — Statement made before Police Patil — Admissibility of — Police Patil and Police Officer — Distinction between — Rules of precedent — Full Bench Reference.

1) Police Patil appointed under Maharashtra Village Police Act — Police Patil is responsible primarily for village surveillance, prevention of crime and providing his assistance and help to the police in discharge of his duties — Police Patil has been vested with very limited powers that too under the control and for the benefit of the Executive Magistrate/Police Officer — Police Patil is not vested with the powers of preparing and filing a charge-sheet before the Court of competent jurisdiction — Powers of Police Patil to investigate and control over the apprehended

persons are very limited in contradistinction to powers of a Police Officer — Not possible for the Court to hold that either the manner of functions and powers of Police Patil or method in which they are to be performed are equatable to the authority, powers and functions of a Police Officer, in law — Cannot be held that Police Patil is a Police Officer in law for all intent and purpose and confession before him would attract the bar contemplated u/s 25 of Evidence Act — Police Patil appointed under the Maharashtra Village Police Act is not a ‘Police Officer’ for the purposes of Section 25 of Evidence Act. (See para 20, 21)

2) Administration of justice — Rule of precedent is an important aspect of legal certainty in the rule of law — One of the essential rudiments of law of precedent is consistency in the judicial decision making — Generally known exceptions to the rule of precedent are principles of ratio decidendi, sub-silentio and stare decisis — It is the ratio understood in its correct perspective that is made applicable to a subsequent case on strength of a binding precedent — Every settled principle of law has to be rationally understood with reference to the facts of the case in which such principle of law is stated — Little difference in the facts or additional facts may make a lot of difference in the precedential value of a decision — Ratio decidendi can act as the binding or authoritative precedent and reliance placed on mere general observations or casual expression of the Court is not of much avail. (See para 1)

Result : Accordingly.

Rajeshwar s/o Hiranman Mohurle (In Jail) Vs. State of Maharashtra 2009 (9) LJSOFT (NAG) 52

Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 — Rule 14(3) — Constitution of India, 1950 — Article 226 — Promotional post — Qualifications — Seniority — Suppression of material facts — Writ jurisdiction.

1) Promotion as Head Accountant or Divisional Accountant or Assistant Accounts Officer from the post of Deputy Accounts Officer or Junior Accounts Officer — Passing the Maharashtra Finance and Accounts Service (Class III) examination, is the eligibility qualification — Both petitioner and Respondent No.4 have not passed that examination and they are exempted from passing the same with effect from the dates indicated in the order dated 29/30.3.2007 — Said aspect was not considered by the Divisional Commissioner while passing the impugned order — Said order is passed without giving any opportunity by way of natural justice to the petitioner — Effect of the government resolutions on record show that the impugned order is erroneous and passed without application of mind and is liable to be quashed and set aside. (See para 16, 17)

2) Writ jurisdiction — Suppression of material facts — Non-disclosure of fact of promotion of petitioner during the pendency of this writ petition — However the promotion was not with the retrospective effect which will take away the effect of the impugned order — Cannot be said that the petition has become infructuous — In fact subsequent promotion of Petitioner would perpetuate the position of Petitioner as Junior to Respondent No.4 in the cadre of Junior Accounts Officer. (See para 10).

3) Writ jurisdiction — Writ petition we are only examining the legality and validity of the impugned order — As the subsequent

developments are offshoots of the impugned order, it is not necessary to test the validity or otherwise of subsequent orders — Once impugned order is quashed all orders subsequently passed pursuant to the said order, will have to be nullified in their effect and parties will have to be restored to status-quo ante. (See para 10)

Result : Petition allowed.

Madhukar Pandurang Gadade Vs. State of Maharashtra Through Secretary, Department of Rural Development & ors. 2009 (9) LJSOFT (AUR) 62

Major Port Trusts Act, 1963 — Section 120 — Levy of penalty and additional landing charges — Setting aside of — Limitation — Writ jurisdiction.

See Esquire Shipping and Trading Pvt. Ltd. Vs. Maharashtra Maritime Board 2009 (9) LJSOFT 102

Marine Insurance Act, 1963 — Section 19, 20 — Sinking of barge entrusted for repairs — Claim of damages — Liability of bailee — Insurance policy — Suppression of material facts.

See Rajaram N.S. Bandekar & Company Pvt. Ltd. Vs. Oriental Insurance Company Ltd. 2009 (9) LJSOFT (GOA) 199

Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 — Rule 7, 8 — Dealership Agreement — Enforcement of contractual rights — Writ jurisdiction — Maintainability of petition.

See Sopanrao Laxmanrao Mhaske Vs. Union of India 2009 (9) LJSOFT (AUR) 166

Motor Vehicles Act, 1988 — Section 147 — Motor accident — Compensation —

Absence of driving licence — Burden of proof — Presumption — Liability of Insurance Company.

Motor accident — Non-production of the licence of driver by claimants or owner of vehicle — Presumption of absence of driving licence would have been available, only in the event, driver was alive — Since the driver had succumbed to the accident, no such presumption could be drawn — Owner of the vehicle in the pleadings, in unequivocal terms, has accepted the status of the driver — Insurance company cannot shirk its responsibility. (See para 13)

Result : Appeal dismissed.

New India Assurance Company Ltd. Vs. Mangala w/o Devidas Pophale & ors. 2009 (9) LJSOFT (AUR) 142

Motor Vehicles Act, 1988 — Section 149, 166 — Code of Civil Procedure, 1908 — Order I Rule 9 — Motor accident — Compensation — Non-joinder of necessary parties.

1) Motor accident — Validity of licence of driver — Insurance company did not prove that the licence was not in force having expired on the date of accident — Concerned officials from the Transport Licensing Authority not examined — Reliance placed to the xerox copy of the licence by itself will not be sufficient — Xerox copy is blurred and difficult to read its contents and it is also not legally proved — Placing on record by the claimants having got it from police by itself will not be admission to proof of such licence — Not established by the insurance company that there was breach of the terms of the insurance policy by the jeep driver. (See para 7)

2) Head-on collision between Jeep and tractor-attached with two trollies — Driver of the jeep

is not arrayed as a party — Non-impleadment of the driver of the jeep by itself is not fatal — Insurance company, by leave of Court could examine him. (See para 8)

Result : Appeals dismissed.

New India Assurance Company Ltd. Vs. Babruwan s/o Pralhad Wakure & others 2009 (9) LJSOFT (AUR) 105

Motor Vehicles Act, 1988 — Section 163 — Motor accident — Enhancement of compensation.

1) Motor accident — Compensation — Appellant no.1 got job in the same department in which deceased was working within eight days after accident — Right to receive compensation being germane to the loss actually occurred due to the death — Mere fact of occurring of death without a particular claimant being dependent upon the deceased being established would not entitle such a claimant to receive compensation — Fact of appellant no.1 having received the service and also receiving a family pension fully denoting of herself having not suffered of financial loss due to death of deceased — Act of Tribunal in deducting additional amount of Rs.1,000/- from the salary of deceased and/or deducting a sum on such a count cannot be regarded as an error committed by the Tribunal. (See para 27)

2) Motor accident — Compensation — Determination of multiplier to be applied — Second schedule provided under M.V. Act predominately provides for the claims preferred u/s 163 — For claims preferred under other provisions of the M.V. Act the matters from the said schedule are to be used only by way of guidelines only. (See para 29)
Result : Appeal dismissed.

Smt. Chhabutai wd/o Sanjay Tupatkar & ors. Vs. Govind s/o Haruishchandra Wasnik & ors. 2009 (9) LJSOFT (NAG) 85

Motor Vehicles Act, 1988 — Section 163-A, 168 — Motor accident — Compensation — Quantum of — Dependency of claimants.

1) Motor accident — Quantum of compensation is always to be assessed not on the basis of income of the deceased but on the basis of actual loss in income caused to dependents due to the death — Appellants failed to adduce cogent evidence regarding the income of the deceased and/or consequently about the loss suffered by them due to his death. (See para 13, 15)

2) Motor accident — Quantum of compensation — Application of multiplier being that the matters from the second schedule of the Motor Vehicles Act are to be predominately used for the purpose of assessing the compensation in the claim preferred u/s 163-A — Same are not to be blindly used for the claims preferred under other provisions and the matters from the relevant table are to be used only by way of an guidelines. (See para 17)

Result : Appeal dismissed.

Smt. Ravinder Kaur wd/o Late Ranjit Singh Mann & ors. Vs. Smt. Amarjit Kaur w/o Mohinder Singh & ors. 2009 (9) LJSOFT (NAG) 84

Motor Vehicles Act, 1988 — Section 166 — Maharashtra Motor Vehicles Rules, 1989 — Rule 254(5) — Code of Civil Procedure, 1908 — Order XLI Rule 23-A — Motor accident — Compensation — Non-production of documents — Non-compliance of Rules.

Motor accident — Claim petition dismissed on the ground that true copy of the first information report or police station diary or entry of traffic accident report was not

appended to the claim petition — Rules framed by the State are not for cornering the beneficiaries i.e. claimants — Rules are handmade of justice and have to be considered and interpreted for advancing the cause of justice, rather to defeat the same — Rule 254(5) is directory and not mandatory — Claims Tribunal has dismissed the claim petition only on the ground of non compliance of Rule 254 and without appreciating the oral evidence of the claimant — Facts of the case are governed by Rule 23-A of Order XLI of CPC — Though the issues were settled by the trial court and claim has been dismissed after settling the issues, retrial of the case in hand is necessary — Impugned order quashed and set aside and case remanded to the Tribunal. (See para 15, 16, 18)

Result : Appeal partly allowed.

Rangnath Trimbak Sonawane Vs. Baban Ganpat Mhaske & others 2009 (9) LJSOFT (AUR) 108

Motor Vehicles Act, 1988 — Section 168 — Motor accident — Compensation — Gratuitous passenger — Liability of Insurance Company — Expression “owner” — Definition of.

1) Accident claim — Deceased was travelling in tipper truck when it met with an accident — Deceased was sitting in the cabin of the said truck — Claimants own witness had admitted that they were given lift — Deceased was gratuitous passenger travelling in goods vehicle at time it met with accident — Appellant-insurer was not liable to pay any compensation or indemnifying the operator for payment of the same. (See para 9, 10, 11)

2) Accident claim — Motor accident — Tipper truck was in possession and control of the operator — Accident was caused by the

employee of the operator — Apart from the Clause of the agreement the owner had proved that it is the operator who would be vicariously liable for the wrongful acts of his driver — On the basis of the evidence produced the liability to pay compensation on account of the fault of the operator’s driver was rightly saddled on the operator and not the owner/insurer of the vehicle. (See para 28)

3) Accident claim — Definition of owner is not exhaustive and it has to be construed in a wider sense — Meaning of ‘owner’ cannot be confined to the registered owner only — Expression “owner” must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the vehicle. (See para 27)

Result : Appeal allowed.

New India Assurance Co. Ltd. Vs. Smt. Laxmi Rama Padsalgi & ors. 2009 (9) LJSOFT (GOA) 110

Mumbai Municipal Corporation Act, 1888 — Section 22 to 36 — Election — Scrutiny of nomination paper — Filing of documents — Obligation of Election Returning Officer (E.R.O.).

1) Election of Municipal Corporation — Respondent No.1 wanted to contest from Ward No.42 though he is resident of Ward No.45 — Insistence of duly signed certified copy of lists of voters from Ward No.45 cannot be said to be beyond the scope and/ or power under the Act and/or the Rules — Defect was not nominal or minor — Though opportunity was given and yet defects was not removed at given time — No fault can be found for rejection of such nomination paper — Impugned order declaring the election of the Petitioner from Ward No.42 of PMC void

is quashed and set aside. (See para 24, 28, 29)

2) Filing of nomination papers — Supporting documents — Election Rules of 1961 prescribed forms and form of affidavit to be filed at the time of filing nomination paper — Scrutiny of nomination paper cannot be said to be just a formality as it goes to the root of the matter with regard to declaring lists of validly nominated candidates — There is a clear obligation on the E.R.O. to scrutinize such nomination form/ paper in all respects — Form of affidavit, as well as, the filing nomination paper/ form nowhere prescribed the filing of the documents along with the same — However that itself cannot be the reason that the concerned candidate should not keep all the connected / relevant documents ready to support their nomination paper — E.R.O. is under obligation to confirm and verify the details through the valid documents — Contention that the requirement of those documents if not contemplated under the Rules or forms, the insistence of the documents in question was unnecessary is unacceptable. (See para 10, 11, 12)

3) Election Petition — Basically the Petitioner must prove his case — Merely because the E.R.O. failed to lead evidence to support the averments that itself cannot be the reason to accept the case of Petitioner on the ground of adverse inference. (See para 21)

Result : Petitions allowed.

Chetan Vitthal Tupe Vs. Shailesh Narayan Shinde & ors. 2009 (9) LJSOFT 147

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 8(c), 20(b)(ii)(c), 27(A), 29 — Search and seizure — Possession contraband — Appeal against conviction.

1) Search and seizure — Admission of a panch witness as to having relation with one of the raiding party members — Same may not per se affect the credibility of the said witness when there is another corroborative evidence by way of statements recorded u/s 67 of NDPS Act connecting the accused persons with the offence of storing and possessing narcotic contraband Ganja. (See para 12)

2) Offences under NDPS Act — In order to establish the guilt of the accused there need not be hundred percent proof required to be established — What is required to be proved is the proof which is beyond reasonable doubt so as to connect the accused persons with offences charged. (See para 13)

Result : Appeal dismissed.

Maruti G. Gund & ors. Vs. Inspector of Customs Preventive Narcotic Cell & anr. 2009 (9) LJSOFT 49

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 50 — Search and seizure — Personal search — Non compliance of mandatory provisions.

One auto rickshaw was intercepted by the police party during Nakabandi — One suitcase was found near the legs of the passengers and one handbag was in the dicky of the said rickshaw — Bags were not on the shoulder or on the lap of any of the passengers — Considering the place at which the bags were placed in the auto rickshaw and considering the narcotic contraband was not on the person of any of the appellants-accused the provisions of Section 50 of NDPS Act were not applicable. (See para 6)

Result : Appeal dismissed.

Raghav Manu Gupta & anr. Vs. State of Maharashtra 2009 (9) LJSOFT 48

Navy Act, 1957 — Section 3(13), 78, 93(1) — Murder — Naval offence — Committal order — Non-compliance of mandatory Rules — Jurisdiction as to place and offences.

See Kanwardeepsingh Harbansingh Bedi Vs. State of Maharashtra 2009 (9) LJSOFT 67

Negotiable Instruments Act, 1881 — Section 138 — Code of Criminal Procedure, 1973 — Section 389 — Bombay Court Fees Act, 1959 — Section 7, 43 — Dishonour of cheques — Appeal against conviction — Suspension of sentence — Ad-valorem Court fees — Payment of — Validity of.

1) Appeal against the order of conviction u/s 138 of N.I. Act — Suspension of sentence — Appellate Court can direct only a reasonable amount out of the compensation amount to be deposited — As a condition for suspension of sentence the appellant cannot be called upon to deposit unreasonable amount — After admitting the appeal against conviction the condition of deposit of entire fine amount of Rs.10.00 lakhs virtually amounted to denial of right of appeal — Order is modified and the petitioner is required to deposit only 50% of the fine amount as a condition for grant of relief u/s 389(1) of Cr.P.C. (See para 10)

2) Appeal against the order of conviction u/s 138 of N.I. Act — Cannot be said to be an appeal to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss — Such an appeal is essentially against an order of conviction — No provision in the Bombay Court Fees Act requiring an accused to pay ad-valorem court fees while preferring an appeal against the order of conviction — Directing an appellant to pay ad-valorem court fees completely defeats the absolute right of an appeal against an order of conviction — Such

a direction defeats fundamental right of an appellant — Direction issued by the Sessions Court requiring the appellant to pay ad-valorem court fees on the basis of amount of fine or compensation is completely illegal and liable to be quashed and set aside. (See para 13, 14, 15, 17)

Result : Petition partly allowed.

Gurukripa Traders Vs. Kailas Ramnarayan and anr. 2009 (9) LJSOFT 58

Negotiable Instruments Act, 1881 — Section 138 — Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheques — Commencement of arbitration proceedings — Effect of — Quashing of criminal proceedings.

Dishonour of cheque — Quashing of complaint on the ground that complainant had already taken recourse to arbitration proceedings — When the cheques were dishonoured a separate liability arose in terms of Section 138 of N.I. Act — Commencement and the continuance of arbitration proceedings could in no way affect criminal proceedings taken separately — There can be no bar to the simultaneous continuance of a criminal proceeding and a civil proceeding if the two arise from separate causes of action — Impugned order quashing the complaint set aside. (See para 5, 6)

Result : Appeal allowed.

Sri Krishna Agencies Vs. State of A.P. & Anr. 2009 (9) LJSOFT (SC) 200

Negotiable Instruments Act, 1881 — Section 138 — Dishonour of cheque — Service of notice — Proof of documents — Appeal against acquittal

1) Dishonour of cheque — Production of documents viz promissory note and security

bond (Hamipatra) — Scribe of the documents not examined — Unless the documents were duly proved either by making a positive statement about execution thereof in presence of the complainant or by examining the scribe, mere filing thereof could not be of any avail to the complainant/appellant — Appellant did not take any step to prove these documents except and save filing of the same on record — Said documents cannot be read in evidence particularly, when the respondent categorically denied execution of the same. (See para 9)

2) Dishonour of cheque — Demand notices sent under certificate of posting and not by registered post — Contended that notice of demand need not be sent by registered post and it could be sent by certificate of posting and there is presumption about due service of such notice only if it is shown that the notice is sent on proper address — Held that there is no post office at village Gujar Jambholi — Version of the appellant reveals that he has no knowledge whether the post office of village Gujar Jambholi is situated at village Gujar Bhawani — As the post office address is not given in the postal certificate it cannot be presumed that the notices were sent through the post office at Gujar Bhawani. (See para 11)

3) Dishonour of cheque — Standard of proof required on the part of an accused and that of the prosecution are different — Not necessary for the accused to prove his defence beyond reasonable realm of doubt — Accused may discharge his burden on the basis of materials already brought on record — Inference of preponderance of probabilities can be drawn even from the circumstances brought during cross-examination of the complainant and other material available

on record. (See para 14)

Result : Appeals dismissed.

Mahendra Gulabchand Kochar Vs. Sakharam Ramdas Patil 2009 (9) LJSOFT (AUR) 121

Negotiable Instruments Act, 1881 — Section 138 — Dishonour of cheques — Legally enforceable debt/ liability — Appeal against acquittal.

Respondent used to purchase the goods on credit and used to make some payments — There was a running account and the practice of making purchase and keeping the amount balance in the account continued for few years — Respondent used to purchase the goods every day ranging from Rs.2,000/- to Rs.10,000/- and used to make payments ranging from Rs.1,500/- to Rs.5,300/- by cheques — There is reason to believe that the credit accumulated to a hefty sum of Rs.1,70,462 — It was for the respondent to discharge his burden by saying that he had made all the payments either by cheque or in cash but he failed to do so — Signatures on the credit memo/ delivery memo appears to have been made hastily but that does not mean that the Court was entitled to record a finding that there was no signature — In the absence of any proof of discharge of entire liability as proved by the appellants it was not legal and proper to believe the defence that he had the liability of Rs.52,500/- only — Approach of trial Court is perverse in appreciation of evidence — Impugned order of acquittal set aside and Respondent is convicted u/s 138 of N.I. Act. (See para 7, 9, 10)

Result : Appeal allowed.

Vijay Khadya Bhandar & anr. Vs. Ramlal s/o Motilal Prajapati 2009 (9) LJSOFT (URC) (NAG) 182

Negotiable Instruments Act, 1881 — Section 138, 141 — Dishonour of cheque — Offences by companies — Liability of Directors — Vicarious liability — Appeal against conviction.

Dishonour of cheque — Appellant was the General Manager of company working under the Managing Director — No evidence that the appellant was in charge and responsible for the conduct of the business of the company — Cheques not signed by appellant and Notice u/s 138 proviso (b) not given in his name — No specific role attributed to him in the complaint petition — Conviction cannot be maintained. (See para 10, 11)

Result : Appeal allowed.

Ramrajsingh Vs. State of M.P. and Anr. 2009 (9) LJSOFT (SC) 106

Negotiable Instruments Act, 1881 — Section 138, 147 — Dishonour of cheque — Compounding offence.

Dishonour of cheque — During the pendency of appeal, the parties have entered into a compromise and entire amount has been received by the respondent — No reason not to accept the compromise entered into between the parties — Offence u/s 138 being compoundable the appellant is entitled to acquittal — Order of conviction and sentence recorded by the Courts below set aside. (See para 5, 6)

Result : Appeal allowed.

Rajendran Vs. N. Mohanan & anr. 2009 (9) LJSOFT (SC) 112

Negotiable Instruments Act, 1881 — Section 138, 142 — Dishonour of cheque — Demand notice — Service of notice — Deemed service.

Dishonour of cheque — Notice u/s 138B sent

through registered post and under a certificate of posting on the correct address of respondents — Once notice has been sent by registered post with acknowledgment due in a correct address it must be presumed that the service has been made effective — High Court not justified in holding that service of notice could not be found to be valid because of the endorsement of the postal peon — Impugned order quashing the proceeding set aside. (See para 8, 9)

Result : Appeal allowed.

Indo Automobiles Vs. Jai Durga Enterprises & Ors. 2009 (9) LJSOFT (SC) 203

Negotiable Instruments Act, 1881 — Section 147, 138 — Code of Criminal Procedure, 1973 — Section 320, 482 — Dishonour of cheque — Compounding of offence at the instance of accused.

1) Dishonour of cheque — Power to compound such offences would be deemed to have been extended only upon the complainant/ affected person etc. but not upon the accused — Any information about compounding of offences given by any other person other than the person permitted to compound would be inconsequential — Trial Court was bound to proceed with the cases in accordance with the law i.e. reviving the proceeding from the stage at which the same were stopped due presentation of a pursis by the accused regarding the settlement which unfortunately had not taken place — Order passed by the trial Court revealing cases being posted for “consideration on merits and for judgment” cannot be said to be an order passed by the trial Court in accordance with the procedure prescribed at the law. (See para 13, 14)

2) Dishonour of cheque — Pursis given by the accused showing his admission/ willingness to pay cheque amount — For construing the same as an admission of guilt, the same should have disclosed a clear cut admission of commission of offence u/s 138 of N.I. Act or admission of all the facts constituting commission of such offences on his part — Agreement to pay cheque amount would never be construed as an admission of guilt of commission of offence u/s 138 of N.I. Act. (See para 18, 19)

Result : Petition allowed.

Gajanan Narayan Joshi Vs. Haridas Bhikulal Jobanputra & anr. 2009 (9) LJSOFT (URC) (NAG) 10

Partnership Act, 1932 — Section 14 — Purchase of shares — Ownership of shares — Interim reliefs.

See Ravinder Singh Ahluwalia Vs. Kuljinder Singh Ahluwalia 2009 (9) LJSOFT 72

Portuguese Civil Code, 1867 — Article 1369 — Administrator of Estate — Removal of.

1) Petitioner was appointed as cabeca-decasal (cc)/ Administrator of Estate — Despite he being notified as per Article 1369. he did not take steps — He did not even reply to the other application taken out for his removal and for appointing another person — Removal is more than two and a half years after the appointment — Petitioner has not taken a single step upon his appointment — He has not taken oath on office upon himself — Removal of petitioner have been correctly made after sufficient notice and upon seeing that the petitioner did not take any steps and did not even show cause against his removal — Order relating to his removal cannot be interfered with. (See para 6)

2) Appointment of cabeca-decasal (cc)/ Administrator of Estate — One of the heirs of the estate leaver only can be appointed — Respondent is son-in-law of Pandurang Kubal and could not have been appointed as cabeca-de-casal — His appointment deserves to be set aside. (See para 7)

Result : Accordingly.

Narayan Shamba Kubal Vs. Ankush Pandurang Halarnkar 2009 (9) LJSOFT (GOA) 80

Prevention of Corruption Act, 1988 — Section 13(1)(d) — Illegal gratification — Demand and acceptance — Proof of — Appeal against acquittal.

Accused accosted the complainant and told him that head light of his moped was out of order — He took his licence and demanded Rs.25/- — Complainant was having only Rs.10/- which he offered to the Respondent — However accused told him to collect licence next day by paying Rs.25/- — Defence of accused was that he accepted money as fine money and bond which he had prepared in respect of complainant and other papers were found with him — Panch witness stated that complainant directly handed over Rs.25/- to accused and without demanding licence — Defence taken by the accused appears to be a probable defence — Cannot be said that the prosecution has proved the case beyond reasonable doubt — Order of acquittal not liable to be interfered with. (See para 7)

Result : Appeal dismissed.

State of Maharashtra Vs. Pandurang Govind Raut 2009 (9) LJSOFT 64

Prisoners Act, 1900 — Section 29(1) — Maharashtra Prison Manual — Assault on prisoners — Fundamental rights of prisoners

— Transfer of under-trial prisoner — Powers of jail authorities.

See Saeed Sohail Sheikh Vs. State of Maharashtra 2009 (9) LJSOFT (URC) 7

Protection of Civil Rights Act, 1955 — Section 7(1)(d) — Abuses on the ground of untouchability — Appeal against acquittal.

Private complaint alleging that respondent has been insulting the appellant on the ground of untouchability — Appellant was the tenant of the respondent No.1 who was the trustee of the Trust — Appellant did not pay the rent to respondent No.1 despite demands — There was prior dispute between the appellant and respondent No.1 — Material witnesses not examined before the trial Court — Acquittal is not only on the ground that the appellant failed to prove his caste or that he failed to disclose his caste in the complaint — Acquittal is on the ground of failure of the appellant to prove his case beyond reasonable doubt — Order of acquittal not liable to be interfered with. (See para 13, 14, 15)

Result : Appeal dismissed.

Pandharinath Mahadeo Patil Vs. Unus Noormohamed Mulla & anr. 2009 (9) LJSOFT 187

Protection of Women from Domestic Violence Act, 2005 — Section 17 — Matrimonial home — Shared household — Right of residence — Joint Family Property — Presumption — Appointment of Court Receiver.

1) Matrimonial home — Plaintiff-wife claiming right of residence in respect of the suit flat at Mumbai — Though parties lived in the suit flat for an extremely short period soon after their marriage in November, 1991 but they moved to the USA in 1991 itself —

They lived in their house in the USA till 2000 when their marriage broke down and the wife continued to live there after her husband left the matrimonial home — Wife claimed right in the suit flat after she returned to Mumbai — Matrimonial home of the parties is the home in the USA where they last lived together during the subsistence of their marriage and in which they intended to so live — Plaintiff No.1-wife cannot claim the right of residence in the suit flat as her matrimonial home or as her shared residence u/s 17 — No relief cannot be granted upon the premise that the said flat is a matrimonial home of Plaintiff No.1 and Defendant No.1 or their shared residence. (See para 17, 34)

2) Matrimonial dispute — Plaintiff wife claim upon suit flat based on the title — Though the flat stood in the names of Plaintiff No.1 and Defendant No.1 with Defendant No.4 as a joint owner in respect of each of the flats, Defendants No.2 to 4 have never resided therein and their continuous possession by way of their residence is not shown — Plaintiffs' right and title in respect of the suit flat is prima facie seen — Injunctive reliefs as prayed by the Plaintiffs must be granted in respect of the suit flat. (See para 25, 26)

3) Joint Family Property — Nucleus of joint family property is essentially required to be shown upon which alone can there be a presumption that the property purchased by any member of the joint family would be a joint family property — All the properties in the names of Defendants cannot be presumed to be of the HUF when the nucleus of the HUF is not shown — Though Plaintiff may have shown a shadow of the HUF and certain properties belonging to the HUF, all the properties enumerated in Exhibits by plaintiff cannot per se be taken to be HUF properties

— Appointment of Court Receiver which is sought in respect of all the said properties is a misconceived relief at least at this stage. (See para 28, 30, 32)

4) Concept of matrimonial home — Parties may from time to time reside in different properties one after another — Their shared household or matrimonial home would change from time to time — Wife would be entitled to continue to reside in only one such residence which she shared with her husband and it would essentially be the last of the residences which the parties shared — If the parties shifted residence the wife would not have the right in more than one such residence — Matrimonial home of the parties is the home where they last lived together during the subsistence of their marriage and in which they intended to so live. (See para 14, 15, 16)

Bindiya A. Chawla & Ors. Vs. Ajay Lajpatrai Chawla & Ors. 2009 (9) LJSOFT 119

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2(e), 2(i) — Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 — Section 14, 15 — Code of Civil Procedure, 1908 — Order VII Rule 10 — Eviction proceedings — Public premises — Applicability of Bombay Rent Act — Jurisdiction of Small Causes Court — Return of plaint.

1) Suit premises owned by Punjab National Bank - a Public Corporation — Premises belonging to nationalised banks are public premises within the ambit of Section 2(e)(2)(ii) of P.P. Act — P.P. Act would override the provisions of Rent Control Legislation — Plaintiffs not entitled to invoke the protection of Bombay Rent Act — Reliefs claimed in the suit for declaration that the

Petitioners-Plaintiffs are the lawful sub-tenants or protected licensee in respect of portion of the premises and protected by provisions of the Bombay Rent Act is unavailable — Appellate Bench of Small Causes Court rightly confirmed the view taken by the Trial Court that it had no jurisdiction to try and entertain the subject suit. (See para 21, 22)

2) Return of plaint — Ordinarily, having held that the Rent Court has no jurisdiction, the appropriate course would be to return the plaint to be presented before the Court of competent jurisdiction — However the relief claimed cannot be granted by any other Court — Though Section 8 of P.P. Act bestows same powers in the Estate Officer as are vested in Civil Court under CPC but the Estate Officer is not treated as a Civil Court or deemed to be a Civil Court as such — Said provisions only invests certain powers of the Civil Court in the Estate Officer — Request of return of plaint cannot be accepted. (See para 23)

Result : Petition dismissed.

Pradeep Babubhai Chinai & anr. Vs. Sindhu Resettlement Corporation Limited & ors. 2009 (9) LJSOFT 186

Public Premises (Eviction or Unauthorised Occupants) Act, 1971 — Section 4(1), 3, 9 — Public Premises — Unauthorised occupants — Eviction of — Term “Due course of law” — Meaning of — Expression “Belonging to” and “Owned by” — Distinction between — Doctrine of merger.

1) Petitioners challenging the show-cause notice issued u/s 4 of the Public Premises Act — Dispute sought to be raised by the petitioners relating to the title to the said land — Litigation came to be initiated without even

filing reply thereto — Rival pleadings on merits are yet to be crystallized — Controversy need not be gone into at this premature stage of the litigation. (See para 34)

2) Doctrine of merger — Earlier order of Division Bench of High Court challenged before Supreme Court — Appeal was disposed of not on merits but on the statement of the learned Solicitor General that Union of India would resort to the remedy known to or recognized by law — What was kept alive was only the cause of action germane from the notice of resumption giving liberty to the Union of India to resume the property in accordance with law or by resorting to the remedy recognized by or known to law — Earlier order of the Division Bench of High Court lost its existence in the eye of law and the same stood superseded with that of the Supreme Court order — Judgment of the High Court had lost its identity by its merger in view of the order of the superior Court — There cannot be two orders holding the field in the same litigation — Order of the Hon’ble Supreme Court alone holds the field — Contention that the order of the earlier Division Bench has not been set aside and it is binding on the Union of India cannot be accepted. (See para 46, 47, 48)

3) Public premises — Eviction proceedings — Dispute sought to be raised by the petitioners relating to the title — Estate Officer appointed u/s 3 as well as the Appellate Authority u/s 9 have only to satisfy themselves that the facts giving rise to their jurisdiction have been established — Rights of the rival parties in the subject property will have to be considered by the Estate Officer while finding out whether or not the subject property could be well within the sweep of the ‘Public Premises’ as defined under the

provisions of the Act — Legislature entrusted an authority with a jurisdiction also to determine whether the preliminary state of facts exist — Even if the authority makes a wrong decision whether of fact or law, it can be corrected by in Appellate Tribunal if there is any, but not by a Writ of Certiorari, as every authority is competent to decide both rightly or wrongly so long as it is given jurisdiction to do so. (See para 63, 64, 69)

4) Term “Due course of law” — Means an exercise of the powers by duly constituted Tribunal or Court in accordance with the procedure established by law providing for adequate safeguards to protect individual rights — Public Premises Act provides complete due machinery answering the test of due course of law — Not necessary for Respondents to first go to civil court to seek declaration of their title and thereafter resort to the provisions of Public Premises Act. (See para 56, 61)

5) Expressions “Belonging to” and “Owned by” have two different connotations — Expression “belonging to” does not mean the same thing as “owned by” — Expression “belonging to” will take within its sweep not only ownership but also rights lesser than that of ownership — Premises of which the absolute right of user vests in a person can be said to belong to him — Estate Officer will have to consider whether it could be legitimately held that the Government has an absolute right of user of the subject premises — Not necessary for Estate Officer to determine ownership or title to the premises. (See para 64, 66)

Result : Petition dismissed.

Kaikhosrou (Chick) Kavasji Framji & anr. Vs. Union of India Through Ministry of Defence & anr. 2009 (9) LJSOFT 42

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 30, 23 — Code of Civil Procedure, 1908 — Section 9 — Recovery proceedings — Jurisdiction of Civil Court — Exclusion of jurisdiction.

1) Plaintiff challenged validity of auction sale conducted by Recovery Officer pursuant to Recovery Certificate issued by Debts Recovery Tribunal — Plaintiff asserts her right seeking 1/16th share in the joint Hindu family property — Plaintiff did not array the Central Bank as a party in the suit — All others, brothers, mother or the persons who have rights and stake in the property and any decision in the matter being adverse impact on such persons, are not made party to the said civil suit — No reason for the plaintiff not to have added necessary parties when relief of declaration was sought, including the relief of setting aside sale. (See para 9)

2) Recovery proceedings — Attachment of property — Appellant aggrieved by the orders of Recovery Officer wherein her share in the property was also put on auction — There is an express bar of jurisdiction of Court in the scheme of the Act itself — Aggrieved person has remedy before the Tribunal or Appellate Tribunal — Claim of plaintiff of non-service of notice is factually incorrect — Since there is a machinery to take care of plaintiffs grievance and no excess of authority is highlighted the Civil Court rightly refused to entertain the suit. (See para 14)
Result : Appeal dismissed.

Kinnariben Shantilal Patel Through General Power of Attorney Vs. Rajmal Premchand Surana 2009 (9) LJSOFT (AUR) 107

Regulation Governing Hindu Temple (Devasthan) of Goa, Daman and Diu Act, 1933 — Article 71 — Temple — Putting up of gold Kalash — Collection from devotees. Resolution passed for putting up a gold Kalash on the temple.

Petitioner is stated to have collected gold to the extent of 6281 grams and cash of Rs. 1,32,25,038.96 from devotees — There were second thoughts and disputes upon the footing that the entire gold Kalash would not be put based upon the opinion of the metallurgist — Petitioner required lesser gold for the Kalash. — Extent of the gold as well as cash collected have not been returned to the devotees — Administrative Tribunal directed to stop work — Best possible mode of doing complete justice to all the parties would be to create options and opportunity for the devotees/Kulavis to be either repaid the amounts paid by them or utilising them in the way they would deem appropriate so as to remove the cause for complaint and the grievance of their trust having been breached — Petitioner directed to deposit Rs.1,32,25,038.96/- in this Court and call general body meeting of the Mahajans as well as Kulavis to put forth before them the amount deposited in the Court for deciding what they would require to do with the amount. (See para 10, 11)

Mahalsa Saunthan Mardol, Ponda Vs. Ajay G. Poi Raiturcar & ors. 2009 (9) LJSOFT (GOA) 78

Removal of Prisoners Order, 1965 — Maharashtra Prison Manual — Assault on prisoners — Fundamental rights of prisoners — Transfer of under-trial prisoner — Powers of jail authorities.

See Saeed Sohail Sheikh Vs. State of Maharashtra 2009 (9) LJSOFT (URC) 7

Right to Information Act, 2005 — Section 15(4) — Second Appeal — Administrative orders — Power of Chief Information Commissioner vis-a-vis State Information Commissioner.

Constitution of State Information Commission — Neither of the State Information Commissioner is subordinate to the Chief Information Commissioner — Quasi or judicial powers are equal but not the administrative — On administrative side the Chief Information Commissioner wields more power and has the statutory authority to manage the affairs of the Commission and to issue direction etc. — Chief Information Commissioner has right to decide which appeals are to be heard by whom — That is his statutory right and his prerogative under the statute — Respondent no.3 is bound to hear only those appeals which may be made over to him and cannot make a grievance for withdrawal of any appeal from him by the Chief Information Commissioner — Administrative orders issued u/s 15(4) by the Chief Information Commissioner cannot be faulted with — Preliminary objection raised by petitioners that the Regional State Commissioner could not hear the second appeal must be upheld and the order passed by respondent no.3 rejecting those objections ought to be set aside. (See para 12, 14, 15)
Result : Petition allowed.

Lokesh Chandra, I.A.S. Director (Transmission) Ministry of Power & anr. Vs. State of Maharashtra & ors. 2009 (9) LJSOFT (NAG) 26

Secondary Schools Code, 2006 — Regulation 2.13, 3.2, 7.1, 7.3, 7.6, 8.1 — Permission to start new school — Unauthorised Classes — Subsequent

recognition.

See Mankawati Shikshan Sanstha Vs. State of Maharashtra 2009 (9) LJSOFT (AUR) 176

Specific Relief Act, 1963 — Section 14 — Termination of contract — Grant of injunction — Interim reliefs.

See Maytas Infra Limited Vs. Utility Energytech and Engineers Pvt. Ltd. 2009 (9) LJSOFT 61

Specific Relief Act, 1963 — Section 16 — Suit for specific performance.

1) Suit for specific performance of the agreement of sale — Defendant No.1-Owner filed his written statement and admitted the claim of the plaintiff — Defendant No.1 is owner of the property and he is agreeable to a decree on admission being passed against him — Defendant No.2 is only developer of the property and is therefore the agent of defendant No.1 — Decree for specific performance passed against defendant No.1 will be fully binding on the defendant No.2 and also the defendant No.3 who claims through defendant No.2 — Impugned judgment and decree set aside — Suit of the plaintiff decreed. (See para 4, 5)

2) Bonafide purchaser — Evidence shows that defendant No.2 was present when payment was made by plaintiff to defendant No.1 — Also Defendant No.1 has made a clear statement that defendant No.2 was aware of the agreement between the plaintiff and defendant No.1 — No finding of collusion between plaintiff and defendant No.1 can be recorded in the face of the evidence on record — Finding of learned Single Judge about defendant No.2 being a bonafide purchaser without notice is recorded by ignoring material

piece of evidence on record and is liable to be set aside. (See para 5)

Result : Suit decreed.

Shrikant Vasudeo Bhole since deceased through LRs. Smt. Mangala Shrikant Bhole and ors. Vs. Satish Shankar Gupte and ors. 2009 (9) LJSOFT 162

Specific Relief Act, 1963 — Section 19 — Suit for specific performance — Impleadment of subsequent transferee — Declaratory relief — Requirement to pay Court Fees.

See Khanderao Bhujangrao Babar Vs. Bharatbai Shrimant Gomsale 2009 (9) LJSOFT (AUR) 137

Specific Relief Act, 1963 — Section 34 — Maharashtra Revenue Patels (Abolition of Office) Act, 1962 — Section 3 — Code of Civil Procedure, 1908 — Section 100 — Limitation Act, 1963 — Section 3 — Suit for possession — Limitation — Second appeal.

1) Suit for recovery of possession — Defendants contended they were heirs of last holder and land was granted to them by Collector after abolition of vatans under Vatan Abolition Act in 1965 and are in possession since then — Civil Court will not have jurisdiction to observe that the order of regrant was obtained by the appellant by practicing fraud — It was essential for plaintiff to get order of grant first set aside by establishing they were the rightful persons in whose favour an order of regrant could have been passed and then take a stand that the appellant was illegally holding the land and apply for possession — Finding of Additional District Judge that grant was obtained by Appellants/defendants by fraud is not sustainable. (See para 7)

2) Suit for recovery of possession — Land was granted to Defendants by Collector after abolition of vatans under Vatan Abolition Act in 1965 — Defendants were put in possession on 26-4-1966 — Suit ought to have been filed prior to 26-4-1978 — Learned Additional District Judge erred in granting concession by excluding the notice period of 4 months — Suit instituted on 30-6-1978 ought to have been treated as one beyond the period of limitation. (See para 10)

3) Second appeal — Court has to fix the points at the stage of admission which could be termed as substantial question of law — However if at the stage of final hearing of the appeal, if a point which is raised in the appeal memo but it is not treated as substantial question of law is placed before the Court for its consideration and if the Court hearing the second appeal would consider the said point and substantial question of law, it would not be proper to reject the hearing on the said point merely because at the stage of admission that point was not treated as substantial question of law. (See para 11)

Result : Appeal allowed.

Pandurang Doulu Patil Vs. Ramrao Dadu Patil since deceased by his LRs. 2009 (9) LJSOFT 92

State Financial Corporations Act, 1951 — Section 29, 30 — Default in payment of loan — Auction sale of properties — Sale of properties not subject matter of mortgage — Legality of.

Default in payment of loan — Rights of Financial Corporation — Statutory power vested in the Corporation must be exercised only in respect of the properties which were mortgaged — Appellant did not have any right to sell any property which was not the subject

matter of the deed of mortgage — Any action taken in that behalf must be held to be wholly illegal and without jurisdiction — Appellant was liable for payment of damages as had been opined by the courts below. (See para 17, 18) Result : Appeal dismissed.

Bihar State Financial Corporation Vs. Chhotanagpur Minerals and Ors. 2009 (9) LJSOFT (SC) 194

Succession Act, 1925 — Section 63 — Testamentary proceedings — Letters of Administration — Grant of — Execution of Will — Proof of.

1) Will — Services of an advocate are availed of in the matter of preparation of Will — Not necessary that in each and every case an advocate who prepared the Will is required to be examined — Non examination of advocate cannot be termed as suspicious circumstance — No adverse inference is required to be drawn against the plaintiffs. (See para 9)

2) Execution of will — Exclusion of wife, elder son and daughters — Deceased has clarified that his eldest Son with his family has separated and his wife and unmarried daughter stay with him separate from me against his wishes — Deceased has laid emphasis on the fact that they have not looked after or taken his care even though he was not keeping well therefore he did not desire to bequeath anything to them under his Will — Deceased has clarified that he had given enough to his married daughter at the time of her marriage and that is why he was not willing to give anything to her — Deceased was impressed by the fact that the younger son and daughter-in-law are taking his care and, therefore property was bequeathed to them — Frame of mind of the deceased was in consonance with the terms which are set out

in the Will — No reason to treat exclusion of his wife and others as suspicious circumstance. (See para 14 to 17)

3) Registration of Will — Role of sub-Registrar of Assurance — Services of sub-Registrar were secured and the endorsement on the Will shows that the job of registration was performed at the residence of the deceased — Will is properly executed that is to say it is executed by the deceased and duly attested by the attesting witnesses — Will cannot be discarded merely because the sub-Registrar has not performed his job properly. (See para 23, 24, 25)

4) Execution of will — No specific provision to hold that the doctor should have certified about the mental ability of the deceased to execute the Will — Defendants could not point out any material to show that the deceased did not possess necessary mental ability to mark the fitness — Though deceased was suffering from paralysis — Merely because the deceased was bedridden it cannot be said that he was not in sound state of mind — Same cannot be considered as something which would make the execution of the Will impossible — Stand of the defendants that the deceased did not possess proper frame of mind cannot be accepted. (See para 26)

5) Execution of will — Presence of son and daughter-in-law when the will was executed — Deceased was bedridden and must have sought the help of his son who was staying with him — Their presence have to be treated as natural — Role played by them cannot be considered as objectionable and that cannot be considered as suspicious circumstance. (See para 33)

Result : Accordingly.

Subhash Hiraji Jadhav (Since deceased) by LRs. Vs. Padmakar Hiroo Jadhav & ors. 2009 (9) LJSOFT 129

Succession Act, 1925 — Section 264, 265 — Letters of Administration — Cancellation of — Revocation of — Powers of Court.

1) Letters of Administration granted in favour of appellant — Respondent No.1 filed application for succession certificate under Indian Succession Act, claiming that she is legally wedded wife of deceased — Said application was allowed — She filed application before the Joint Civil Judge, Senior Division for revocation of order granting letter of administration in favour of appellants — Respondent No.1 filed Appeal before the District Judge which was allowed and the letter of administration was revoked being not in accordance with the law — Appellants who took stand before the Civil Judge, Senior Division that it has no jurisdiction to entertain the application for cancellation of letter of administration now cannot be allowed to change their stand — Once appellants have subjected to the jurisdiction of the District Judge in an appeal and contested the matter on merits it was not open for the appellants to say that the said Court has no jurisdiction to pass the impugned judgment. (See para 18, 19, 22)

2) District Delegates — Authority who delegates its original powers has jurisdiction to exercise original or appellate powers — District Judge who had delegated powers to the Civil Judge, Senior Division can himself exercise its original or appellate powers — Appeal filed by the respondent was rightly entertained and adjudicated by the District Judge. (See para 21)

Result : Appeal dismissed.

Rajendra s/o Dwarkadas Raisoni & ors. Vs. Sunita w/o Ashokkumar Raisoni & anr. 2009 (9) LJSOFT (AUR) 197

Transfer of Property Act, 1882 — Section 52 — *Development agreement* — *Temporary injunction* — *Frivolous proceedings* — *Costs* — *Doctrine of lis pendens*.

See Ramesh Bodhraj Nagpal (HUF) Vs. Prakashkaur Sardar Deelipsingh 2009 (9) LJSOFT (AUR) 198

Transfer of Property Act, 1882 — Section 52 — Code of Civil Procedure, 1908 — Order I Rule 10 — Order XXII Rule 10 — Subsequent purchasers — Impleading of party as defendants — Doctrine of lis pendens.

1) Suit for declaration of title and ownership — Petitioner claiming title over the property on the ground that he is the real owner and deceased Narayan was a Benamidar — During pendency of the suit the defendants transferred the property to defendant Nos.12 and 13 who filed an application before Trial Court to implead themselves as defendants — Original defendants may not have any interest in the litigation and it will be necessary to implead the respondent Nos.12 and 13 so that they may see that the suit is properly contested — Necessary to grant permission to respondent Nos.12 and 13 to be impleaded, so that the petitioner may not obtain a decree by collusion with other defendants — No fault found with the impugned order. (See para 5, 9, 11)

2) Doctrine of lis pendens applies only where the lis is pending before a Court — Pending the suit the transferee is not entitled as of right to be made a party to the suit though the Court has a discretion to make him a party — Transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral

— None of the pleas regarding purchase of property pending the suit without knowledge of rights of the petitioner or without the knowledge of the litigation or that they are the bona fide purchasers can be available to a transferee, pending litigation, in view of the provisions of Section 52 of T.P. Act. (See para 9, 10)

Result : Petition dismissed.

Satyanarayan s/o Swaroopnarayan Khandelwal Vs. Smt. Chandrakalabai w/o Ramssahay Khandelwal & ors. 2009 (9) LJSOFT (NAG) 148

Transfer of Property Act, 1882 — Section 54 — Immovable property — Proof of purchase.

Petitioner claim to be put in possession of the Suit premises by the owner/ builder — Documentary evidence shows that Defendant No.2 was really in tight circumstances as creditors were knocking at his door and he also owed moneys to other parties — Defendant No.2 had to surrender possession of the Suit premises for discharge of his liability — At that time that the Petitioner wanted to purchase the premises — Defendant No.2 entered into a kind of tripartite agreement under which he would surrender the Suit premises to the owner/ builder — Owner would agree to hand over possession to the Petitioner who would make payment of consideration to the owner — Defendant No.2 suppressed the Deed of Cancellation dated 24-12-2005 and also suppressed the letter of that date written by him to the owner — Production of original agreement by the petitioner as a further circumstantial evidence lends credence to his case — If the Petitioner was not a bonafide

occupant of the Suit premises he would not have had the original Agreement for Sale — Production by the Petitioner of the original receipts of MSEB soon after the purchase of the Suit premises for payment of the arrears of electricity as also for deposit or transfer to his name are further circumstantial evidence to prove his purchase and the subsequent possession — Allowing the Review Petition the Petitioner is allowed to continue in possession of the suit premises upon seeing his title. (See para 18, 19, 36, 37)

Result : Petition allowed.

Devilal R. Chhajed, Proprietor of Nakoda Trading Co. Vs. Smt. Sumati Wd/o. Raja Nadar & 3 Ors. 2009 (9) LJSOFT 178

Transfer of Property Act, 1882 — Section 58(c) — Code of Civil Procedure, 1908 — Order VI Rule 1 — Maharashtra Land Revenue Code, 1966 — Section 157 — Suit for redemption, possession and mesne profits — Nature of transaction — Interpretation of documents — Mutation entries — Second appeal.

1) Nature of transaction between the parties is of utmost importance — Nomenclature of the document cannot be said to be decisive — Not only nature of transaction as “mortgage” is mentioned in the document but redemption is also mentioned at the end of the document — Said document reflects the nature of transaction as mortgage and mortgage alone — Contention that transaction is a sale with condition of repurchase cannot be accepted to be a ground involving substantial question of law. (See para 16)

2) Rules of pleadings — Case of the parties has to be pleaded in its pleading and is a

foundation of the stance taken by the party — Facts stated in the pleading shall be confined to material facts alone — Parties are prohibited from pleading either evidence or provision of law — Parties are also not expected to travel beyond the pleadings. (See para 6)

3) Mutation entries do have a presumptive value u/s 157 of Maharashtra Land Revenue Code — Mutation entry, which is certified, has a rebuttable presumption alone — Mutation entries by themselves do not confer title or extinguish the title so far as immovable property is concerned. (See para 17)

Result : Appeal dismissed.

Eknath S/o Bandu Malve Vs. Somnath Bhagwat Malve 2009 (9) LJSOFT (AUR) 201

Transfer of Property Act, 1882 — Section 107 — Suit for possession — Issue of tenancy — Lease.

See Ramji Dhondji Dhumal Vs. Mahadu Jalbaji Dhumal 2009 (9) LJSOFT (AUR) 87

UCO Bank Officer Employees (Conduct) Regulation, 1976 — Rule 3 — Dismissal from service — Departmental enquiry — Principles of natural justice.

See P.A. Karkhanis Vs. Uco Bank 2009 (9) LJSOFT 38

Wealth Tax Act, 1957 _ Section 17(1)(a) _ Net wealth _ Trust Deed _ Right to purchase property _ Right or interest in property.

1) Trust Deed _ Right or interest in property _ Relevant part of the deed would become operational only on the death of settlor _ Settlor was alive on the date of the valuation _ Question of the assessee exercising his right

and purchasing the property for the pre-determined value could not have arisen and consequently could not have been treated as an asset for the purpose of calculating net wealth. (See para 5)

2) Trust Deed _ Right to purchase property on the happenings of certain events _ Clause did not confer any property right or interest in property _ Mere right to purchase may be for an ascertained price is not property or interest in property and could not have been added to the net wealth of the assessee. (See para 6, 7)

Result : Accordingly.

Ardeshir Behram Dubash Vs. Wealth Tax Officer 2009 (9) LJSOFT 180

Workmen's Compensation Act, 1923 — Section 4, 4-A (As amended by Act No.30 of 1995 w.e.f. 15-9-1995) — Employment injury — Compensation — Applicability of amendment — Retrospective effect of.

Claims in respect of death or permanent disablement resulting from an accident caused during the course of employment — Entitlement to compensation as enhanced by amendment to Sections 4 and 4A — Relevant date for applying amendment would be the date of accident and not the date of adjudication — Amendment made by Act No.30 of 1995 w.e.f. 15-9-1995 enhancing the amount of compensation and rate of interest cannot be made applicable to the claims arising out the accident caused prior to 15-9-1995. (See para 8)

Result : Appeal dismissed.

Smt. Shakuntala wd/o Mulchand Yadav & ors. Vs. Deputy Conservator of Forest & anr. 2009 (9) LJSOFT (NAG) 5

Workmen's Compensation Act, 1923 — Section 12, 30 — Workmen's Compensation Rules, 1924 — Rule 28 — Employment injury — Compensation — Principal employer — Commercial activity — Framing of issues — Absence of — Effect of.

1) Deceased was engaged as a mason by appellant who used to take contract of construction of well — Well was to be constructed for the respondent No.2 — While the work of construction of well was going on, the part of the well suddenly collapsed and deceased Santosh was buried under the debris and died of suffocation — Unless activity of the Principal is treated as commercial activity he cannot fall u/s 12 at all — Respondent No.2 had got dug the well in his private house for private use — Digging of well cannot be said to be a part of his business or trade — Respondent No.2 cannot be treated as a principal within the meaning of Section 12 — Trial Court rightly exonerated respondent No.2. (See para 11, 12)

2) Claim of compensation — Trial Court needs to frame issues and answer them — Object of framing issues is always to concentrate the attention of the parties to the real controversy between the parties and also as regards the burden of proof — However simply because the issues were not framed it cannot be said that there was no proper trial — Both the parties knew on what points they were at issue and have accordingly led the evidence and the Court in fact decided the matter — No need to remand the matter back to the Trial Court. (See para 5,10)

3) Appeal — Trial Court held that the claimant was dependent on the deceased and also found that wages were Rs.40/- per day — Said

findings are findings on facts — Not a case of findings being based on no evidence at all — Those findings of facts, have assumed finality — What can be urged is only substantial questions of law. (See para 14)

Result : Appeal dismissed.

Eknath P. Kamble Vs. Smt Janqui Nilu Kamble & anr. 2009 (9) LJSOFT (GOA) 144

Workmen's Compensation Act, 1923 — Section 30(2), 4-A (4-A (As amended by Act No.30 of 1995 w.e.f. 15-9-1995) — Employment injury — Quantum of compensation — Applicability of amendment — Relevant date of — Substantial question of law — Maintainability of appeal.

Claims in respect of death or permanent disablement resulting from an accident caused during the course of employment — Amendment made to section 4A w.e.f. 15.9.1995 enhancing the amount of compensation and rate of interest — Relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim — Appeal not maintainable as there is no substantial question of law. (See para 8, 9)

Result : Appeal dismissed.

Danial Nana Pathare Vs. Tilaknagar Industries Limited & another 2009 (9) LJSOFT (AUR) 109