

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**

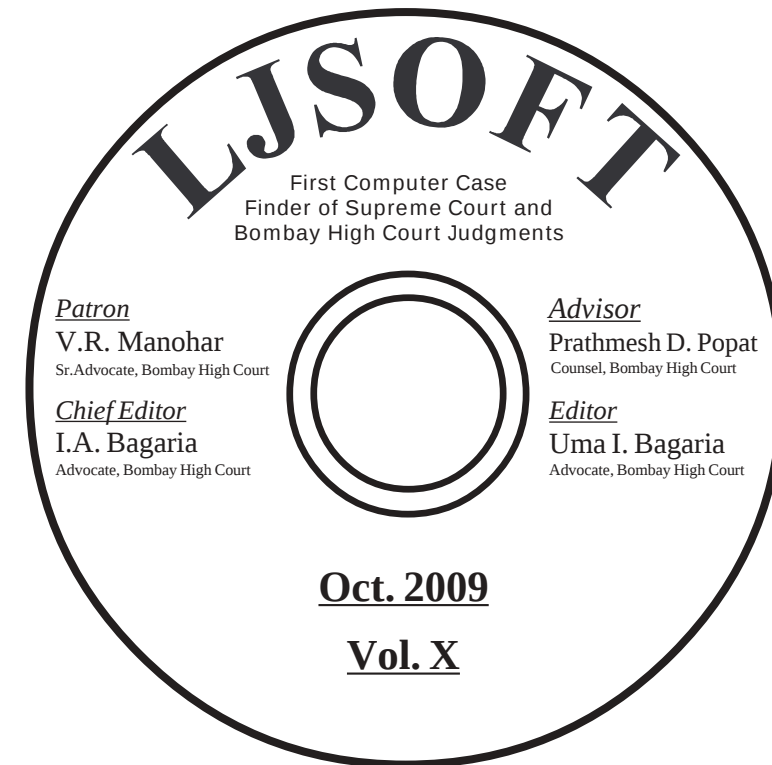
OCTOBER, 2009

LJSOFT

PART 10

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 October, 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 (10)



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 (OCT, 2009)

S. No.		LJSoft Citation	Digest Page No
	<u>A</u>		
1.	A.C.C. Limited Vs. Associated Cement Staff Union	155	79
2.	A.V.K. Poduval Vs. Chief General Manager, State Bank of India & anr.	61	41
3.	Abhijit Keshavrao Gavhankar & anr. Vs. State of Maharashtra (NAG)	34	34
4.	Additional Chief Executive Officer Vs. Additional Commissioner (NAG) .	151	82
5.	Adnan Sami Khan Vs. State of Maharashtra (URC)	105	32
6.	Agnello Caridade Lobo Vs. Sanjay A. Pednekar & ors. (GOA)	36	50
7.	Aires Rodrigues (Adv.) Vs. Subodh Kantak & anr. (URC) (GOA)	16	50
8.	Ajabrao s/o Kisanrao Ingole Vs. Dnyaneshwar Kisanrao Ingole (NAG)	125	23
9.	Amratlal Bhanji Laxman Vs. Kusum Prabhudas Laxman & Ors.	86	37
10.	Anil Vasant Mandke (Prof.) Vs. Indian Institute of Technology (NAG)	28	45
11.	Ankush Maruti Shinde and others Vs. State of Maharashtra (SC)	121	60
12.	Anna Kishanrao More Vs. P.R.Menon & Others (URC)	8	90
13.	Anna Pandurang Vaidya, since deceased, through LRs. & ors. Vs. Nagpur Agricultural Produce Market Committee & ors. (NAG)	97	98
14.	Anusaya Madhaorao Kapgate Vs. Baburao Pandurang Kapgate (NAG)	147	26
15.	Anushree Rajkamal Bajaj Vs. State of Maharashtra & Ors.	126	36
16.	Archana Hemant Naik Vs. Urmilaben I. Naik and Anr. (URC)	19	91
17.	Arvind Ganesh Karnik and ors. Vs. Reserve Bank of India and anr.	127	41
18.	Ashok Krishnaji Inamdar & anr. Vs. K.H. Ranganath & ors.	88	41
19.	Ashwin Neema Vs. Mangalam Clothes (Pvt.) Ltd. & Ors.	136	9
20.	Asstt. Engineer, Cl. II, Kukadi Left Canal & anr. Vs. Dattatraya Ganpat Kenge & ors. (AUR)	111	83
21.	Audumber alias Shubham Pednekar Vs. State of Goa & anr. (URC) (GOA) ..	21	31
	<u>B</u>		
22.	B.R. Mangalur Vs. Union of India & ors.	91	19
23.	Balasaheb Changdeo Ghule Vs. State of Maharashtra	38	62
24.	Bharat Rambhau Vairage Vs. State of Maharashtra	89	12
25.	Bhaskarrao Shankarrao Kulkarni Vs. State Information Commissioner & ors. (NAG)	123	92
26.	Bilal Bishad Shaikh Vs. State of Maharashtra	43	59
27.	Board of Trustees of Jawaharlal Nehru Port Trust Vs. Continental Float Glass Ltd. & ors.	142	46
28.	Britannia Industries Limited Vs. Union of India & ors.	48	95
	<u>C</u>		
29.	Carla Gannon & Anr. Vs. Shabaz Farukh Allarakhia & anr.	40	51

30.	Chaganlal s/o Girdhari Kundkar Vs. Parmatma Ek Sewak Nagrik Sahakari Bank Limited & ors. (NAG)	30	64
31.	Chanchal Choudhary Vs. State of Maharashtra & ors. (URC)	11	86
32.	Chandahas Narayan Shetty Vs. Smt.Misribai Ramkuvar Pandit & ors.	133	94
33.	Cimco Birla Limited Vs. Rowena Lewis	79	78
34.	Coca Cola India Pvt. Ltd. Vs. Commissioner of Central Excise	18	20
35.	Commissioner of Central Excise, Pune Vs. SKF India Ltd. (SC)	45	19
36.	Commissioner of Income-Tax Vs. Beirsdorf (India) Ltd. & anr. (GOA)	166	56
	<u>D</u>		
37.	Damodhar Laxman Chede Vs. State of Maharashtra (AUR)	74	84
38.	Deepak R. Raut Vs. Maharashtra Co-op. Marketing Federation Ltd. (AUR)	161	74
39.	Deeplakshmi Sachin Zingade Vs. Sachin Ramesh Rao Zingade (URC)	4	53
40.	Delta Engineers Vs. State of Goa & Ors. (SC)	131	64
41.	Devidayal Stainless Steel Ind.P.L. Vs. Ratnamma S. Panikar	154	66
42.	Dinshah Dhunjishah Gagrath (Dr.) Vs. Viloo Byramji Plumber and anr.	49	70
43.	Dnyandeo Dhandiba Jadhav & ors. Vs. State of Maharashtra	134	56
	<u>G</u>		
44.	Ganesh Bhandari Vs. State of Goa (GOA)	135	84
45.	Girreddi Suryanarayana Reddy Vs. Securities & Exchange Board of India ...	29	93
46.	Goa State Co-operative Bank Ltd. Vs. Mohan Surya Naik (URC) (GOA)	17	87
47.	Goaldas Deosthan, Bhidi Vs. State of Maharashtra & another (NAG)	129	71
48.	Gondia District Central Cooperative Bank Ltd. Vs. State of Maharashtra & ors. (NAG)	90	73
49.	Gorakh Sripati Mahingade & Ors. Vs. District Collector, Solapur & Ors.	124	67
50.	Govind @ Bhai Ganesh Tilve Vs. Vikram Kumar, District Magistrate, Sindhudurg & ors.	41	29
51.	GTC Industries Limited & anr. Vs. Coastal Roadways Limited	168	58
	<u>H</u>		
52.	Habibuddin s/o. Sadruddin & Ors. Vs. Amirbi w/o. Shujauddin Inamdar (deceased through Lrs.) & Anr. (AUR)	169	55
53.	Hansabai Shripati Bhosale Vs. Smt.Parubai Gopal Bhosale (Since deceased) through her LRs.	22	27
54.	Harsha d/o. Manoharlal Manshani Vs. State of Maharashtra & Anr. (NAG)	146	40
55.	Hidayatkhan Bismillakhan Pathan Vs. Vaijnath and others (SC)	116	17
56.	Hindustan Unilever Ltd. Vs. Hindustan Lever Employees Union & another .	67	65
57.	Hislop Education Society Vs. Presiding Officer, University College Tribunal, Nagpur & ors. (NAG)	32	42
	<u>I</u>		
58.	Indiabulls Financial Services Ltd. Vs. Loyal Motors Pvt. Ltd.	60	11
59.	Indian Tourism Development Corporation & Ors. Vs. Presiding Officer, 9th Labour Court, Mumbai & Anr.	75	43

<u>J</u>	
60. J. Marathe since deceased through his Lrs. & anr. Vs. P.V. Kaloke	144
61. Jagannath s/o Damaji Pol Vs. State of Maharashtra (AUR)	139
62. Jagdish Devilal Sutar (since deceased) by LRs. & Ors. Vs. Maharashtra Housing & Area Development Authority & Ors. (URC)	13
63. Jamdar High School Education Society Vs. Sunil Wasudeorao Bhoyar & anr. (NAG)	92
64. Jitendrasinh Mohansinh Parmar (Dr.) since deceased through his LRs. Vs. Ambaben Ramabhai Patel (widow) & ors.	130
65. Jyoti Bhimrao More Vs. State of Maharashtra (URC)	15
66. Jyotitai Vikas Gawande Vs. Additional Commissioner & ors. (NAG)	156
<u>K</u>	
67. Kailas Mahadeo Mhaske & Anr. Vs. Vasant Changdeo Gaikwad	58
68. Kanihyalal Hastimal Firodiya Vs. Vasantlal Hastimal Firodiya (died) through his legal heirs & anr. (AUR)	110
69. Kantilal S/o. Dhanrajji Ostwal Vs. Divisional Joint Registrar, Cooperative Societies, Nagpur & ors. (NAG)	85
70. Karbhari Dhondiba Rahane and others Vs. State of Maharashtra (AUR)	104
71. Karishma Consultant & anr. Vs. Om Prakash Agarwal & anr. (URC)	7
72. Kausarbag Co-op. Housing Society Ltd. Vs. State of Maharashtra (URC)	10
73. Keki Hormusji Gharda & ors. Vs. Mehervan Rustom Irani & anr. (SC)	107
74. Kiran Laxman Karhade Vs. Sub Divisional Officer, Degloor (URC) (AUR) ...	3
75. Kishor s/o Sukhdeo Walhekar Vs. State of Maharashtra & ors. (AUR)	165
76. Krishni Go Seva Sangh Malegaon Vs. State of Maharashtra & ors. (AUR)	87
77. Kuljinder Singh Ahluwalia Vs. Smt. Sandeep Kaur Ahluwalia & ors.	26
<u>L</u>	
78. Latabai w/o Jeevanrao Bodhankar since deceased through LRs. Vs. Trimbakrao Shriramrao Deshpande (AUR)	37
<u>M</u>	
79. M.B. Motwani Vs. UCO Bank & ors.	24
80. Maharashtra Navnirman Sena & ors. Vs. Union of India & ors. (URC)	5
81. Maharashtra State Electricity Board Vs. P.B. Salunke & anr. (AUR)	63
82. Maharashtra State Handloom Corporation Limited & anr. Vs. Krishna Shankar Kamble & ors. (NAG)	100
83. Maharashtra State Road Transport Corporation Vs. Shaikh Mehaboob Jainuddin & anr. (AUR)	83
84. Malti Rajesh Yawalkar & anr. Vs. Sagar Raghunathrao Kautkar (NAG)	52
85. Mangala w/o Sharad Mutha & ors. Vs. State of Maharashtra & ors. (AUR) ...	31
86. Mayuri d/o. Manohar Bende Vs. State of Maharashtra & Ors. (NAG)	148
87. Meghraj Sethi and Sons & Anr. Vs. Sunita Jitendranath & Ors. (URC)	12
88. Minaxi A. Pednekar Vs. State of Goa & anr. (URC) (GOA)	20
89. Misha M. Jashnani Vs. State of Maharashtra & Anr.	73

90. Modi Fibres Limited Vs. Modi Rubber Limited & ors.	47	37
91. Motilal Lingayya Lakekar Vs. State of Maharashtra & ors. (URC) (AUR)	1	42
92. Motiram Lorya Patil Vs. Tata Electric Companies & anr.	82	66
93. Municipal Council, Gondia & anr. Vs. Bhandara Zilla General Workers Union (NAG)	93	77
94. Mustaq Ahmed Mohammed Isak and Ors. Vs. State of Maharashtra (SC) ...	112	29
<u>N</u>		
95. Nasir Husain Films Pvt. Ltd. Vs. Saregama India Ltd. and anr. (URC)	172	9
96. Nava Bharat Press (Nagpur) Vs. P.P. Patil, Presiding Officer, Industrial Tribunal, Nagpur & anr. (NAG)	102	96
97. Networth Stock Broking Ltd. Vs. K. Vinaya Prasad S/o. K.S. Bhat	53	10
98. New India Assurance Co. Ltd. Vs. Smt. Rukhmabai wd/o Laxman Charde & ors. (NAG)	78	83
99. Nitin Laxman Taloskar Vs. State of Maharashtra & anr.	64	62
100. Northern Marine Management (India) Pvt. Ltd. & Anr. Vs. Municipal Corporation of Greater Mumbai & Ors. (URC)	14	84
101. NTPC Limited Vs. Reliance Industries Limited	25	23
<u>P</u>		
102. P.M. Ratnakar Vs. Uco Bank & ors.	62	96
103. Pandurang Atmanand Camotin alias Pramod Atmanand Kamat Vs. Sunivas Builders & anr. (GOA)	159	21
104. Paul Dias and Sons Vs. SDS Shipping Pvt. Ltd. (GOA)	171	87
105. Payal @ Sharinee Vinay Pathak (Re:) (URC)	9	52
106. Petine Shipping Inc. of Monrovia Vs. Minerals and Metals Trading Corporation of India Ltd. (SC)	137	9
107. Petroleum Employees Union Vs. Chief Labour Commissioner & ors.	70	95
108. Prabhakar Dhonge and others Vs. Harichandra s/o Santoshrao Aaswale and others (NAG)	132	17
109. Prakesh Ramchandra Kothavade Vs. State of Maharashtra & anr. (AUR) ...	160	32
110. Prasanna s/o Sudhakar Rao Deshmukh (Dr.) & ors. Vs. State of Maharashtra & anr. (AUR)	65	61
111. Praveen Bhatia Vs. Union of India & Ors. (SC)	115	7
<u>R</u>		
112. R.R. Tripathi (Advocate) Vs. Union of India & ors.	27	8
113. Rajendra Tukaram Ahirrao & ors. Vs. State of Maharashtra & ors. (AUR) ..	143	30
114. Rajiv Vyas Vs. Johnwin Groge Mandavalan & ors.	44	10
115. Ram Maruthi Pawar Vs. State of Maharashtra & Anr. (SC)	140	57
116. Ramchandra Krushnarao Pitale Vs. Scientific Cooperative Housing Society Ltd. & ors. (NAG)	77	72
117. Ramchandra Sitaramji Heda & anr. Vs. Union of India & ors. (NAG)	99	76
118. Ramkrishna Shivram Gadekar Vs. Board of Trustees of the Port of Mumbai & anr.	153	65

119. Ramkumar Vaidyanath Pal Vs. State of Maharashtra (NAG)	68
120. Ranjeet Sanghvi Vs. Commissioner of Customs (Adjudication)	56
121. Rashid s/o Shanmohammad Shaikh Vs. State of Maharashtra (NAG)	66
122. Ravi Development Vs. Shree Krishna Prathisthan & Ors. (SC)	109
123. Ravindra Ramchandra Tingare Vs. Ashwini Ravindra Tingare & anr.	72
124. Ravindra s/o Motiram Firake Vs. Janata Shikshan Mandal & ors. (AUR)	76
125. Regional Director, ESI Corporation Vs. Smt. Supriya S. Bandal & ors.	80
126. Reliance Communications Limited (RE:)	33
S	
127. Sachin Sahebrao Patil and others Vs. State of Maharashtra and ors. (AUR) .	163
128. Sadhana Shikshan Prasarak Mandal, Rui (Wai) & anr. Vs. State of Maharashtra & ors. (NAG)	98
129. Sanjay Jaganath Surve & Ors. Vs. State of Maharashtra & Ors.	114
130. Sarla Rashmikan Doshi and ors. Vs. State of Maharashtra and anr. (URC)	2
131. Satish Balkrushna Mundle Vs. Ramdas Pandurang Lunge & ors. (NAG)	84
132. Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd. Vs. Commissioner of Income-Tax & ors.	141
133. Satyanarayan Modulal Dayma Vs. State of Maharashtra (AUR)	170
134. Satyavativai wd/o Anantsingh Chauhan Vs. State of Maharashtra (NAG) ..	118
135. Savitribai A. Salvi Vs. Smt.Suman Navgire & Ors.	81
136. Shaikh Maqsood Vs. State of Maharashtra (SC)	119
137. Shankar Vishnu Sonar (Lohokare) since deceased by his LRs. Vs. Kusum Gajanan Pawar through her Mukhtyar & ors.	149
138. Sharad Jamnadarji Mor Vs. Arjun Yeshwant Dhanwatey & anr. (NAG)	54
139. Shashikant s/o Vishwanathrao Choudhari Vs. Sant Gadge Baba Amravati University & anr. (NAG)	113
140. Shashikant Girdhardas Bagdi Vs. Ratanlal Kanhaiyalal Rathi (NAG)	101
141. Sher Singh Vs. State of Goa (GOA)	150
142. Shobha Ashokrao Deshmukh Vs. Jagannath s/o Parshuram Shinde (AUR) ...	46
143. Shri Jagdamba Sahakari Sakhar Karkhana Ltd. Vs. Tahsildar Karjat, Dist. Ahmednagar & anr. (AUR)	122
144. Shri Shivaji Education Society Vs. Kumar Keshavrao Kale & anr. (NAG)	96
145. Shrikant R. Palkar Vs. Indian Airlines and Anr.	69
146. Shrikrushna Digambar Jadhav Vs. Additional Commissioner (NAG)	152
147. Sikka Papers Limited Vs. National Insurance Company Ltd. & Ors. (SC) ...	103
148. Smruti Pahariya Vs. Sanjay Pahariya (SC)	108
149. Sohel Mehaboob Shaikh Vs. State of Maharashtra (SC)	138
150. Special Land Acquisition Officer (I) Vs. Dilip Rajaram Nemade (AUR)	59

151. State of Goa Vs. N.S. Nayak & Sons (GOA)	35	9
152. State of Maharashtra Vs. Mehmuda Shikshan and Mahila Gramin Vikas Bahuudheshiya Sanstha & anr. (NAG)	39	85
153. State of Maharashtra Vs. Sujay Mangesh Poyarekar	42	63
154. Sudhakar Narayanrao Bharsakale Vs. Assistant Registrar, Co-op. Societies, Distt.Amravati & Ors. (NAG)	157	73
155. Sukhadeo Nimbaji Meshram Vs. Shobhatai Krishnarao Bagde (NAG)	57	13
156. Suzlon Infrastructure Ltd. Vs. Union of India & ors.	120	20
157. Syndicate Marine Enterprises Vs. Regional Director, Employees State Insurance Corporation & anr. (GOA)	158	48
T		
158. Tancom Electronics Vs. Bhartiya Kamgar Karmachari Mahasangh	167	78
159. Tulsiram s/o Jago Dudhkohale Vs. Union of India & anr. (NAG)	128	43
U		
160. Upendranath Chandrabhushan Chaube Vs. Mrs.Neeta Upendranath Chaube and anr. (URC)	55	28
161. Urvath Vargese Paul Vs. Shah Khimji Passoo since deceased by his heirs	94	24
162. Usha w/o Vinayak Bhagwat Vs. State of Maharashtra (NAG)	71	57
163. Uttamrao Shivdas Jankar Vs. Ranjitsinh Vijaysinh Mohite-Patil (SC)	106	92
V		
164. Vatsalabai Panditrao Lad & ors. Vs. State of Maharashtra & ors. (AUR)	162	80
165. Vijay Shrawan Shende & ors. Vs. State of Maharashtra & ors. (NAG)	117	49
166. Viral Filaments Ltd. Vs. State of Maharashtra & anr. (URC)	6	85
167. Vithal s/o. Hullaji Hivre Vs. Sumanbai w/o. Vithal Hivre (AUR)	51	54
168. Vithhal Dhondiba Chawan (Died) through LRs. Vs. Madhavrao alias Mahadev Tukaram Chavan & ors. (AUR)	23	70
W		
169. Western India Shipyard Ltd. Vs. Deekay Steels & ors. (GOA)	145	86
Y		
170. Yamunabai Purushottam Deogirikar & ors. Vs. Mathurabai Nilkanth Choudhari & ors. (AUR)	50	22
171. Yashwant Motiram Patel & anr. Vs. State of Maharashtra & ors. (NAG)	95	13
172. Yogesh Ramchandra Baldawa Vs. State of Maharashtra	164	33

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

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

Air Force Act, 1950 — Section 19 — Air Force Rules, 1969 — Rule 15 — Misconduct — Belated filing of property return — Compulsory retirement — Quantum of punishment — Judicial review — Scope of.

1) Appellant was officer in Air Force — Failure to submit the property returns within the prescribed period of six months — No return was filed during the course of enquiry and ultimately after show cause notice was issued it was filed — Order of compulsory retirement upheld. (See para 3, 16)

2) Word “misconduct” — Host of departmental instructions elucidate, amplify and provide guidelines regarding the conduct of the employees — However the range of activities are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed — Word “misconduct” not capable of precise definition — It receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty — Act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve. (See para 7 to 14)

3) Quantum of punishment — Power of the court to interfere with the quantum of punishment is extremely restricted — Only when the relevant factors have not been considered the Court can direct reconsideration or in an appropriate case to certain litigation, indicate the punishment to

be awarded; and that can only be in very rare cases. (See para 15)

Result : Appeal dismissed.

Praveen Bhatia Vs. Union of India & Ors. 2009 (10) LJSOFT (SC) 115

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 16(1) Third Proviso — Superannuation — Extension of service — Judicial review — Scope of — Public Interest Petition.

1) Petitioners challenging the extensions of the services of Chief Secretary of State of Maharashtra on the ground that the same is not in public interest — Proposal was preceded by a detailed Note describing details of entire projects and other need of the State which, according to the State, was full justification for getting approval of the Central Government for extension of service — Said reasons not unconnected with the service and affairs of the State and the wisdom of the State is based upon these detailed documents — Proposal has full justification and has been projected to be in public interest — Not a case where there was no material substantiated by facts and figures on the basis of which the Competent Authority had proposed to grant extension of service — High Court will not examine the aspect of justification of the proposal and public interest involved in it as an appellate body and would not interfere only on the ground that another view was possible — Scrutiny of administrative wisdom of the State in arriving at a conclusion per se would be beyond the scope of judicial review — Facts do not indicate that the decision taken is arbitrary, perverse or is contrary to the regulations — It completely satisfies the essentials of the third proviso to Rule 16(1) — Extension granted to the private Respondent cannot be termed as arbitrary,

without any reasonable cause and is not opposed to statutory or basic rule of law. (See para 33, 34, 37, 38)

2) Petitioners challenging the validity of Third proviso to Rule 16 as inserted vide Notification dated 30-11-2005 — There is a presumption in favour of validity of a Legislation — Opening words would raise a presumption in favour of the Notification that it was issued after consultation with the States — Onus to show that the Notification was issued without proper consultation was upon the Petitioners — Except making a bald statement in the Petition, no documents have been produced or even specific averments have been made in the Petition as to which of the States were not consulted — Said provision provides sufficient check and balance and inbuilt guidelines to the authorities exercising their discretion while granting or declining extension to an officer — Bare reading of the provisions makes it clear that it does not vest the Government with arbitrary or unguided power. (See para 17 to 22)

3) Judicial review — Administrative matters — By way of judicial review the Court is not expected to act as a court of appeal while examining an administrative decision — Soundness of decision taken by the Government is not to be examined but it would have to be seen whether the decision making process is just, fair and in accordance with law — Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides — Its purpose is to check whether choice or decision is made lawfully and not to check whether the choice or decision is sound — Power of judicial review need not be permitted to be invoked to protect private interest at the cost of public interest. (See para 11, 12)

4) Public Interest Petition — Question relating to the highest post in State administration and — Cause does not relate to the matters exclusively falling in the domain of a service jurisprudence but is related to matters of public importance — Post in question affects the entire administration of the State and larger public interest — Very note on proposal forwarded by the State shows the various public projects concerning security of the State and involvement of the interest of public at large in such affairs, which sufficiently indicates the significance of such Petition in the larger public interest rather than terming it as a mere service matter — Petition maintainable. (See para 35)

Result : Petitions dismissed.

R.R. Tripathi (Advocate) Vs. Union of India & ors. 2009 (10) LJSOFT 27

Arbitration Act, 1940 — Section 31(4) — Charter party agreement — Jurisdiction — Maintainability of petition.

Charter party agreement — Respondent filed petition before Delhi High Court for declaration that the nomination of arbitrator was valid — Petition was dismissed as infructuous on account of the death of nominated arbitrator — Delhi High Court did not retain any control over the said proceedings of the arbitrator — Also respondent did not file any application regarding appointment of another arbitrator in the Delhi High Court — Application filed before the Delhi High Court cannot be said to be a reference made u/s 31(4) — Under the agreement respondent has chosen Mumbai as the port of delivery — Bombay High Court had the jurisdiction in the Arbitration Petition as the goods were delivered at the Port of Bombay — High Court of Bombay is not correct in rejecting the Arbitration Petition on

the ground of lack of jurisdiction. (See para 17 to 20)

Result : Appeal allowed.

Petine Shipping Inc. of Monrovia Vs. Minerals and Metals Trading Corporation of India Ltd. 2009 (10) LJSOFT (SC) 137

Arbitration and Conciliation Act, 1966 — Section 7(4), 9 — Interim reliefs — Draft Assignment Deed — Arbitration clause — Enforceability of.

Dispute regarding exploiting the petitioner's works/ songs/ music/ lyrics, through or by way of ringtones/ ringtone down loadings — Issue regarding existence of an arbitral agreement — Various negotiations between the parties — Correspondence is in respect of exchange of documents as to an agreement which contains an arbitral clause — Independently there was no exchange of correspondence on the issue of an independent arbitral agreement — Though most of the material terms were settled but the major issue was not settled regarding payment of royalties for the past dues — There was no concluded agreement and merely because there was an arbitral clause in the documents exchanged would not result in holding that there was an contract containing an arbitral clause — Arbitral clause was not independent of the agreement to be entered into — Learned Single Judge rightly held that there was no binding arbitration agreement between the parties as non signing of the basic documents between the parties. (See para 14, 18, 19)

Result : Appeal dismissed.

Nasir Husain Films Pvt. Ltd. Vs. Saregama India Ltd. 2009 (10) LJSOFT (URC) 172

Arbitration and Conciliation Act, 1996 — Section 34, 37 — Setting aside of award — Term “Public Policy”.

Arbitration award — Question whether the act

of Arbitrator in granting amount in excess of contractual amount or failure to deduct escalation already paid was against public policy and constituted fraud — Term “public policy” was construed by learned District Court in the light of judgment of Apex Court in Renusagar Power Company case — In the subsequent Judgment reported in Oil and Natural Gas Corporation Ltd. v. SAW Pipes Ltd. (2003 (5) LJSOFT (SC) 7) Apex Court stated that narrower meaning given to term “Public Policy” in Renusagar Power Company case is required to be widened and if award is patently illegal it can be set aside — Matter remanded back for re-consideration. (See para 8, 15)

Result : Appeal allowed.

State of Goa Vs. N.S. Nayak & Sons 2009 (10) LJSOFT (GOA) 35

Arbitration and Conciliation Act, 1996 — Section 34(3), 37 — Limitation Act, 1963 — Section 5, 14 — Setting aside of award — Condonation of delay.

Arbitration petition — Contention that Petitioner got the knowledge of dismissal order dated 24/04/2004 only on receiving the summons on 02/01/2009 not acceptable as his advocate has full knowledge of the order — Even otherwise, that itself cannot be the reason to condone the delay Submission based upon Section 5 of Limitation Act cannot be extended in such matter — No reason or sufficient cause made out by the Petitioner to condone the delay — Even the pendency of the complaint against the Advocate for professional misconduct cannot protect or sufficient reason to condone the delay of this nature — Petition dismissed on the ground of delay. (See para 4, 5, 6)

Result : Petition dismissed.

Ashwin Neema Vs. Mangalam Clothes (Pvt.) Ltd. & Ors. 2009 (10) LJSOFT 136

Arbitration and Conciliation Act, 1996 — Section 9 — Interim reliefs — Cable channels and broadcasting services — Shareholders Agreement — “Non compete and non solicitation” clause — Breach of.

1) Shareholders Agreement — Formation of company to bring together a group of 18 odd cable operators and distributors — Agreement signed by approximately 15 distributor shareholders including the promoters — However it is nowhere to be found that if the said agreement is not signed by 18 distributors the said Agreement would be treated as incomplete or unenforceable — All the signatories had signed the said agreement by 10-9-2007 according to the definition of “effective date” the Agreement came into force for all intent and purposes from 10-9-2007 — Agreement stood concluded binding and enforceable and capable of being implemented, the moment it was executed — Any subsequent dispute or issue raised by respondent Nos.1 and 2 cannot affect the binding nature of the said agreement and it cannot be contended that the shareholders agreement is incomplete or is not concluded or is not enforceable or cannot be implemented — Said agreement is complete and binding between the parties and the arbitration clause is valid subsisting and binding between the parties. (See para 11 to 20)

2) Shareholders Agreement — Breach of “Non compete and non solicitation” clause — Respondent Nos.1 and 2 and other signatories had throughout carried on business inspite of the said clause and the petitioner had never objected to the same — Objection raised for the first time through this petition that too only on the ground that respondent nos.1 and 2 have incorporated a company, objects of which are identical — Few of the Cable Operators have

started distributing cable channels to various customers from the new company having 23 shareholders including respondent nos.1 and 2 — Even if the negative covenant is enforced against respondent nos.1 and 2, balance 21 shareholders shall continue to carry on the business — Order passed by High Court enforcing the negative covenant against respondent nos.1 and 2 will not be effective in substance and will not serve any purpose — Courts are not to pass orders which cannot be made effective or which would not serve the purpose behind passing of such orders — Petitioner not entitled to any relief as sought u/s 9 of Act of 1996. (See para 30 to 34)

Result : Petition dismissed.

Rajiv Vyas Vs. Johnwin Groge Mandavalan & ors. 2009 (10) LJSOFT 44

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

Member-Client Agreement — Buying and/or selling and dealing in securities and trading on the National Stock Exchange — Amount as claimed is due and payable by the Respondent — Petitioner had filed present petition u/s 9 for interim relief — While granting any protection or measure in such proceeding the Court needs to consider Order 38 Rule 5, Order 39 Rule 1 and 2 of CPC and Section 14 and 41 of Specific Relief Act — Sole Arbitrator has passed an Award and there is nothing to show that the Respondent has challenged the Award — As a prima facie case is made out and it is just and convenient to grant the prayer of securing the amount of Award. (See para 5 to 8)

Result : Petition allowed.

Networth Stock Broking Ltd. Vs. K. Vinaya Prasad S/o. K.S. Bhat 2009 (10) LJSOFT 53

Arbitration and Conciliation Act, 1996 — Section 9 — Code of Civil Procedure, 1908 — Section 20, 21 — Interim reliefs — Grant of injunction — Arbitration clause — Territorial jurisdiction.

Personal Loan Agreement — Parties agreed that any dispute between them shall be subject to the exclusive jurisdiction of the Courts or Tribunals at New Delhi — Part of cause of action arose in Mumbai — Where two or more Courts have jurisdiction to try a suit or proceeding, an agreement between the parties that the dispute shall be tried in one of such courts was not contrary to public policy — In view of the specific permissible agreement the Court at Delhi will have exclusive jurisdiction to try and decide the arbitration proceedings though part cause of action arose in Mumbai — Court at Mumbai has no jurisdiction to pass any Order even on this petition filed by Petitioner bank u/s 9 for interim reliefs.

Indiabulls Financial Services Ltd. Vs. Loyal Motors Pvt. Ltd. 2009 (10) LJSOFT 60

Arms Act, 1959 — Section 17 — Elections — Surrender of arms — Review of cases — Guidelines — Time-frame.

See Govind @ Bhai Ganesh Tilve Vs. Vikram Kumar 2009 (10) LJSOFT 41

Army Act, 1950 — Section 38(1), 40(a), 40(b) — Summary Court Martial — Dismissal from service — Cause of action — Territorial jurisdiction of High Court.

See Tulsiram Jago Dudhkohale Vs. Union of India 2009 (10) LJSOFT (NAG) 128

Banking Regulation Act, 1949 — Section 21 — Death of member — Transfer of interest. **See Gondia District Central Cooperative Bank Ltd. Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (NAG) 90**

Bombay High Court (Original Side) Rules, 1980 — Rule 399, 400 — Will — Revocation of probate — Limitation.

See Dr. Dinshah Dhunjishah Gagrath Vs. Viloo Byramji Plumber 2009 (10) LJSOFT 49

Bombay Highways Act, 1955 — Section 23(1), 24, 19-E — Constitution of India, 1950 — Article 226 — Road widening — Removal of encroachment — Notice of demolition — Powers of Highway Authority — Writ jurisdiction — Alternate remedy.

1) State Highway — Widening of road — Properties constructed in contravention of the building line — Pursuant to the powers conferred u/s 23(1) the Notice was issued for removal of the encroachments — Not the case of the petitioners that their construction had come up after obtaining the permission of the Highway Authority — Prima facie notice was within jurisdiction and cannot be said to be an arbitrary exercise of power and or in violation of the principles of natural justice and fair play — Notice cannot be said to be nullity at law which would result in invoking extraordinary jurisdiction of High Court. (See para 14, 16)

2) State Highway — Widening of road — Removal of encroachment — Notice issued u/s 23(1) — Dispute as to whether the lands of the petitioners would fall within the building line or control line will have to be decided along with other objections — These are questions of fact which cannot be decided by the High Court — Section 24 provides a remedy by way of appeal against a notice issued u/s 23(1) — No relief can be granted to the petitioners in view of alternate remedy available to the petitioners — However interim relief granted earlier continued in order to enable the petitioners to move the appellate forum, i.e. Highway Authority. (See

para 17, 18)

3) State Highway — Widening of road — Act of 1955 by itself is a self contained Code in the matter of acquisition of land for a Highway — Section 19E excludes the provisions of the Land Acquisition Act. (See para 13)

Result : Petition dismissed.

Satyanarayan s/o Modulal Dayma & ors. Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (AUR) 170

Bombay Municipal Corporation Act, 1888 — Section 317 — Ganpati and Durga festivals — Erection of temporary shed — Obstruction to flow of traffic.

Erection of shed / structures during Ganapati and Durga festivals to enable the stall owners to sell idols and other ancillary material — Municipal Corporation directed that while granting permission precaution should be taken that sheds are not permitted to be erected on public roads, public footpaths and persons applying for such permissions should get no objection certificates from the Health Department, Chief Fire Officer and Maharashtra Pollution Control Board — No shed may be permitted at the entrance and exit of the petitioner society and obstruct the shop premises in such a manner so as to cause obstruction to access of customers to the shop premises and deprive public from utilising public utility services like BEST Bus shelter / pole or State Road Transport stand and accordingly relocate the same. (See para 2)

Sanjay Jaganath Surve & Ors. Vs. State of Maharashtra & Ors. 2009 (10) LJSOFT 114

Bombay Police Act, 1951 — Section 56(1)(bb) — Externment order — Area of externment — Excessive order — Delay.

1) Externment order affects liberty of an

individual which is guaranteed by the Constitution of India — Activities of the petitioner are confined to jurisdiction of two police stations at Pune — Mere geographical proximity is no ground to extend the order of externment to another adjoining district in which there are no objectionable activities by the externnee — Nothing to show that there was necessity of extending the order to any other districts abutting the Pune district — Order extending to contiguous districts becomes excessive, it also shows non application of mind on the part of authority passing the order of externment. (See para 4, 5)

2) Externment order — Elementary principles of natural justice required the authority to specify and describe the specific districts or specific areas — Show cause notice suggested that the petitioner is proposed to be externed from Pune city and adjoining districts — However at some other place it is stated that the petitioner is proposed to be externed from Pune city and Pune district — Show cause notice can be interpreted in two different ways — Not possible for the petitioner to give effective reply to the show cause notice — There was a breach of principles of natural justice. (See para 4)

3) Externment order — Show cause notice was issued on 19-12-2007 and the order of externment was passed on 20-11-2008 — Total absence of any explanation for delay of eleven months — Considering the prejudicial activities of the petitioner the delay resulted in snapping the live link between the preventive action and allegations against the petitioner — Delay has vitiated the order of externment. (See para 6)

Result : Petition allowed.

Bharat Rambhau Vairage Vs. State of Maharashtra 2009 (10) LJSOFT 89

Bombay Prohibition Act, 1949 — Section 49 — Country Liquor Licence — Addition of partners — Transfer of licence — Inheritance of licence.

Licence for selling country liquor — Application was filed for transfer of said licence in the name of petitioner No.2- Company of which original licensee, Petitioner No.1 and Respondent No.5 were directors — Licence transferred upon certain conditions, namely, that original licensee should get larger share of profit; if the original licensee's relation with licence is severed, remaining two directors shall not have any right over the licence, and upon demise of original licensee, his heirs will get the benefits from the licence — No record to show as to how and why the said conditions were deleted after four days — This part of decision making process is shrouded in mystery and therefore, suspicious — Question as to whether respondent No.4 or the intervenor should inherit the licence may have to be considered by authorities concerned — Should there be no heir, principle of escheat may apply, but in no case can petitioners succeed to the licence held by the original licensee. (See para 18, 22, 24)

Result : Petition dismissed.

Yashwant S/o. Motiram Patel & anr. Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (NAG) 95

Bombay Public Trusts Act, 1950 — Section 2(13) — Public Trust — Applicability of R.I. Act — Term "Public authority".
See Bhaskarrao Shankarrao Kulkarni Vs. State Information Commissioner 2009 (10) LJSOFT (NAG) 123

Bombay Public Trust Act, 1950 — Section 70-A — Administration of public trust —

Elections — Suo moto proceedings — Jurisdiction of Charity Commissioner — Principles of natural justice.

1) Suo moto proceedings — Jurisdiction of the Charity Commissioner or an Appellate Commissioner to initiate a suo moto proceeding is limited — Although no period of limitation is prescribed but such power should not be exercised after a long time — Suo motu jurisdiction need not be exercised only because it would be lawful to do so. (See para 16, 17, 19)

2) Suo moto proceedings — Court of law or a superior Tribunal would not entertain an appeal or revision application wherein no effective order can be passed — For the said purpose not only the fact situation as was obtaining on the date of filing of the application shall be taken into consideration but also the events which took place subsequent thereto. (See para 17)

Result : Appeal allowed.

Hidayatkhan Bismillakhan Pathan Vs. Vaijnath 2009 (10) LJSOFT (SC) 116

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(g), 13(1)(l), 13(2) — Constitution of India, 1950 — Article 227 — Eviction proceedings — Bonafide requirement — Acquiring of alternative suitable accommodation — Comparative hardship — Concurrent findings of fact — Writ jurisdiction.

1) Plaintiff was staying in America for quite some time claiming possession of the suit premises so that when he returns to India, he could have an independent residence of his own for himself and his family — Other premises stood in the name of his mother; whereas the suit premises belonged to the Plaintiff — It was vaguely stated that Plaintiff would not return to India but the basis of such

assumption is not forthcoming — Nothing in the provisions of the Bombay Rent Act which would preclude the landlord, who has lateron acquired green card or citizenship of some other country, from invoking the ground of eviction u/s 13(1)(g) so long he is able to establish that the relationship of the parties still continue as that of landlord and tenant — Plaintiff entered witness box and categorically stated that he intended to return to India — Courts below upon evaluation of the rival evidence have concurrently found that the Plaintiff has established his bonafide and reasonable requirement — Judgment and Decree passed by the two Courts below for possession of the suit premises confirmed with costs. (See para 13, 16)

2) Acquiring of alternate accommodation — Defendant No.1 who is the contractual tenant has shifted to Sangli — Acquisition of another premises in some distant city, ipso-facto, does not mean alternative suitable accommodation — However it is to be further demonstrated that the tenant has shifted to his alternative accommodation with his family, so as to attract provisions of section 13(1)(l) — Family members, namely, the Defendant No.2 had come in the suit premises after Defendant No.1 had left for Sangli — Not a case of Defendant No.2 occupying the suit premises alongwith the Defendant No.1 — Contention that although the contractual tenant has shifted to Sangli for the good, his family members continued to reside in the suit premises would be devoid of merits. (See para 22)

3) Comparative hardship — Defendant No.2 is not the contractual tenant — He is only claiming through the Defendant No.1 the contractual tenant — It is the hardship of the contractual tenant which is to be born in mind — Contractual tenant has not entered the witness box to establish the fact that he would

suffer greater hardship — Issue will have to be answered against the contractual tenant. (See para 18)

4) Comparative hardship — Defendants expected to start looking for alternative accommodation immediately on receipt of the notice to vacate but continued to do so inspite of institution of the suit and even till recording of evidence. (See para 21)

5) Eviction proceedings — Concurrent findings of fact — Assuming that there is some error here or there, that cannot be the basis to interfere in writ jurisdiction — View taken by the two Courts below is just and proper and cannot be said to be perverse, manifestly wrong or error apparent on the face of the record — View so taken needs no interference at all keeping in mind the parameters for interference in exercise of writ jurisdiction. (See para 8, 12)

6) Eviction proceedings — Other premises stood in the name of mother — After demise of his mother plaintiff allowed the said premises to be transferred in the name of his younger brother — Plaintiff already got his full share of suit flat and relinquished his interest in the other flat in favour of his younger brother as per the family arrangement — Plaintiff has done that with a view to amicably resolve family matters after the demise of his mother — Said arrangement is quite natural and reasonable and the genuineness thereof cannot be doubted — Factum of Plaintiff relinquishing his right in respect of another flat in favour of his younger brother cannot be the basis to doubt the bonafide and reasonableness of the requirement of the Plaintiff in respect of the suit premises. (See para 10)

Result : Petition dismissed.

J. Marathe since deceased through his Lrs. Vs. P.V. Kaloke 2009 (10) LJSOFT 144

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(2), 12(3)(a), 15 — Transfer of Property Act 1882 — Section 106 — Eviction proceedings — Arrears of rent — Transfer of running business — Eviction of transferee/assignee — Service of notice.

1) Suit for possession — Suit premises let out to defendants 1 and 2 for running laundry business — Defendants 1 and 2 transferred the running business alongwith the stock-in-trade and goodwill thereof in favour of the partnership firm of which defendant No.3-Petitioner was one of the partner — Courts below held that such transfer/assignment of a running business was permitted by the provisions of Section 15 and the defendant no.3 cannot be labelled as trespasser or an unlawful sub-tenant but has acquired the status of a tenant within the meaning of Section 5(11)(aa) — Said finding not challenged by plaintiff and has been allowed to become final — Even though plaintiff got ejectment decree against the defendants 1 & 2-the head tenants on the ground of default but that decree will be of no avail against the assignee-defendant no.3 as lawful demand notice was not addressed to transferee/assignee — Suit for possession against defendant no.3 on the ground of arrears of rent could not have proceeded in absence of issuance of a valid demand notice against him — Although decree would stand confirmed as against defendants 1 & 2 the same will have to be overturned in so far as petitioner-defendant no.3. (See para 10, 19)

2) Suit for possession — Service of notice — Where the tenant happens to be an assignee who is in possession of the suit premises in his own rights on account of a valid assignment and is allegedly in arrears of rent, a demand notice u/s 12(2) must be given to

him as well — Demand notice addressed to original tenants and at the end of the notice it is mentioned that copy is marked to transferee/ assignee — Forwarding of demand notice to transferee/ assignee which was addressed to original tenant does not fulfil the mandatory requirement of due service of a demand notice on transferee/ assignee — Requirement of Section 12(2) is not a mere formality but it is a mandatory provision — In absence of demand notice the question of instituting ejectment suit against transferee/ assignee on the ground of arrears of rent does not arise at all. (See para 10)

3) Adverse findings on the ground of unlawful subletting — Landlord failed to appeal against that part of the decree or object thereto and permitted the same to achieve finality — Such party cannot be heard so as to reverse the finding recorded by the two Courts below to his own advantage to support the decree for eviction passed on the ground of arrears of rent. (See para 13, 14)

Result : Petition allowed.

Shankar Vishnu Sonar (Lohokare) since deceased by his LRs. Vs. Kusum Gajanan Pawar through her Mukhtyar-Chandrakant Khanderao Pawar & ors. 2009 (10) LJSOFT 149

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 36(1), 120(e) — Recovery of possession of land — Procedure of — Summary jurisdiction.

Petitioner is the son of erstwhile tenant — Application was filed u/s 120(c) for recovery of possession — It is not an admitted position that the petitioner was dispossessed after the land vested in him — Question whether the respondent is in possession in terms of compromise could not have been decided in

the summary jurisdiction u/s 120 — Would not be permissible to conclude ex-facie that respondent's possession was unauthorised — Refusal by the Sub-Divisional Officer to exercise discretionary powers u/s 120(c) left undisturbed by MRT cannot be faulted. (See para 11)

Result : Petition dismissed.

Sukhadeo s/o Nimbaji Meshram Vs. Smt. Shobhatai w/o Krishnarao Bagde 2009 (10) LJSOFT (NAG) 57

Bombay Village Panchayats Act, 1958 — Section 14(1)(g), 16(2) — Disqualification of Sarpanch.

1) Disqualification of Sarpanch — Husband of petitioner had withdrawn the amount from the bank from Gram Panchayat Account — Said amount was deposited with the Secretary of Gram Panchayat and were spent for the purpose for which they were withdrawn — Merely because it is drawn in favour of petitioner that by itself would not attract disqualification u/s 14(1)(g) unless appropriate allegations are made and substantiated — No allegation made by the respondent no.3 that any share or interest of the petitioner or her husband in the work or contract done by any party for Gram Panchayat — As such allegations are missing much less for want of proof of such allegations no inference against the petitioner can be drawn — Remote unsubstantiated possibilities cannot be considered for inviting liability of disqualification — Though handing over the cheques to the husband of the petitioner for withdrawing the amount cannot be treated as a permissible in the administration of the Gram Panchayat and has to be deprecated — However considering object and scope of section 14(1)(g) it is not possible to hold that the allegations made by respondent no.2 in his

complaint are sufficient enough to attract the disqualification — Impugned order quashed and set aside and it is held that the petitioner has not incurred any disqualification u/s 14(1)(g). (See para 10, 11, 19, 21)

2) Disqualification of Sarpanch — Fresh case for disqualification of the petitioner in respect of the allegations of the action of her husband in the work done by one of the suppliers cannot be allowed to be made out at this stage in this petition. (See para 20)

Result : Petition allowed.

Jyotitai Vikas Gawande Vs. Additional Commissioner, Amravati Division & ors. 2009 (10) LJSOFT (NAG) 156

Bombay Village Panchayats Act, 1958 — Section 35(2) — Bombay Village Panchayat Sarpanch and Up-sarpanch (Motion of No Confidence) Rules, 1975 — Rule 2(2) — No confidence motion — Non-supply of copy.

No Confidence Motion against Sarpanch — Non-supply of the copy of No Confidence Motion — Provisions of Rule 2(2) are directory — Action of No Confidence Motion is not a punitive action — No necessity to give opportunity of hearing as it is required to be given in the matter where punitive action is sought to be taken — Some opportunity given to the Sarpanch to explain his side when No Confidence Motion is moved against him would suffice. (See para 11, 12)

Result : Petition dismissed.

Shrikrushna s/o Digambar Jadhav Vs. Additional Commissioner, Amravati and ors. 2009 (10) LJSOFT (NAG) 152

Bombay Village Panchayats Act, 1958 — Section 39(1), 124, 125 — Maharashtra Village Panchayat (Payment of Lump Sum Contribution by Factories) Rules, 1961 —

Rule 3, 4, 6, 7 — Levy of taxes and fees — Causing of financial loss — Disqualification.

Industrial Unit established in the Gram-panchayat area — Gram-panchayat passed a Resolution agreeing to take from the said Company a lump sum contribution in lieu of taxes — Allegation of causing financial loss to the Gram-panchayat — Agreement entered into between the factory and Grampanchayat would always be subject to sanction of the Government — There could be no concluded contract between the factory and the Gram-panchayat which either party can enforce — Contract does not assume finality and the Gram-panchayat is not bound to act upon it, nor can the factory enforce it — Government had every right to refuse sanction which would have rendered resolution and the agreement non est — If the Government has not as yet accorded sanction the agreement as well as the Resolution have no efficacy — Cannot be said that due to this resolution and execution of the agreement any loss is caused to the Gram-panchayat — Gram-panchayat can still proceed u/s 124 — Petitioners cannot be said to have caused any loss to the village Panchayat and they could not incur any disqualification u/s 39 — Impugned orders quashed and set aside. (See para 8)

Result : Petition allowed.

Prabhakar Dhone and others Vs. Harichandra s/o Santoshrao Aaswale and others 2009 (10) LJSOFT (NAG) 132

Carriers Act, 1865 — Section 8, 9, 10 — Contract Act, 1872 — Section 73 — Transporting contract — Claim of damages — Liability of common carriers — Service of notice.

1) Contract of transporting the transformer — While unloading the transformer within the

premises of Railway Station the transformer had toppled down and got damaged — Liability of a common carrier under the Carriers Act is that of an insurer — Negligence on the part of the carrier need not be established by complainant-owner of the goods — General principle in cases of tortious liability that the party who alleges negligence against the other must prove the same has no application to a case covered under the Carriers Act — Circumstances indicate that defendant No.1 was negligent in handling the transformer which was a very heavy article and in any case he is liable u/s 8 and 9 of Carriers Act — Trial Court erred in not holding defendant No.1 liable for his negligence as a transport contractor. (See para 9, 10, 11)

2) Contract of transporting the transformer — Claim of damages — Notice of loss or injury is to be given within six months — However Section 10 of Carriers Act does not require the actual intimation of amount claimed but mere intimation of accident and demand of damages that may be accrued. (See para 16, 17)

Result : Accordingly.

Maharashtra State Electricity Board Vs. P.B. Salunke & anr. 2009 (10) LJSOFT (AUR) 63

Carriers Act, 1965 — Section 10 — Code of Civil Procedure, 1908 — Order XXIX Rule 1 — Damage of goods — Claim of damages — Negligence — Proof of — Non-service of notice — Verification of plaint.

1) Suit for recovery of damages — Suit filed by company being vendors of the goods alongwith the Insurance Company as a subrogee — Plaint ought to have been signed by the officer who falls in the category mentioned in Order XXIX Rule 1 of CPC —

For Plaintiff No.1 the Plaint is signed by the officer of Plaintiff No.2 — No evidence placed before the Court to show that the person who has signed the plaint as also the person who declared the plaint fall in that category — Witness admitted in the cross-examination that she does not know who has declared the plaint — Plaint not signed or affirmed by the competent person as is expected under Order XXIX Rule 1(c) of CPC. (See para 12, 13)

2) Claim of damages — Goods entrusted with the Defendants for transportation delivered in a damaged condition — Damage certificates are without prejudice — Use of the terminology 'without prejudice' shows that the Defendants had not produced clean damage certificates — Defendants had merely given certificates to show that certain quantity of the cartons were found in a damaged condition leaving the question open as to how they were damaged and who was responsible for the damage — There is no admission on the part of the Defendants to show that they were negligent in handling the goods — It was necessary for the Plaintiffs to lead evidence to show that the Defendants were negligent in handling the goods — Plaintiffs failed to show that the Defendants were responsible for causing damage to the suit goods. (See para 16, 17, 18)

3) Claim of damages — Goods entrusted with the Defendants for transportation delivered in a damaged condition — In view of Section 10 of Carriers Act notice ought to have been issued by Plaintiff No.1 or Plaintiff No.2 as the alleged subrogee — Notice issued by the purchaser cannot be used by the Plaintiffs for the purposes of claiming damages — Institution of suit without complying with the precondition regarding issuance of notice is not maintainable. (See para 20)

Result : Suit dismissed.

GTC Industries Limited & anr. Vs. Coastal Roadways Limited 2009 (10) LJSOFT 168

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 16 — Central Civil Services Conduct Rules, 1964 — Rule 3(1) — Constitution of India, 1950 — Article 226, 227 — Departmental enquiry — Nature of penalty — Writ jurisdiction.

1) Petitioner working as J.T.O. charged for misconduct of removing scrapped cables unauthorisedly without any valid gate pass — Enquiry officer after establishing the involvement of petitioner found that the petitioner failed to maintain absolute integrity, devotion to duty and his action was unbecoming of a Government servant — Disciplinary authority accepted the report of the enquiry officer and passed an order of withholding of two increments with cumulative effect — In a departmental enquiry, strict proof of evidence, like the criminal trial, is not necessary — Appropriate reasons have been given by the disciplinary authority — Disciplinary authority, appellate authority and the Tribunal have concurrently found that on the basis of evidence on record, the petitioner has committed misconduct — Contention that this is a case of no evidence cannot be believed and the said contention is rejected. (See para 6)

2) Departmental enquiry — Enquiry officer was appointed, petitioner was given opportunity to defend his case, witnesses were examined — Procedure for inflicting major penalty was followed — Simply because initially in the memorandum reference is made to Rule 16 of the Rules, 1965 for minor penalty, it cannot ultimately vitiate the final order of withholding of two increments with

cumulative effect which can be said to be a major penalty — Cannot be said that any prejudice has been caused to the petitioner. (See para 7)

3) Writ jurisdiction — While deciding the petition under Articles 226 and 227 of the Constitution of India High Court cannot re-appreciate the evidence and give its own finding as if deciding a regular appeal against the penalty order. (See para 6)

Result : Petition dismissed.

B.R. Mangalur Vs. Union of India & ors. 2009 (10) LJSOFT 91

Central Excise Act, 1944 — Section 11A, 11AA, 11AB, 11AC — Short levy of duty — Recovery of — Interest on delayed payment of duty — Liability to pay interest.

Respondent-assessee revised the price of goods with retrospective effect — Assessee demanded from its customers the balance of the higher prices and issued to them supplementary invoices — Assessee also paid the differential duty on the goods sold earlier — Considering the demand from customers the balance of the higher prices it follows that at the time of sale the goods carried a higher value and those were cleared on short payment of duty — Differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts — It was a case of short payment of duty though indeed completely unintended and without any element of deceit etc. — There is no question of imposition of any penalty but the payment of differential duty came u/s 11A(2B) attracted levy of interest u/s 11AB — Impugned judgments and orders set aside and the order passed by the Assistant Commissioner is restored. (See para 11, 14, 15)

Result : Appeal allowed.

Commissioner of Central Excise, Pune Vs. SKF India Ltd. 2009 (10) LJSOFT (SC) 45

Central Excise Act, 1944 — Section 35-C — Customs Act, 1962 — Section 129-C — Procedure of Appellate Tribunal — Difference of opinion by two members — Rectification of mistake — Inherent jurisdiction of CESTAT.

1) In an appeal preferred by the petitioner there was difference of opinion between two members — Bench is bound to refer the points of difference for determination and get answered the said points by a third member — There have been findings on some of the submissions and in respect of some others both the members have not recorded their findings — Application for rectification would be maintainable even when a reference is made to a Member — Court or tribunal in such case has an inherent jurisdiction to decide an application for rectification so that the real controversy in issue is decided and/or referred if there be any difference of opinion amongst the members to a third member — Power to do procedural justice inhere in every Court or tribunal — Court or Tribunal in deciding an appeal have to frame points for determination which would be relevant for answering the contrary in appeal — Application filed by the petitioners directed to be heard according to law and till such time, the third Member is directed not to proceed to answer the points raised. (See para 17 to 25)

2) Appeal — Difference of opinion between two members — Once there be two orders it is not possible to say that they are merely opinions — These are two distinct judgments which on account of difference in answer to the points raised, the members differ on the reliefs to be granted and as such is not a final decision — Contention argued on behalf of

the revenue that these being merely opinions the application for rectification is not maintainable cannot be accepted. (See para 21)

Result : Petition allowed.

Suzlon Infrastructure Ltd. Vs. Union of India & ors. 2009 (10) LJSOFT 120

CENVAT Credit Rules, 2004 — Rule 2(1) — Service Tax — CENVAT — Term “Input service” — Advertisement and sales promotion activities.

1) Appellants manufacturing non-alcoholic beverage bases (concentrates) and sell it to the bottling companies who in turn sell the aerated beverages manufactured from the concentrates — Advertisement expenses incurred by appellant form part of the sale price of concentrates on which duty has been paid — Excise duty and service tax are value added taxes and they are consumption taxes — Consumption tax derives its name from the fact that tax burden is ultimately borne by the final consumer — Business does not bear the burden of the tax since the business are allowed to take credit of tax paid on inputs supplied/received by them — If Cenvat is denied to the input service received by the assessee they will become burden to the assessee which is against the very grain or principle of VAT being a consumption tax — Service tax paid on expenditure incurred by the assessee on advertisements sales promotion, market research will have to be allowed as input stage credit (See para 37, 38, 43, 44)

2) Whether the advertisement or sales promotion of aerated waters undertaken by manufacturer of concentrate is covered by the inclusive part of the definition of “input service” contained in Rule 2(1) of the CENVAT

Credit Rules? (Yes) (See para 27, 44)
Coca Cola India Pvt. Ltd. Vs. Commissioner of Central Excise 2009 (10) LJSOFT 18

Code of Civil Procedure, 1908 — Impleading of party — Leading of further evidence.

Suit for declaration — Respondent was added as a party defendant after the affidavit-in-lieu of examination-in-chief of the witness of the petitioners was filed — Respondent No.3 was permitted to file written statement — However 3rd respondent did not step into witness box and the petitioners could have confronted her with the documents which now they are seeking to produce to falsify the case of the 3rd respondent — Trial Court ought to have given an opportunity to the petitioners to file further affidavit in lieu of examination-in-chief of their witness and to produce the documents — Prejudice, if any, caused to the 3rd respondent compensated by ordering payment of costs quantified at Rs.5,000/-. (See para 4, 5)

Result : Petition allowed.

Jagdish Devilal Sutar (since deceased) by Smt.Bhagwanti Jagdish Sutar & Ors. Vs. Maharashtra Housing & Area Development Authority & Ors. 2009 (10) LJSOFT (URC) 13

Code of Civil Procedure, 1908 — Order I Rule 3 — Evidence Act, 1872 — Section 91, 92 — Sale of flat — Delivery of wrong flat — Proof of — Non-joinder of necessary parties.

1) Agreement for sale of flat — Plaintiff contended the defendant No.1-BUILDER changed flat which was agreed to be sold to him — Further contended that the flat which was agreed to be sold to him has been handed

over to defendant No.2 — Held that agreement of defendant No.2 was prior in time — Other three flats on the second floor were already sold and the remaining one flat was agreed to be sold to the plaintiff and there has been no mistake regarding identity of the flat — Fact of keeping the luggage and the articles in the flat after taking the keys clearly suggests that the plaintiff did take the possession of the flat consciously and cannot now resile from that position — Plaintiff not entitled to any kind of relief much less specific performance. (See para 8, 9, 11, 13)

2) Agreement for sale of flat — Plaintiff contended that flat which was agreed to be sold to him has been handed over by the defendant No.1-Builder to defendant No.2 — However the said Agreement in favour of the defendant No.2 is a joint agreement — Wife of defendant No.2 is also a co-purchaser or a contracting party — Suit could not be decided finally and effectually without the presence of the wife of the defendant No.2 — Suit is bad for non-joinder of necessary parties. (See para 13)

Result : Appeal dismissed.

Pandurang Atmanand Camotin alias Pramod Atmanand Kamat Vs. Sunivas Builders & anr. 2009 (10) LJSOFT (GOA) 159

Code of Civil Procedure, 1908 — Order I Rule 10(4) — Motor accident — Claim of compensation — Service of summons.

See Satish Balkrushna Mundle Vs. Ramdas Pandurang Lunge 2009 (10) LJSOFT (NAG) 84

Code of Civil Procedure, 1908 — Order II Rule 2(3) — Section 11 — Evidence Act, 1872 — Section 115 — Limitation Act, 1963 — Article 59, 109 — Omission to sue for

certain reliefs — Second suit — Maintainability of — Doctrine of “Res judicata” — Principle of “Issue estoppel” and “Rule of estoppel” — Distinction between.

1) Doctrine of res judicata — Omission to sue for one of the several reliefs, arising out of the same cause of action, would create legal bar in filing second suit for the relief which was omitted in the earlier suit — In the earlier suit Appellants omitted to seek declaration that the sale-deeds were invalid and also omitted to seek relief for setting aside the sale transactions — They also omitted to specifically seek alternative relief of partition — Same cause of action cannot be permitted to be minced and multiple suits cannot be allowed when the identity of the cause of action is same — No leave was obtained in the earlier suit to sue for declaratory relief or for relief of partition — Omission to seek above reliefs in the earlier suit would operate as ‘bar’ as enumerated under Order II Rule 2 of CPC — Suit is barred by principle of ‘res judicata’ and the first Appellate Court was right in giving such a finding. (See para 25, 33, 34)

2) Limitation — Setting aside the sale transactions sought after period of three years from date of the transaction and that the relief of possession is claimed after twelve years of the delivery of possession to the contesting defendants in respect of the suit lands — Transfers have not been challenged within the period of limitation in view of Article 109 of the Limitation Act — Though it is contended that the sale-deed executed in favour of the defendant No.2 is vitiated by fraud — Assuming that the suit is covered by Article 59 of the Limitation Act, then also, it is barred by limitation. (See para 37)

3) Distinction between doctrine of ‘res

judicata’, principle of ‘issue estoppel’ and ‘rule of estoppel’ — Doctrine of res judicata creates legal embargo on hands of the Court to a judicial determination of deciding the same question over again even though the earlier determination may be demonstrably erroneous — Determination of the issue in the same set of facts in the previous lis between the parties would give rise to an issue estoppel and it operates in any subsequent proceedings between the same parties — Doctrine of res judicata is based on rule of procedure — However doctrine of mere estoppel is based on rule of evidence — In case of estoppel u/s 115 of Evidence Act there is embargo on the party to plead or prove a particular fact whereas in case of res judicata, the prohibition is operative against the Court to deal with the same kind of issue again and again. (See para 29)

Result : Appeal dismissed.

Yamunabai Purushottam Deogirikar & ors. Vs. Mathurabai Nilkanth Choudhari & ors. 2009 (10) LJSOFT (AUR) 50

Code of Civil Procedure, 1908 — Order VI Rule 17 — Maintenance — Quantum of — Subsequent events — Amendment of pleadings.

See Ravindra Ramchandra Tingare Vs. Ashwini Ravindra Tingare & anr. 2009 (10) LJSOFT 72

Code of Civil Procedure, 1908 — Order VI Rule 17 — Amendment of written statement — Delay — Subsequent events.

1) Suit for specific performance — Contract for supply of gas — Respondent seeking amendment to written statements on the ground that certain events had transpired after filing of the written statement — All the decisions of the authorities concerned

including the Government of India sought to be introduced by way of amendment are of subsequent period — Decisions of Empowered Group of Ministers have a bearing on the concept of gas utilization policy which in turn is a general and specific policy in regard to the utilization as well as pricing of the natural gas — Certain issues were framed and evidence by way of affidavit had been filed — Even assuming that this as commencement of the trial even then there is sufficient ground that the Applicant could not bring the facts on record despite exercise of due diligence inasmuch as practically all the events occurred subsequent to the filing of the written statement — Applicants have acted with due diligence and bonafidely — Learned Single Judge has exercised its judicial discretion and no error found in the impugned order. (See para 13, 14)

2) Amendment of written statement — Question of delay should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded — Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof — No strait-jacket formula can be laid down — Mere delay cannot be a ground for refusing a prayer for amendment. (See para 7)

3) Amendment of written statement — Respondent had taken the stand that there was no concluded subsisting agreement between the parties — By way of amendment, the Respondent wants to add an alternative plea on the basis of the same cause of action within the ambit and scope of the existing suit and by referring the subsequent events that even if there was a contract it stands frustrated as it is incapable of being performed because of

these subsequent events — It is open to the parties to raise even mutually inconsistent pleas and if the relief could be founded on the alternative plea, it could be granted. (See para 11, 12)

Result : Appeal dismissed.

NTPC Limited (Formerly National Thermal Power Corporation Limited) Vs. Reliance Industries Limited 2009 (10) LJSOFT 25

Code of Civil Procedure, 1908 — Order VII Rule 11 — Order XIV Rule 1, 2 — Suit for declaration — Un-registered partnership firm — Maintainability of suit.

See Kuljinder Singh Ahluwalia Vs. Smt. Sandeep Kaur Ahluwalia 2009 (10) LJSOFT 26

Code of Civil Procedure, 1908 — Order XX Rule 6 — Section 152 — Correction of decree.

Suit for partition and separate possession — Suit was decreed by Appellate Court — However the final order does not disclose as to which of the property is required to be partitioned and what is the share — Learned judge has given very clear finding as to the share of the plaintiff as well as the property in which the plaintiff has a share — As the decree does not agree with the judgment it was absolutely necessary to have corrected the final order — First appellate court was not proper in rejecting the application u/s 152 of CPC on the count that it was not a clerical or arithmetical mistake — Impugned order set aside and the decree accordingly amended. (Para 6)

Result : Petition allowed.

Ajabrao s/o Kisanrao Ingole Vs. Dnyaneshwar Kisanrao Ingole 2009 (10) LJSOFT (NAG) 125

Code of Civil Procedure, 1908 — Order XXI Rule 98, 103 — Execution proceedings — Objection to execution of decree — Non consideration of — Legality of — Letters Patent Appeal — Maintainability of — Rules of precedent.

See Mangala Sharad Mutha Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 31

Code of Civil Procedure, 1908 — Order XXIX Rule 1 — Damage of goods — Claim of damages — Verification of plaint.

See GTC Industries Limited Vs. Coastal Roadways Limited 2009 (10) LJSOFT 168

Code of Civil Procedure, 1908 — Order XXXIX Rule 1, 2 — Development agreement — Grant of injunction — Burden of proof.

1) Grant of injunction — An injunction can be issued only if the party seeking injunction shows that it is going to suffer an irreparable loss if an injunction is not issued — Contention that lies on defendant to show that he would suffer an irreparable loss if injunction is issued is opposite of the settled principle — It is for the person seeking injunction to show that he would suffer irreparably, and not merely suffer, if an injunction is not issued. (See para 7)

2) Grant of injunction — In matters resting in discretion of the trial Court an appellate Court should be extremely slow in disturbing exercise of such discretion, unless it is shown that such exercise was unwarranted, perverse or was likely to cause such harm as may not be reversible — Trial Court has refused injunction and it is not shown that the appellant's interest cannot be protected otherwise than by grant of injunction, it is not necessary to interfere in the exercise of discretion by the trial Court in refusing

injunction. (See para 8)

Result : Appeal dismissed.

Sharad S/o. Jamnadhharji Mor Vs. Arjun S/o. Yeshwant Dhanwatey & anr. 2009 (10) LJSOFT (NAG) 54

Code of Civil Procedure, 1908 — Order XXXIX Rule 1, 2 — Code of Criminal Procedure, 1973 — Section 145 — Dispute regarding immovable properties — Grant of injunction.

Civil suit — Proceedings u/s 145 of Cr.P.C. will be always subject to the result of litigation in the Civil Court — Whatever is the decision of the Civil Court deciding the rights of the respective parties will govern the relationship between the parties — What has transpired in proceeding u/s 145 of Cr.P.C. is not relevant for the purpose of deciding the rights of the parties. (See para 6)

Result : Appeal dismissed.

Urvath Vargese Paul Vs. Shah Khimji Passoo since deceased by his heirs 2009 (10) LJSOFT 94

Code of Civil Procedure, 1908 — Order XLI Rule 31 — Recovery of amount — Appeal — Failure to frame points for determination — Territorial jurisdiction — Jurisdiction of Co-operative Court.

See Deepak R. Raut Vs. Maharashtra Co-op. Marketing Federation Ltd. 2009 (10) LJSOFT (AUR) 161

Code of Civil Procedure, 1908 — Order XLVII Rule 1 — Order of status-quo — Clarification — Application for review — Change of advocate.

Possession of property — Applications filed for clarification of an order passed by High Court directing both the parties to maintain status-quo — Held that no clarification is

necessary — Order speaks for itself as one need to consider the order in the background of the particular litigation and the submission made based upon the material available on record — Applications for clarification is uncalled for and basically when it is filed through another advocate — Practice of changing the advocates and filing repeated petitions should be deprecated — Both the Applications dismissed with exemplary costs of Rs.2,000/- each. (See para 6, 7)

Result : Applications dismissed.

Kailas Mahadeo Mhaske & Anr. Vs. Vasant Changdeo Gaikwad 2009 (10) LJSOFT 58

Code of Civil Procedure, 1908 — Section 9 — Succession proceedings — Admission of plaintiff — Jurisdiction of Civil Court.

See Habibuddin s/o. Sadruddin Vs. Amirbi w/o. Shujauddin Inamdar (deceased through Lrs.) & Anr. 2009 (10) LJSOFT (AUR) 169

Code of Civil Procedure, 1908 — Section 20, 21 — Interim reliefs — Grant of injunction — Arbitration clause — Territorial jurisdiction.

See Indiabulls Financial Services Ltd. Vs. Loyal Motors Pvt.Ltd. 2009 (10) LJSOFT 60

Code of Civil Procedure, 1908 — Section 47 — Execution proceedings — Decree for eviction — Execution of decree — Objections — Decree nullity — Jurisdiction of Executing Court — Scope of.

1) Execution of decree — Suit was filed against the sole defendant who expired during the pendency thereof — His heirs were brought on record but they did not choose to participate in the proceedings inspite of notice and the matter proceeded ex-parte — In execution the heirs are urging that the decree

is a nullity being passed by a Court lacking inherent jurisdiction — Contented that when the suit was filed Bombay Rent Act was not applicable — Same cannot be decided on the face of the decree — It requires elaborate and in depth investigation of factual matters — If all this had to be permitted then the very purpose and object of conferring limited powers on the executing court would be defeated and that would make mockery of Rule of Law also — Court at all costs must discourage delaying tactics by litigants who have suffered adverse orders and decrees or else they will never be executed and enforced against them — Executing Court rightly rejected the objection that the of decree is a nullity as it is passed by a Court lacking inherent jurisdiction. (See para 20, 21, 22)

2) Execution of decree — Conditional decree — Amount not deposited within the stipulated time — When the condition of deposit in the decree having not been complied with the executing court could not have granted any benefit to the Petitioner/ Judgment Debtor — There is no question of the Executing Court extending the time for deposit — Executing Court had to go by the decree and when it found that the condition of deposit has not been complied with within the time stipulated, then it had no alternative but to give effect to the consequences of default and issue the warrant of possession. (See para 24)

3) Execution proceedings — An erroneous or an illegal decree can be set aside only if party aggrieved by it invokes the remedies prescribed in law to impugn and challenge it — If it does not do so, then, in execution proceedings, the decree cannot be set aside on the ground of any illegality or it being vitiated by errors of procedure. (See para 23)

4) Execution proceedings — Jurisdiction u/s 47 of CPC conferred on the Executing court

is limited and narrow — Jurisdiction cannot be equated with that of an Appeal or Review — Objector not permitted to urge such pleas and matters which would require reopening of the decree on concluded issues — Jurisdiction being extremely limited and narrow the objections must fall within the ambit and scope of the same — If they fall outside the purview of the said limited power, then, the executing court is not empowered to take note of them (See para 14)

Result : Petition dismissed.

Smt.Savitribai A. Salvi Vs. Smt.Suman Navgire & Ors. 2009 (10) LJSOFT 81

Code of Civil Procedure, 1908 — Section 100 — *Suit for partition — Property of partnership firm — Second appeal.*

See Kanihyalal Hastimal Firodiya Vs. Vasantlal Hastimal Firodiya (died) through his legal heirs 2009 (10) LJSOFT (AUR) 110

Code of Civil Procedure, 1908 — Section 100, 103, 107 — Second Appeal — Substantial questions of law — Concurrent findings of fact.

1) Suit for specific performance of contract — Land described as Survey No.364/3 — Figure 3 has been altered to figure 2 — However defendants stand is of total denial — Not the case that he admits that the Agreement of Sale was in relation to Land Survey No.364/3, however, by alteration, now a decree is sought for Survey No.364/2 — No issue framed as to alleged tampering — Alleged over-writing or correction would be totally inconsequential and would not vitiate the contract — Plea regarding said overwriting raised by the defendant was out of sphere of consideration. (See para 11 to 15)

2) Suit for specific performance of contract — Agreement of Sale is dated 22-3-1984 —

Defendant accepted total amount of consideration upto 14-4-1984 — Subsequent payments made in instalments and receipt thereof essentially connote that the mention of seven days as a condition for balance payment and performance was thereby waived by the vendor — Finding of the First Appellate Court that the performance was liable to be done within three years from the date fixed for performance or from the date the last payment was made is contrary to the recitals contained in the document — Said finding of fact does not fit the case within bar of limitation. (See para 16 to 20)

3) Second appeal — Findings recorded by the Courts below found to be unreasonable and unconscionable — Fact-finding which is unsustainable needs to be set right in exercise of powers u/s 100 of CPC — Once it is found that finding of fact is unsustainable, power u/s 103 and 107 of CPC would empower and entitle High Court to set right the fact-finding — What is being done is reversal of findings on the ground of findings being perverse and unconscionable and not because the Court does not agree with findings. (See para 24, 25, 26)

4) Second appeal — No substantial question of law framed at the time of admission — At final hearing, it would be incumbent upon High Court to formulate the question and give notice to other side — However considering the time lag of over twenty-four years of pendency if High Court follows the beaten and imperative way, i.e., of issuing a fresh notice to the respondent, it would mean another spell of years — High Court dispensed with the requirement of issuing fresh notice to other side to strike the balance of justice. (See para 30 to 33)

Result : Appeal allowed.

Anusaya wd/o Madhaorao Kapgate Vs.

Baburao s/o Pandurang Kapgate 2009 (10) LJSOFT (NAG) 147

Code of Civil Procedure, 1908 — Section 151, 152, 153 — Decree — Wrong description of suit property — Amendment of plaint — Rectification of mistake/ error — Correction of mistakes in judgments — Powers of Court.

1) Suit for declaration — Suit was decreed — Plaintiffs filed application u/s 151 and 152 of CPC for making amendment in the plaint in respect of the description of the suit property which was wrongly described and consequential error which has appeared in the judgment and decree — Phrase “in any proceeding” has to be given wide meaning to the so as to advance the cause of justice — Correction is necessary for the ends of justice — All proceedings in the Court of Civil jurisdiction would fall within the scope of the phrase “in any proceedings in a suit” — Plaintiff could rightly establish the identity of the suit property — It is merely a mistake in the survey number of the land and it is not a substitution of the land — Impugned order allowing the application by holding that the errors are due to accidental slip and it was necessary to correct to meet the ends of justice not liable to be interfered with. (See para 14, 18, 20)

2) Rectification of mistake/ error — Relief cannot be refused on a technical defect i.e. the correct section is not quoted — If the power exists under the Code then one can conveniently refer to that power to sustain the order passed by the Trial Court. (See para 6)

3) Suit for declaration — Wrong description of the suit property — When the suit is decided then the amendment cannot be carried out in the plaint under order 6 rule 17 of CPC — Plaint cannot be corrected by moving

application of review and the plaint also cannot be amended by invoking powers of the High Court under revision to amend the plaint — In the absence of any other remedy the plaintiff has no option but to take recourse of sections 151, 152 or 153 of CPC — If amendment is not allowed then the plaintiff will be without remedy though he has right over the suit property and it will be against the principles of ubi jus ibi remedium. (See para 6, 21)

Result : Petition dismissed.

Hansabai Shripati Bhosale Vs. Smt.Parubai Gopal Bhosale (Since deceased) through her LRs. 2009 (10) LJSOFT 22

Code of Civil Procedure, 1908 — Section 151, 152, 153-A — Decree — Omission of name — Correction of mistakes in judgments — Rectification of clerical mistake/ error — Limitation — Powers of Court.

1) Suit for specific performance — Suit allowed with a clerical mistake of omitting one of the heirs of defendant No.1 — Though the appeal was preferred to the higher Court an application for correction of decree u/s 151 and 152 of CPC can be entertained before the Court by which the decree was passed — Decree was passed by the District Judge in Regular Civil Appeal — Second Appeal preferred against it was dismissed at the admission stage — District Judge was the proper forum to prefer the application for rectification of the decree passed by it — No illegality and perversity in the Order of District Judge in entertaining the application for correction of decree — Impugned order not liable to be interfered with. (See para 13, 17)

2) Rectification of clerical or arithmetical mistakes in Judgments, decrees or orders — Application can be preferred at any time and

same can be corrected by the Court accordingly — No substance in the objections raised by the Petitioner in respect of provisions of law of limitation. (See para 14)

Result : Application dismissed.

Shobha w/o Ashokrao Deshmukh Vs. Jagannath s/o Parshuram Shinde & ors. 2009 (10) LJSOFT (AUR) 46

Code of Criminal Procedure, 1973 — Section 125(1) (As amended by Maharashtra Act 21 of 1999) — Constitution of India, 1950 — Article 254(1) — Claim of maintenance — Upper Limit — Validity of State Amendment.

1) Claim of maintenance — Wife made an allegation of cruelty and neglect on the part of the applicant-husband — She contended that the applicant was a medical practitioner who was earning Rs.25,000/- p.m. — It is not possible to believe that a person who was holding a flat worth Rs.32.00 lakhs was not earning anything — An Indica Car stands in his name though his father claimed that he had acquired the said car for the benefit of his son — No evidence was adduced by the applicant to show that the first respondent-wife was earning any income — Monthly maintenance of Rs.3,000/- each fixed by the Family Court for the wife and the daughter cannot be said to be an excessive or exorbitant. (See para 12, 13)

2) Maintenance — Quantum of — Upper limit — Vide amendment to Section 125 made by Maharashtra Act No.21 of 1999 the upper ceiling on the amount of maintenance fixed by the Central Act at Rs.500/- p.m. has been enhanced to Rs.1,500/- per month — However by subsequent Central amendment by the Act No.50 of 2001 brought into force w.e.f. 24-9-2001 the upper limit in Section 125(1) has been completely removed — State amendment

of the year 1999 is void to that extent in view of Article 254(1) of the Constitution of India — Central Government amendment will prevail and there is no upper ceiling on the amount of maintenance. (See para 14)

Result : Application dismissed.

Upendranath Chandrabhushan Chaube Vs. Mrs.Neeta Upendranath Chaube and anr. 2009 (10) LJSOFT (URC) 55

Code of Criminal Procedure, 1973 — Section 125, 126 — Code of Civil Procedure, 1908 — Order VI Rule 17 — Maintenance — Quantum of — Subsequent events — Amendment of pleadings.

Claim of maintenance by wife and minor child at Rs. 1,500/- p.m. each — During the pendency of application it was learnt that the husband has acquired a Maruti Alto Car — Application was made for amendment claiming maintenance of Rs. 3000/- p.m. — Claim to a particular amount made by the applicant is irrelevant and ultimately it is for the learned Magistrate to decide at what rate monthly allowance shall be paid — Remedy u/s 125 is a summary remedy and strict Rules of the pleadings are not applicable to such proceedings — On the basis of subsequent events applicant can always claim maintenance at an enhanced rate by filing a simple application — Applicant need not amend the application — Wife could have always adduced evidence to prove the entitlement to receive the higher amount — No prejudice caused to the petitioner by the impugned order — Merely because a wrong provisions of law (Order 6 Rule 17 of CPC) is mentioned due to an error committed by an Advocate the learned Magistrate is not deprived of power of passing appropriate orders in accordance with the law. (See para 4, 5, 6)

Result : Petition dismissed.

Ravindra Ramchandra Tingare Vs. Ashwini Ravindra Tingare & anr. 2009 (10) LJSOFT 72

Code of Criminal Procedure, 1973 — Section 144 — Indian Penal Code, 1860 — Section 188 — Arms Act, 1959 — Section 17 — Elections — Surrender of arms — Review of cases — Guidelines — Time-frame.

1) Election period — Prohibitory orders u/s 144 of Cr.P.C. banning the carrying of licensed arms — Order is issued under Article 324 of the Constitution of India which vests Superintendence, direction and control of elections in the Election Commission — Election Commission and at its instance the 1st respondent have followed the Constitutional mandate and they cannot be faulted for it — Contention that because Section 17 of Arms Act provides for surrender of licence the 1st respondent could not have issued order u/s 144 of Cr.P.C. cannot be accepted. (See para 11)

2) Election period — Surrender of licence — Review is mandatory to identify cases where it is essential to impound arms so that only those persons can be directed to surrender arms — No categorical statement that the Screening Committee first reviewed the cases and then called upon arms licence holders to deposit arms — Course adopted by the 1st respondent is contrary to the directives issued by the Election Commission and contrary to the judgment of High Court in Ganesh Thakur's case — Impugned notice set aside qua the petitioner. (See para 14)

3) Election period — Surrender of licence — Election Commission must ensure that its directives are adhered to strictly by the State and its officers — Screening Committees must

be in place — Review and assessment of arms licence holders must be done post haste and then notice must be issued to the shortlisted arms licence holders to deposit arms — Guidelines laid down as mentioned in para 18 of the judgment — Further clarified that that if the time-frame is not abided by, the competent authority shall take action in accordance with law against the erring officers. (See para 17, 18, 19)

Result : Accordingly.

Govind @ Bhai Ganesh Tilve Vs. Vikram Kumar, District Magistrate, Sindhudurg & ors. 2009 (10) LJSOFT 41

Code of Criminal Procedure, 1973 — Section 145 — Dispute regarding immovable properties — Grant of injunction.

See Urvath Vargese Paul Vs. Shah Khimji Passoo since deceased by his heirs 2009 (10) LJSOFT 94

Code of Criminal Procedure, 1973 — Section 154 — Murder — Delay in lodging F.I.R.

See Bilal Bishad Shaikh Vs. State of Maharashtra 2009 (10) LJSOFT 43

Code of Criminal Procedure, 1973 — Section 167(2) — Maharashtra Control of Organised Crime Act, 1999 — Section 21(2) — Grant of bail — Compulsive bail — Delay in filing charge-sheet — Power of extension — Grant of second extension — Validity of.

1) Non-filing of charge-sheet within the specified period of 90 days — Accused challenged the order passed by Special Court granting second extension of 15 days — Section 167(2) of Cr.P.C. indicates that power of remand has to be exercised from time to time — Nothing in the language of second proviso inserted in Section 167(2) by Section

21(2) of MCOC Act indicate that the power of extension can be exercised only once Special Court can exercise power under the said proviso from time to time however the total period for filing charge sheet/ challan cannot exceed 180 days. (See para 15, 16)

2) Grant of bail on default of the prosecution in filing the charge-sheet within the specified period — Appeal filed in High Court was challenging the order of Special Court granting extension — Said appeal cannot be considered as application for bail. (See para 17)

Result : Appeal dismissed.

Mustaq Ahmed Mohammed Isak and Ors. Vs. State of Maharashtra 2009 (10) LJSOFT (SC) 112

Code of Criminal Procedure, 1973 — Section 177, 227, 228 — Indian Penal Code, 1860 — Section 498-A — Dowry Prohibition Act, 1961 — Section 2, 4 — Matrimonial cruelty — Territorial jurisdiction — Quashing of process — Discharge of accused.

1) Private complaint — Framing of charge — Applicant contended that respondent No.2 is not his legally wedded wife as the registered divorce with her first husband is not binding and valid in the eyes of law — Accused has no right to file any material or documents at the stage of framing charge and such right is granted only at the stage of trial — Neither certified copy of the registered agreement of divorce nor the documents placed on record by the accused in their defence of alibi can be considered — Lower Court rightly rejected the application of the applicant for discharge. (See para 9)

2) Private complaint filed by wife at Dhule — Allegations of matrimonial cruelty pertains to the period in which the complainant-wife was residing with the applicants at Nashik —

However applicant Nos.2 to 4 are resident of Dhule and there is alleged demand of Rs. 2 lakhs by even applicant Nos.2 to 4 at Dhule and also threats given by the applicant Nos.2 to 4 to the complainant at Dhule — Prima facie the complaint is maintainable even at Dhule. (See para 10)

Result : Application dismissed.

Rajendra Tukaram Ahirrao and Ors. Vs. State of Maharashtra and Ors. 2009 (10) LJSOFT (AUR) 143

Code of Criminal Procedure, 1973 — Section 311 — Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii)(C) — Recalling of witnesses.

Applicant filed application for remand to the trial Court to take additional evidence by recalling for further cross-examination panch witness contending that document namely “property seizure memo” was not in the know of the accused — Said document is prepared with a view to maintain certain records of the Department and those of National Crime Bureau — Said document is not a document which is required to be given to the accused — It was not relied upon by the prosecution though an inadvertent statement came to be recorded in the station diary — Contention that it was suppressed from the Court cannot be accepted since there is no practice of giving a copy to the accused of such a document — In view of statements made by panch witness and categorical assertion of the Investigation Officer that it was prepared at site but was completed with certain details at the Police Station, no case is made out for recalling for further cross-examination either of the said two witnesses. (See para 6, 7)

Result : Application dismissed.

Sher Singh Vs. State of Goa 2009 (10) LJSOFT (GOA) 150

Code of Criminal Procedure, 1973 — Section 313 — Murder — Statement of accused. See Jagannath s/o Damaji Pol Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 139

Code of Criminal Procedure, 1973 — Section 313 — Attempt to murder — Statement of accused.

See State of Maharashtra Vs. Sujay Mangesh Poyarekar 2009 (10) LJSOFT 42

Code of Criminal Procedure, 1973 — Section 313, 315 — Indian Penal Code, 1860 — Section 302 — Murder — Examination of accused — Appeal against conviction.

Murder of wife — Deceased died due to burns — Examination of accused u/s 313 of Cr.P.C. — Purpose is to enable the accused to explain any circumstances appearing in the evidence against him — Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus — Word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case — Question must be framed in such a way as to enable the accused to know what he is to explain what are the circumstances which are against him and for which an explanation is needed — It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them — He must be questioned separately about each material substance which is intended to be used against him — Questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand — Conviction based on the accused’s failure to explain what he was never asked to explain is bad in law — No question was put to the accused which established that

he was the author of the crime — Conviction cannot be maintained and is set aside. (See para 6 to 10)

Result : Appeal allowed.

Shaikh Maqsood Vs. State of Maharashtra 2009 (10) LJSOFT (SC) 119

Code of Criminal Procedure, 1973 — Section 378(4) — *Dishonour of cheques — Authority of signatory — Leave to file appeal against acquittal.*

See Misha M. Jashnani Vs. State of Maharashtra 2009 (10) LJSOFT 73

Code of Criminal Procedure, 1973 — Section 437(5), 439(2) — Indian Penal Code, 1860 — Section 324 — Goa Children’s Act, 2003 — Section 7(c), 8(2), 8(9) — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 — Section 3(1)(xi), 18 — Bail — Cancellation of — Maid — Minor child — Ill-treatment — Change of circumstances — Additions of offence/s.

1) Family of petitioner engaged a maid of about 10 years of age — Maid slipped out from their house on account of ill treatment meted out to her — Extensive burn injuries were noticed and a complaint was lodged on behalf of SCAN (Stop Child Abuse Now) — Petitioner was arrested on 25.7.09 and was granted conditional bail on 27-7-2009 — Victim was re-examined on 29-7-09 by a Medical Board and the injuries on the victim came to be described as grievous injuries — On the same date statement of her grandfather was recorded and Section 3(1)(xi) of Atrocities Act came to be added to the said crime — Application was filed on 30-7-2009 for cancellation of bail and Children’s Court cancelled the bail earlier granted — There was no change in fact situation but only opinions had changed — Opinion of Investigating Officer that Section 3(1)(xi) of Atrocities Act

ought to be added that too without there being any complaint by any of the family members of the victim cannot be termed to be a new cogent and overwhelming circumstance — Additions of offence/s to the same set of facts cannot justify cancelling of bail unless it is shown that omission to add the Sections was done with a view to help the accused — Impugned Order of the learned Children’s Court in cancelling the bail earlier granted cannot be justified. (See para 17, 18)

2) Bail — Offence u/s Section 3(1)(xi) of Atrocities Act added belatedly to the crime — Intention of an accused is the crux of the matter to dishonour or outrage her modesty — No complaint lodged by any of the family members of the victim that she was assaulted or criminal force was used upon her by the applicant or any of the members of the family with intent to dishonour or outrage her modesty — No offence u/s 3(1)(xi) was complained of nor disclosed — If section 3(1)(xi) was not prima facie attracted no bail could have been denied to the applicant u/s 18 of Atrocities Act. (See para 13)

Result : Petition allowed.

Audumber alias Shubham Pednekar Vs. State of Goa & anr. 2009 (10) LJSOFT (URC) (GOA) 21

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory bail — Grant of — Offence u/s 323, 504, 498-A, 406, 506, 420, 384, 511 r/w 34 of IPC — Obscene photographs/ VCD — Cruelty. Complaint filed by the wife of applicant — She has also filed divorce petition on the ground of cruelty and the said proceedings are pending — It is contended applicant is not handing over obscene photographs of complainant and hence his custody is required — Photographs were taken by consent of complainant and it was a private affair

between the wife and husband — No doubt if such photographs or VCD are circulated, displayed or shown to anybody then will definitely injure the honour of the womanhood of complainant — However this is an apprehension and there are no specific instances of the display or circulation of such photographs by the applicant at any place — Accusation that the applicant may abuse or misuse the photographs or VCD is based on apprehension which can be taken care of by putting specific conditions — Applicant though Pakistani national is settled in Mumbai since 1993 and is tax payer since 1999 and is having residence in Mumbai — Considering the nature and the gravity of the accusation it is a fit case to grant anticipatory bail. (See para 5, 7, 9, 10)

Result : Application allowed.

Adnan Sami Khan Vs. State of Maharashtra 2009 (10) LJSOFT (URC) 105

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory bail — Grant of — Offence u/s 406, 408, 409, 420, 465, 468, 471, 120-B, 34 of 1PC — Bank fraud — Cheating — Misappropriation of amount — Responsibility of Directors.

1) Applicant was one of the Ex-Director of the Bank — Allegations of systematic fraud by unlawful disbursement of crores of amount under garb of loan without obtaining security and mortgage and by forging documents — Persons who were Directors during the period in which loan proposals are sanctioned in the meetings contrary to the policy of the bank are collectively responsible and no Director can escape from the responsibility, unless he or she demonstrates 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

— Though applicant or his relatives have not taken loan, however, the loan is sanctioned to 14 borrowers during the period in which the present applicant was Director — Loans have been sanctioned by the Board in utter disregard to the by-laws of the Bank — Applicant has not opposed any loan proposal during the meeting in which he was present and signed the proceedings — Merely because the applicant has not borrowed the loan himself or his relatives, prima facie, it cannot be concluded that he is not responsible for the illegal disbursement of the loan amount contrary to the policy of the Bank — If protection is granted to the applicant there may be possibility that he may try to influence the prosecution witnesses — Bail application rejected. (See para 28, 30, 31, 32, 34, 36, 37)

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 rejected.

Prakesh Ramchandra Kothavade Vs. State of Maharashtra & anr. 2009 (10) LJSOFT (AUR) 160

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory bail — Grant of — Offence u/s 366-A of IPC — Procuration of minor girl.

Complainant alleged that the applicant had eloped with her daughter — Prosecutrix was 17 years 8 months 11 days old and that she

had an affair with the applicant and both of them wanted to get married which was opposed by the parents of the girl as they belonged to two different communities — Prosecutrix had also filed an application for quashing the complaint which is pending — Applicant is above 18 years of age as of today — Prosecutrix admittedly was above 16 years of age and she had gone with the applicant willingly and has no objection if the anticipatory bail is granted — Prima facie case made out for grant of anticipatory bail. (See para 3, 4)

Result : Application allowed.

Yogesh Ramchandra Baldawa Vs. State of Maharashtra 2009 (10) LJSoft 164

Code of Criminal Procedure, 1973 — Section 438 — Indian Penal Code, 1860 — Section 324 — Goa Children's Act, 2003 — Section 7(c), 8(2), 8(9) — Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 — Section 3(1)(xi), 18 — Anticipatory bail — Grant of — Maid — Minor child — Ill-treatment.

1) Family of applicant engaged a maid of about 10 years of age — Maid slipped out from their house on account of ill treatment meted out to her — Extensive burn injuries were noticed and a complaint was lodged on behalf of SCAN (Stop Child Abuse Now) — Offence have taken place within the confines of the house of the applicant — Articles required to be attached have been attached — Though applicant's husband was arrested on 25.7.09 but applicant was not arrested — Not the case of the prosecution that applicant was not available in the house on that day — Applicant has thereafter joined investigations from 6.8.09 — No reason is disclosed as to what will be sought to be achieved by custodial interrogation — Merely on stating that the

presence of the applicant is required for custodial interrogation, without showing the need for it, application for anticipatory bail cannot be rejected — Bail granted. (See para 15, 16)

2) Child abuse — Offence u/s Section 3(1)(xi) of Atrocities Act added belatedly to the crime earlier registered u/s. 324 IPC, etc. without any complaint from the victim or her family members — Intention of an accused is the crux of the matter to dishonour or outrage her modesty — No complaint lodged by any of the family members of the victim that she was assaulted or criminal force was used upon her by the applicant or any of the members of the family with intent to dishonour or outrage her modesty — No offence u/s 3(1)(xi) was complained of nor disclosed — If section 3(1)(xi) was not prima facie attracted no bail could have been denied to the applicant under section 18 of Atrocities Act. (See para 12)

3) Offence under Atrocities Act — Victim belonging to Bhanjara, Lamani caste, a Scheduled Caste recognised in the State of Karnataka — Atrocities Act is a Central Act, in force in the entire country, except in the State of Jammu and Kashmir — Nothing in the Act suggests that the offences in relation to the Act can be committed only in the State where their particular caste or tribe is recognised — Act was meant to protect the persons belonging to Scheduled Castes and Scheduled Tribes from atrocities not only in the State where they were otherwise recognised as Scheduled Castes or Scheduled Tribes but anywhere in the country where there was no such recognition. (See para 10)

Result : Application allowed.

Smt. Minaxi A. Pednekar Vs. State of Goa & anr. 2009 (10) LJSoft (URC) (GOA) 20

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offences u/s 420, 467, 468, 471, 472 r/w 34 of IPC and u/s 3 and 7 of Essential Commodities Act — Kerosene scam.

1) Grant of bail — After filing of applications charge sheet was filed — If the applicants want to approach to the trial Court for bail of their own due to changed circumstances, that would have been a welcome exercise for them — As the bail applications of the applicants are already rejected by the Sessions Court the applicants feel that lower courts may not take different view and they would like to pursue this matter — As the High Court is the Court having omnibus jurisdiction on this matter, cannot shut its doors when the parties want relief from High Court. (See para 9, 10, 11)

2) Grant of bail — Earlier order passed by High Court granting anticipatory bail to the applicants was stayed by the Apex Court — When Apex Court stays the operation of the impugned order it would mean all the observations therein cannot be considered for the purposes of deciding further bail matters on merits on the same material — It has to be presumed that the legality and validity and sustainability of the impugned order was considered by the Apex Court and therefore, the operation of the impugned order was stayed — Contention that some of the observations referred above in the earlier order granting anticipatory bail should be considered cannot be countenanced — Applicants cannot rely on the observations in that order to contend that no prima facie case has been made out against the applicants. (See para 19)

3) Grant of bail — Kerosene scam case — Applicants are government officials working in District Supply Department — Allegedly large quantity of kerosene was sought to be

released by showing illegal enhancement in the population figure and thousand kiloliters was sold in open market, some of it was sold in the black market — Allegations against the applicants cannot be equated with that of the retailers — Had the applicants been particular in doing their duties, perhaps such offences would not have been committed — Considering the penalty though prima facie offences are triable by the court of J.M.F.C. but the matter can be transferred to the court of C.J.M. for seeking enhanced punishment — Unless the trial court finds that no severe punishment can be imposed or invited, applicants would not be entitled for bail considering the impact of the order of stay, to the order of High Court, passed by the Apex Court. (See para 31)

Result : Applications dismissed.

Abhijit Keshavrao Gavhankar & anr. Vs. State of Maharashtra 2009 (10) LJSoft (NAG) 34

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offence u.s 306, 498-A, 323, 504, 506 of IPC — Dowry death — Suicide — Ill-treatment.

Deceased allegedly committed suicide being driven due to ill-treatment — Prosecution has not collected any evidence as to the facts and circumstances in existence immediately prior to the incident of suicide — Injuries on the person of deceased are shown to be post-mortem and not ante-mortem — Statements of all 11 witnesses are prototype and almost replica of one another and do not disclose any circumstances in immediate proximity of the incident of suicide — Witnesses are residents of place other than the place of residence of accused persons and they are mostly related to the complainants family — All the essential facts are kept ambiguous and undisclosed —

Applicants made out a case for release on bail.
(See para 17 to 28)

Result : Application allowed.

Karbhari Dhondiba Rahane and others Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 104

Code of Criminal Procedure, 1973 — Section 439 — Grant of bail — Phrase “person in custody”.

Applicant was earlier granted anticipatory bail for a period of 60 days with a direction that the applicant may apply for regular bail — Application for regular bail u/s 439 of Cr.P.C. was rejected by the Additional Sessions Judge by passing a cryptic order that unless the accused is in custody there is no question of releasing her on bail — Not proper — Phrase “in custody” covers the situation wherein a person appears before the court and submits himself to the jurisdiction of the court — “In custody” does not mean that the person has to be in police or judicial custody — Applicant entitled to be released on bail. (See para 1)

Result : Application allowed.

Sau. Jyoti Bhimrao More Vs. State of Maharashtra 2009 (10) LJSOFT (URC) 15

Code of Criminal Procedure, 1973 — Section 482 — Indian Penal Code, 1860 — Section 339, 341 — Wrongful restrains — Offences against company — Vicarious liability of Directors — Quashing of criminal complaint — Inherent powers — Availability of alternate remedy.

1) Wrongful restraint — Complaint against company — Appellant nos.1 to 5 were Managing Director and/or Directors of a company and Appellant no.6 was an architect — Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be

expressly stated — Managing Director or the Directors of the Company cannot be said to have committed an offence only because they are holders of offices — Appellants were not named as accused in the first information report — No allegation in regard to acts of common intention or common object on the part of the appellants was made out — Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company — Order summoning the appellants quashed. (See para 13 to 16)

2) Quashing of criminal proceedings — Inherent powers of High Court — Availability of the remedy of filing an application for discharge would not mean that although the allegations made in the Complaint Petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the Court, still the High Court would refuse to exercise its discretionary jurisdiction u/s 482 of Cr.P.C. — Though there might have been some delay on the part of appellants in approaching the High Court but while adjusting equity the High Court was required to take into consideration the fact that in a case of this nature the appellants would face harassment although the allegations contained in the Complaint Petition even assuming to be correct were trivial in nature. (See para 16)

3) Wrongful restraint — Essential ingredients of Section 339 of IPC are: (1) Accused obstructs voluntarily; (2) The victim is prevented from proceeding in any direction; (3) Such victim has every right to proceed in that direction — Word ‘voluntary’ is significant and it connotes that obstruction should be direct — Obstructions must be a restriction on the normal movement of a

person and it should be a physical one — They should have common intention to cause obstruction. (See para 11, 12)

Result : Appeal allowed.

Keki Hormusji Gharda & ors. Vs. Mehervan Rustom Irani & anr. 2009 (10) LJSOFT (SC) 107

Code of Criminal Procedure, 1973 — Section 482 — Indian Penal Code, 1860 — Section 279, 338 — Motor accident — Rash and negligent driving — Settlement/compromise — Quashing of criminal proceedings.

Applicant driving the car in excessive speed gave dash to the injured who was crossing the road — Settlement between the parties — Applicant paid the expenditure on medical treatment as well as for stay and food of the relatives of the injured — Father of the injured boy stated that his son is now medically fit and he has no grievance against the applicant — Power u/s 482 of Cr.P.C. deserves to be exercised considering the peculiar facts of the case — Criminal proceedings quashed.

Result : Application allowed.

Anushree Rajkamal Bajaj Vs. State of Maharashtra 2009 (10) LJSOFT 126

Code of Criminal Procedure, 1973 — Section 482 — Medical negligence — Criminal liability — Quashing of criminal proceedings. **See Prasanna Sudhakar Rao Deshmukh (Dr.) Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 65**

Code of Criminal Procedure, 1973 — Section 482 — Failure to pay ESI contribution — Subsequent payment — Quashing of criminal proceedings — Discharge of accused.

See Regional Director, ESI Corporation Vs. Supriya S. Bandal 2009 (10) LJSOFT 80

Code of Criminal Procedure, 1973 — Section 482 — Termination of services — Breach of order passed by the Industrial Court — Issuance of process — Quashing of criminal proceedings — Maintainability of petition — Alternate remedy.

See Indian Tourism Development Corporation Vs. Presiding Officer 2009 (10) LJSOFT 75

Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheque — Offences by companies — Vicarious liability of Directors — Quashing of criminal proceedings.

See Goa State Co-operative Bank Ltd. Vs. Mohan Surya Naik 2009 (10) LJSOFT (URC) (GOA) 17

Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheque — Cheque issued by third party — Liability — Quashing of criminal proceedings.

See Viral Filaments Ltd. Vs. State of Maharashtra 2009 (10) LJSOFT (URC) 6

Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheques — Death of authorised signatory — Validity of cheques — Quashing of criminal proceedings.

See Karishma Consultant Vs. Om Prakash Agarwal 2009 (10) LJSOFT (URC) 7

Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheques — Plea of fraud — Quashing of criminal complaint.

See Chanchal Choudhary Vs. State of Maharashtra 2009 (10) LJSOFT (URC) 11

Companies Act, 1956 — Section 111-A, 433, 434 — Winding up proceeding — Filing of two different petitions under two different capacities — Effect of.

Winding up proceeding — Same party cannot be allowed to institute two substantive proceedings taking a diametrically opposite and destructive stand in relation to his capacity in which the same are initiated — In one Petition he would claim to be a creditor of the company on the basis of a particular transaction whereas in the other he would claim to be a member/shareholder of the company on the basis of the self same transaction — Two capacities are entirely different and mutually exclusive — Once he claims to be a creditor in relation to a particular transaction then intrinsic in that stand is that he consciously abandons his claim of being a member/ shareholder of the company in the context of that transaction — A member/ shareholder cannot be a creditor of the company at the same time in relation to the self same transaction — Issue raised by the Appellants goes to the root of the matter and the CLB has failed to address the same one way or the other — Impugned order passed by CLB admitting the Petition in part u/s 111A set aside and the parties relegated before the CLB for reconsideration of the matter afresh. (See para 8)

Result : Appeal allowed.

Modi Fibres Limited Vs. Modi Rubber Limited & ors. 2009 (10) LJSOFT 47

Companies Act, 1956 — Section 34 — Property of Company — Partition of property — Joint family business.

Suit for partition — On incorporation a company becomes distinct from its members/ shareholders — Property of the members is not property of the company and the property of company is not the property of the members/shareholders — It is the company who owns its property and not the shareholders — Properties of defendant nos.7

and 8 companies are not the properties of the joint family — Plaintiff may continue to be a member/shareholder but that does not mean that he is owner of any of the properties of the companies — Properties of the defendant nos.7 and 8 companies cannot be a subject matter of a suit for partition of the alleged joint family — No question of appointment of a receiver of the properties of the defendant nos.7 and 8 companies — Plaintiff assuming that he is a shareholder is not entitled to a relief of injunction against the defendant nos.7 and 8. (See para 6, 7, 8)

Result : Notice of motion dismissed.

Amratlal Bhanji Laxman Vs. Kusum Prabhudas Laxman & Ors. 2009 (10) LJSOFT 86

Companies Act, 1956 — Section 394, 211 — Scheme of Arrangement — Sanction of — Reconstruction of companies.

1) Scheme of Arrangement — Petitioner Reliance Communications Ltd. the “Demerged Company” and Reliance Infratel Ltd., “the Resulting Company” under the Optic Fiber undertaking of the Demerged Company shall stand transferred to and vested in the Resulting Company — Meeting of equity share holders of both the Companies convened and approved the scheme in which valuation report made available — If the Applicant-objectors failed to avail of the said opportunity Company cannot be blamed — No tangible material produced to question the opinion of the valuer regarding the basis and methodology adopted — Resolution was approved by overwhelming majority of the shareholders of the Demerged Company and unanimously by the Resulting Company — Commercial decision cannot be interfered with unless it is shown to be illegal, impermissible and against Public Policy —

Nothing on record to doubt the integrity and honesty of the independent expert appointed by the Company for the purpose of valuation — No substance in the objections taken by the intervenors/Objectors. — Petition allowed subject to the modification to the Scheme specified in the Judgment and upon acceptance of undertaking given by the Petitioners. (See para 18, 25, 43, 48)

2) Scheme of Arrangement — Objections — Applications filed by Rajkot Saher/ Jilla Grahak Suraksha Mandal — Said Applicant is neither a Creditor nor a Shareholder of any of the Company — A person who is neither a Shareholder nor a Creditor of the Company would have no locus. (See para 19)

3) Scheme of Arrangement — Non mention of provision regarding the user charges by the Demerged Company for use of optic fiber does not militate against the Scheme — That is an arrangement post demerger Scheme to be evolved and adopted by the Board of Directors of the two Companies as may be suited to them — Board of Directors would act in the best interest of the stakeholders of the respective Companies. (See para 27)

4) Scheme of Arrangement — Making of payment in deferred manner, by itself, does not result in unfairness to the shareholders of the Demerged Company — Demerged Company will be suitably compensated by way of interest until the consideration is fully paid by the Resulting Company — No law prohibits deferred payment by the subsidiary company in relation to the commitment under the Scheme sanctioned by the Court nor there is any law which prescribes for outer limit for such payment. (See para 31)

5) Scheme of Arrangement — Observance of accounting standard is a norm but violation thereof is not completely impermissible — Companies assure to abide by the said regime

to be followed as per Section 211 — So long as necessary disclosures are made, the Company cannot be faulted even if there were to be deviation from the accounting standards, more so, to be made a ground to disapprove the Scheme — Undertaking given by Petitioners that they would not only follow the Accounting Standard-11 but also Accounting Standard-5 in its letter and spirit — Assurance so given by the Petitioners is accepted. (See para 33, 43)

Result : Petition allowed.

Reliance Communications Limited (RE:) 2009 (10) LJSOFT 33

Constitution of India, 1950 — Article 14, 19(1)(g) — Pre-packed commodities — Standard packages — Providing of extra commodity free of cost in same pack — Use of non-standard weight/ measure — Freedom to do business.

See Britannia Industries Limited Vs. Union of India 2009 (10) LJSOFT 48

Constitution of India, 1950 — Article 14, 226 — Maharashtra Housing and Area Development Authority Act, 1976 — Section 164 — Maharashtra Government Rules for Conduct of Business, 1975 — Rule 3, 12 — Development of Government lands — Joint venture — Public Private participation — Suo motu development proposals — Originator of proposal — Preferential treatment — Swiss Challenge Method — Discrimination — Government contracts — Judicial review — Scope of.

1) Development of Government lands — Appellant provided MHADA in its innovative project plan how to balance with highly developed high-rise with the low-rise building of lower specifications built up for the EWS, LIG and MIG groups — Project plan was in

accordance with the objective of MHADA as well as profit sharing mode in a public-private partnership — Contention given in the impugned judgment that there was dearth of innovativeness and originality in the proposal made by the appellant is wrong on factual ground — Though requirement of innovativeness is not there in Swiss Challenge Method but the proposal of appellants under the Swiss Challenge Method was a new innovative venture for MHADA and for State of Maharashtra. (See para 16, 17)

2) Development of Government lands — Appellant provided its innovative project plan to MHADA — No decision was taken by MHADA — There was nothing wrong in appellants submitting the same proposal to the Chief Minister of Maharashtra who had portfolio of Housing Department — Material on record shows that no favoritism was ever shown to appellants instance of the Chief Minister — Also Government could issue instructions if really had to favour appellants and the same would be statutorily binding on MHADA — However on receipt of the representation the officer concerned merely forwarded the same to CEO, MHADA to offer their remarks — Entire documents clearly shows that there was no attempt either from the authorities of the State of Maharashtra or from the Chief Minister to favour appellants — Contrary observations of the High Court are baseless and not warranted. (See para 18, 19)

3) Suo motu development proposals — Swiss Challenge method applied by the State Government only on a pilot basis after due deliberations and study of the methodologies — Swiss Challenge Method is transparent inasmuch as all the parties were well aware of the “right of first refusal” accorded to the “originator of proposal” — There is no

provision for allowing other tenderers to raise the bid further, when “initiator of proposal” accepts to raise up to the highest bid — State Government is well within its rights to try out on pilot basis a methodology recognized internationally as well as in India — High Court is not justified in striking out the Swiss Challenge Method without allowing the State Government to exercise its executive discretion on a pilot basis. (See para 27)

4) Government contracts — Scope for judicial review is very limited and that the Court cannot substitute its own decision for that of the government. (See para 25)

Result : Appeals allowed.

Ravi Development Vs. Shree Krishna Prathisthan & Ors. 2009 (10) LJSOFT (SC) 109

Constitution of India, 1950 — Article 21, 226 — Custodial death — Claim of compensation — Right of personal liberty. Deceased died on account of the injuries suffered by him on account of assault while in police custody at police station — Defence that deceased was criminal and several cases were pending against him cannot be of any consequence since even a criminal has a right to protect his liberty and his liberty cannot be interfered with on the spacious plea that he is a criminal — Such a plea could not be a defence to a charge of custodial death — Custodial death of deceased is clearly established — Heirs of deceased are entitled to compensation quantified at Rs. Five Lakhs from respondent no.1 — Respondent no.1 directed to hold an enquiry to find out the police officials responsible for the custodial death and recover the compensation from the concerned police officials after giving them opportunity of being heard. (See para 11, 17, 18, 20)

Result : Petition allowed.

Smt. Satyavatvai wd/o Anantsingh Chauhan & anr. Vs. State of Maharashtra through its Secretary, Home Department & ors. 2009 (10) LJSOFT (NAG) 118

Constitution of India, 1950 — Article 30(1), 226 — *Right to establish a Minority Educational Institution — Grant of permission — Power of Commission.*

See State of Maharashtra Vs. Mehmuda Shikshan and Mahila Gramin Vikas Bahuudheshiya Sanstha 2009 (10) LJSOFT (NAG) 39

Constitution of India, 1950 — Article 226 — Admissions — Entrance examination — Eligibility criteria — Minimum marks — Process of rounding off.

Admission in the first year of two year full time MBA/ MMS/ PGDBM/ PGDM course — Eligibility criteria for appearing in the Entrance Test — Rules provide that candidate should secure at least 45% marks — Petitioner has acquired 44.59% of marks and was not permitted to appear for Entrance Test — Though even a fraction of mark can make a world of difference and secure place in the merit list — However in order to enable a candidate to appear for competitive examination if the well known formula of rounding off is adopted it does not affect the other candidates — Would be inequitable and unjust to deprive a candidate to compete in entrance examination merely on the ground that he/she is not eligible having scored a fraction of mark less than 45% marks when it can be considered for rounding off. (See para 11, 12)

Result : Petition allowed.

Kum. Harsha d/o. Manoharlal Manshani Vs. State of Maharashtra & Anr. 2009 (10) LJSOFT (NAG) 146

Constitution of India, 1950 — Article 226

— Caste certificate — Issuance of.

Petitioners seeking caste certificates — Petitioners produced caste validity certificate issued to their first cousin — Genealogy establish the interse relations, from paternal side, between the caste validity certificate holder and the petitioners — These documents are not at all considered by the Sub Divisional Officer as well as by the Scrutiny Committee — Impugned orders are erroneous and liable to be quashed and set aside — Sub Divisional Officer directed to forthwith issue caste certificates to the petitioners — However the caste certificates will be subject to verification by the competent scrutiny committee. (See para 6, 7)

Result : Petition allowed.

Kiran s/o Laxman Karhade Vs. Sub Divisional Officer, Degloor & anr. 2009 (10) LJSOFT (URC) (AUR) 3

Constitution of India, 1950 — Article 226 — Dismissal from service — Quantum of punishment — Recommendation of Central Vigilance Commission (CVC) — Binding effect of.

Petitioner charged with certain irregularities committed by him when he was working as Assistant General Manager — Initially disciplinary authority decided to pass an order of compulsory retirement — Opinion of the CVC was sought for by the disciplinary authority which recommended for the punishment of dismissal — Held that punishment to be imposed depending upon the nature of every case and the gravity of the misconduct proved — Authorities have to exercise their judicial discretion — No third party like the CVC or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should

exercise their power and what punishment they should impose on the delinquent officer — CVC could not have compelled the Bank to pass an order of dismissal — Impugned order of dismissal is liable to be set aside and is substituted to compulsory retirement. (See para 7, 8, 9)

Result : Accordingly.

A.V.K. Poduval Vs. Chief General Manager, State Bank of India & anr. 2009 (10) LJSOFT 61

Constitution of India, 1950 — Article 226 — Employment — Wrongful Demotion — Back-wages.

Demotion of respondent No.1 from the post of Principal of a College to the post of an Assistant Professor — Person would be entitled to what he had lost due to a wrong order — However claim of full emoluments for the post of principal has to be rejected — Full back wages could be granted only on showing lack of gainful employment would imply establishing lack of even an opportunity of such employment — Petitioners had given opportunity to respondent No.1 to serve as Assistant Professor which respondent No.1 did not avail — Petitioners would be liable to pay only the difference in the salary of Principal (to which respondent No.1 was entitled) and that of Assistant Professor (a post which was offered to respondent No.1 which he did not join). (See para 13)

Result : Petition partly allowed.

Shri Shivaji Education Society, Amravati Vs. Kumar Keshavrao Kale & anr. 2009 (10) LJSOFT (NAG) 96

Constitution of India, 1950 — Article 226 — Forged degrees — Investigation. Petitioners praying for termination of services of Respondent No.3 as her degree is bogus

and that the matter be entrusted to Central Bureau of Investigation for investigation of bogus degrees — Inquiry against Respondent No.3 has been completed and the Inquiry Officer has submitted his report — Private complaint has been filed and the investigation in the criminal case is in progress — Petition disposed of by directing Competent Authority in the University of Mumbai to pass final order in accordance with law as the report of the Inquiry Officer within eight weeks and Central Government is directed to constitute a special team headed by a Police Officer not below the rank of Deputy Inspector General of Police to examine all the cases of forged degrees. (See para 7, 8, 9)

Result : Accordingly.

Ashok Krishnaji Inamdar & anr. Vs. K.H. Ranganath, Chairman, People's Education Society & ors. 2009 (10) LJSOFT 88

Constitution of India, 1950 — Article 226 — Reserve Bank of India Pension Regulations, 1990 — Revision of pension — Withdrawal of benefits — Opportunity of hearing.

Petitioners are ex-employees of Reserve Bank of India — By circular dated 1.9.2003 the pension of the petitioners was revised and updated from the year 2002 — Vide Circular dated 10.10.2008 Reserve Bank of India had withdrawn its earlier circular dated 1.9.2003 on the directions issued by the Government of India — Benefit which was enjoyed by the petitioners from the year 2002 was withdrawn without giving them an opportunity of being heard — Impugned circular dated 10-10-2008 is liable to be set aside. (See para 3)

Result : Petition allowed.

Arvind Ganesh Karnik and ors. Vs. Reserve Bank of India and anr. 2009 (10) LJSOFT 127

Constitution of India, 1950 — Article 226 — Termination of services — Minority educational institution — De facto doctrine.

1) Termination of services — Objection to the disciplinary proceedings against respondent No.2 on the ground that it was initiated or concluded by a body whose change report was not accepted — Both the old and new bodies have filed the petitions to show that they are united as far as the question of disciplinary proceedings against respondent No.2 is concerned — Whatever may have been the defects in initiation of action they stood cured by the subsequent ratification of the action by two bodies — University Tribunal could not have set aside the removal of respondent No.2 on such a ground, unless it was shown to the Tribunal that a majority of trustees or the members of the governing council were against such an action. (See para 18, 19)

2) Petitioner is a minority institution and has a right to manage its affairs subject to such statutory limitations as may be recognized, as applicable even to minority institutions — Institution entitled to terminate the services of its employees without obtaining prior approval of the authorities. (See para 29)

Result : Petitions allowed.

Hislop Education Society Vs. Presiding Officer, University College Tribunal, Nagpur & ors. 2009 (10) LJSOFT (NAG) 32

Constitution of India, 1950 — Article 226 — Verification of caste claim — Termination of services.

Reserved post — Petitioner in service since 1989 — All of a sudden notice was served on 10/08/2009 directing him to produce the caste validity certificate till 14/08/2009 failing which his services will be terminated — Claim

of petitioner submitted for verification on 09/09/2009 — Impugned order dated 10/08/2009 quashed and set aside — Respondent No.2 directed to decide the caste verification claim of the petitioner expeditiously and respondent No.2 not to terminate the service of the petitioner on the ground that petitioner failed to produce his caste validity certificate. (See para 4, 5)

Result : Petition allowed.

Motilal S/o.Lingayya Lakekar Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (URC) (AUR) 1

Constitution of India, 1950 — Article 226(2) — Army Act, 1950 — Section 38(1), 40(a), 40(b) — Summary Court Martial — Dismissal from service — Cause of action — Territorial jurisdiction of High Court.

1) Court Martial proceedings — Offence was committed, the chargesheet was served and the petitioner was tried and convicted in the State of Punjab — Petitioner was imprisoned in a jail also in the State of Punjab — This completes the cause of action — After release petitioner received the discharge certificate by post at Yavatmal — Said certificate is not integrally connected to the cause of action namely, the offence, the trial and the punishment — Petitioner not entitled to any relief as no part of the cause of action has arisen within the jurisdiction of Bombay High Court. (See para 9)

2) Territorial jurisdiction of High Court — Depends not only on the residence or location of the person affected by the order but of the person or authority passing the order and the place where the order has the effect — Jurisdiction of a High Court can be exercised even if part of the cause of action or a small fraction thereof has arisen within the jurisdiction of that High Court. (See para 10)

Result : Petition dismissed.

Tulsiram Jago Dudhkohale Vs. Union of India & anr. 2009 (10) LJSOFT (NAG) 128

Constitution of India, 1950 — Article 226, 227 — Code of Criminal Procedure, 1973 — Section 482 — Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 48(1) — Termination of services — Breach of order passed by the Industrial Court — Issuance of process — Quashing of criminal proceedings — Maintainability of petition — Alternate remedy.

1) Complaint filed u/s 48 of MRTU and PULP Act — Petitioner no.2 is a chairman of the company and petitioner no.3 is the vice president — No averment in the complaint that the petitioner No.2 was responsible for day to day affairs of the company — No averment that the copy of the interim order was served on the petitioner nos.2 and 3 — Unless the interim orders are served personally, no action for contempt can be initiated against such person. (See para 10)

2) Complaint filed u/s 48 of MRTU and PULP Act — Interim order did not absolutely prohibit the petitioners from terminating the services of its employees involved in the complaint — Liberty was given to the petitioners to terminate their services by following due process of law — It was the duty of the Labour court to have ascertained, prima facie, at least, whether the order of termination was passed without following due process of law or not — Since no such exercise appears to have been followed by the Labour Court, the order of issuance of process has been passed without any application of mind — Impugned order of issuance of process is liable to be quashed and set aside. (See para 11, 12)

3) Quashing of process — Availability of alternate remedy of filing revision application — High Court could exercise its jurisdiction under Articles 226 and 227 of Constitution of India or Section 482 of Cr.P.C. and existence of alternate remedy was not a complete bar for entertaining such an application — Petition maintainable (See para 7)

Result : Petition allowed.

Indian Tourism Development Corporation & Ors. Vs. Presiding Officer, 9th Labour Court & Anr. 2009 (10) LJSOFT 75

Constitution of India, 1950 — Article 226 — Road widening — Removal of encroachment — Writ jurisdiction — Alternate remedy.

See Satyanarayan Modulal Dayma Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 170

Constitution of India, 1950 — Article 226 — Custody of minor child — Nature of enquiry — Writ of habeas corpus.

See Carla Gannon Vs. Shabaz Farukh Allarakhia 2009 (10) LJSOFT 40

Constitution of India, 1950 — Article 226 — Dismissal from service — Discrimination. **See P.M. Ratnakar Vs. Uco Bank 2009 (10) LJSOFT 62**

Constitution of India, 1950 — Article 226 — Dismissal from service — Alternative remedy — Maintainability of petition.

See Girreddi Suryanarayana Reddy Vs. Securities and Exchange Board of India 2009 (10) LJSOFT 29

Constitution of India, 1950 — Article 226 — Plagiarism — Malpractices in examinations — Degree obtained by fraud —

Principles of natural justice — Writ jurisdiction.

See Shashikant s/o Vishwanathrao Choudhari Vs. Sant Gadge Baba Amravati University 2009 (10) LJSOFT (NAG) 113

Constitution of India, 1950 — Article 226, 227 — Departmental enquiry — Nature of penalty — Writ jurisdiction.

See B.R. Mangalur Vs. Union of India 2009 (10) LJSOFT 91

Constitution of India, 1950 — Article 226, 227 — Execution proceedings — Objection to execution of decree — Non consideration of — Legality of — Letters Patent Appeal — Maintainability of — Rules of precedent.

See Mangala Sharad Mutha Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 31

Constitution of India, 1950 — Article 226, 227, 329, 243 — Member of Panchayat — Disqualification of — Misuse of office.

See Agnello Caridade Lobo Vs. Sanjay A. Pednekar 2009 (10) LJSOFT (GOA) 36

Constitution of India, 1950 — Article 226, 311 — Institutes of Technology Act, 1961 — Section 17 — Removal from services — Wrong usage of title ‘Professor’ — Suspension — Disciplinary proceedings — Initiation of — Competent authority.

1) Petitioner appointed on the post of Training and Placement Officer — Charged for misconduct including wrong usage of the title ‘Professor’ on letterheads and rubber stamps, scant regard for orders of the director and creating a situation for his own financial benefits by assigning more lectures to himself — It was also alleged that he was arrogant and condescending and his behaviour was unbecoming of a senior member of staff —

Articles of charge neither vague nor ambiguous — Petitioner is in no way prejudiced and having participated in the inquiry so also availed of all opportunities to defend himself, it is no longer open to him to complain and urge that the charge-sheet is vague and ambiguous — Charges are serious and the Petitioner was held guilty of using impertinent language and showing scant regard and his conduct depicts lack of decency and decorum — Petitioner was warned of the consequences resulting from his irresponsible conduct but he persisted — When there was no alternative a charge-sheet was issued and inquiry was held — Once the charges were proved, considering their seriousness and the standards which are required to be maintained in reputed and prestigious institutions like Indian Institute of Technology, the punishment of removal from service was imposed — Punishment cannot be said to be excessive, arbitrary and unreasonable so as to call for interference in writ jurisdiction. (See para 27, 33, 39)

2) Conduct of domestic/ departmental inquiry — Order of Dismissal or Removal of an Employee must be made by an Authority not Subordinate to the Appointing Authority — It does not require that the order initiating the Inquiry or the Inquiry itself must be made by the Appointing Authority himself or by some person, not Subordinate to him — In such cases prejudice or failure of justice must be proved — Inquiry Officer rightly concluded that the Director was the competent Authority as far as the Petitioner is concerned and had full powers to issue the charge-sheet and initiate the inquiry. (See para 14, 22)

3) Petitioner appointed on the post of Training and Placement Officer — Duties was to co-ordinate between the Institute and several Placement Agencies and Organizations —

Petitioner cannot be termed as a Professor considering the predominant nature of his functions and duties — Merely because he was taking some lectures and classes does not mean that he was a Professor or designated as such — It is not as if the posts are designated nominally or ornamentally — There are distinct functions and duties to be performed — Once it is undisputed that a Training and Placement Officer is not a Professor, then the charge has been rightly held to be proved. (See para 29, 31)

Result : Petition dismissed.

Anil Vasant Mandke (Professor) Vs. Indian Institute of Technology & ors. 2009 (10) LJSOFT (NAG) 28

Constitution of India, 1950 — Article 227 — *Eviction proceedings — Concurrent findings of fact — Writ jurisdiction.*

See J. Marathe since deceased through his Lrs. Vs. P.V. Kaloke 2009 (10) LJSOFT 144

Constitution of India, 1950 — Article 254(1) — *Claim of maintenance — Upper Limit — Validity of State Amendment.*

See Upendranath Chandrabhushan Chaube Vs. Neeta Upendranath Chaube 2009 (10) LJSOFT (URC) 55

Consumer Protection Act, 1986 — Section 21 — Insurance Act, 1938 — Section 64UM(2) — Machinery Insurance Policy — Break down — Claim of compensation — Under-insurance — Claim towards mental harassment.

1) Diesel Generating Set — Claim of reimbursement on breaking down of machinery — Complainant had paid Rs.25,00,000/- for the repairs but the insurer relying upon the report of the last surveyor agreed to reimburse the sum of Rs.8,07,110/-

only — Parts which had suffered due to wear and tear on account of constant use although replaced could not form part of claim for reimbursement under the terms of policy — Though surveyor's report is not the last word but then there must be legitimate reasons for departing from such report — Complainant failed to show any reason justifying rejection of surveyor's report. (See para 11, 15)

2) Machinery Insurance Policy — Under-insurance — Complainant had purchased diesel generating set and the alternator for Rs.45,25,000/- but got the insurance cover for Rs.35,00,000/- — There is an element of under-insurance — Value of the item is always declared by the insured at the time of issuance of the insurance policy while the element of under-insurance is calculated by the insurer at the time of assessment of loss — Policy provides that if the sum insured is less than the amount required to be insured the insurer will pay only in such proportion as the sum insured bears to the amount insured — Deductions by applying the pro-rata formula from the sum payable as under-insurance cannot be faulted. (See para 17)

3) Insurance claim — Claim for mental harassment — It is only the natural person who can claim damages for mental harassment and not the corporate entity — Complainant is a company and the claim for mental harassment is not legally permissible. (See para 19)

Result : Appeal dismissed.

Sikka Papers Limited Vs. National Insurance Company Ltd. & Ors. 2009 (10) LJSOFT (SC) 103

Contempt of Courts Act, 1971 — Section 2(b),12 — Disobeying the orders of the Court.

Contempt proceedings — Statement was made by the learned A.G.P. on behalf of State that

Government has taken every care and steps to stop slaughtering of animals and birds by way of sacrifice to God or adoration and is being prevented — Respondents No.4 and 5 have not taken the precautionary preventive and effective steps — Order passed by High Court was disobeyed which amounts to contempt of Court — However, since the unconditional apology has been tendered on behalf of respondents No.4 and 5, same is accepted — Contempt proceeding dropped with directions to the respondents that they shall take effective, efficient, constructive and preventive measures and care to stop the slaughtering of animals and birds by way of sacrifice in the name of God and adoration scrupulously and meticulously to comply with the directions issued by the High Court. (See para 13, 14)

Result : Accordingly.

Krishi Go Seva Sangh Malegaon Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (AUR) 87

Contract Act, 1872 — Section 23 — *Specific performance — Oral agreement — Money decree — Amount paid by way of black money. See Chandrahas Narayan Shetty Vs. Smt.Misribai Ramkuvar Pandit 2009 (10) LJSOFT 133*

Contract Act, 1872 — Section 73 — *Transporting contract — Claim of damages — Liability of common carriers — Service of notice.*

See Maharashtra State Electricity Board Vs. P.B. Salunke 2009 (10) LJSOFT (AUR) 63

Contract Act, 1872 — Section 230 — Import of goods — Rent/ Storage charges — Disclosed foreign principal — Liability of shipping agent.

Suit filed by Port Trust for recovery of charges upon uncleared goods — Defendant No.1 imported the suit goods — Defendant No.2 was the shipping agent — Plaintiff has not sued the foreign disclosed principal but has only sued the Indian agent — Under Exception to Section 230 of Contract Act the action is maintainable — However Defendant No.2 - the Indian agent may claim on merits that he is otherwise not liable which aspect can be adjudicated at the time of the trial — Not a fit case for striking off the name of Defendant No.2 from the record of the Suit in the absence of the disclosed foreign principal of Defendant No.2 even before trial. (See para 11, 16)

Result : Notice of motion dismissed.

Board of Trustees of Jawaharlal Nehru Port Trust Vs. Continental Float Glass Ltd. & ors. 2009 (10) LJSOFT 142

Customs Act, 1962 — Section 111(o), 112 (a), 112(b) — Violation of import policy — Confiscation — Imposing of penalty.

Import of second-hand printing machines under the "actual user" condition — Said machines sold to different parties in violation of the said conditions and the import policy — Condition of actual user and the condition of non-transfer of the machinery within five years from the date of import were violated — Goods were liable to be confiscated u/s 111(o) — No fault with the impugned orders holding the appellant liable to be penalised u/s 112 of Customs Act. (See para 5)

Result : Appeal dismissed.

Ranjeet Sanghvi Vs. Commissioner of Customs (Adjudication) 2009 (10) LJSOFT 56

Customs Act, 1962 — Section 129-C — *Procedure of Appellate Tribunal — Difference of opinion by two members — Rectification*

of mistake — *Inherent jurisdiction of CESTAT. See Suzlon Infrastructure Ltd. Vs. Union of India 2009 (10) LJSOFT 120*

Development Control Regulation — Regulation No.N-2.4.17 — Acquisition of land — Grant of TDR/DRC in lieu of compensation — Right of private land-owners — Notification dated 3-2-2007 — Legality of. See Kausarbag Co-operative Housing Society Ltd. Vs. State of Maharashtra 2009 (10) LJSOFT (URC) 10

Dowry Prohibition Act, 1961 — Section 2 — Dowry death — Circumstantial evidence — Presumption — Term “dowry” — Appeal against conviction. See Balasaheb Changdeo Ghule Vs. State of Maharashtra 2009 (10) LJSOFT 38

Dowry Prohibition Act, 1961 — Section 2, 4 — Matrimonial cruelty — Territorial jurisdiction — Quashing of process — Discharge of accused. See Rajendra Tukaram Ahirrao Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 143

Employees’ State Insurance Act, 1948 — Section 2(9), 2(12), 45-A, 77 — Recovery of contribution — Number of employees — Clubbing of different units — Applicability of E.S.I. Act — Nature of establishment — Term “Premises” — Limitation.

1) Ship division — Unit for repairs to ship — Contended that there are no premises utilised for the purpose of the repairs since the ships are repaired while they are berthed in the dock or sea and in no case the sea or high sea could be treated as premises — Rejecting the contention held that the premises that are to be treated as premises would be the place where from instructions are issued to

employees to repair any particular ship and the place from where this work is supervised. (See para 5)

2) Amalgamation of different units to bring the distinct activities under the provisions of ESI Act — Clubbing of three units (a) Office i.e. administrative work premises; (b) Department of repairs to ship and (c) steel fabrication — To decide whether different units are part of the same establishment, the Court has to assess the extent of functional integrity between them and also whether one unit can exist conveniently and reasonably without the other — Neither of the units can be run conveniently and independently of the other — Units were rightly clubbed together by the respondent by implementation of ESI Act. (See para 6)

3) Limitation — Application u/s 77 required to be filed within 3 years from the date of the claim — Question of limitation cannot be decided upon an admission of a witness in evidence — Question as to on which date the cause of action arose and which facts constitute the cause of action has to be first determined — Date of cause of action cannot be treated as the date of allotment of code number — Word “claim” has to be necessarily interpreted to mean a demand of certain sum of money payable as contribution — Cause of action would arise when a claim for specific sum of money is made as contribution — Claim for contribution was made on 10.06.1987 and the application u/s 77 was filed on 23.06.1987 within three years — Application could not be said to be barred by limitation. (See para 7)

4) Repairing of ship — Employees of appellant cannot be called Dock Workers because they are not employed in connection with the work of loading and unloading of ships or any other functions of navigation.

(See para 8)

Result : Appeal dismissed.

Syndicate Marine Enterprises Vs. Regional Director, ESI Corporation & anr. 2009 (10) LJSOFT (GOA) 158

Employees’ State Insurance Act, 1948 — Section 85(a), 85(i)(b) — Code of Criminal Procedure, 1973 — Section 482 — Failure to pay ESI contribution — Subsequent payment — Quashing of criminal proceedings — Discharge of accused.

Complaint filed against Respondents-accused as they failed to pay ESI contribution as required by law — Payment of contribution amount before filing of the complaints but after offence was completed — Same may be considered a mitigating circumstance to be considered in the event the accused are convicted — However, the payment of contribution before filing of the complaints is no ground to discharge the accused — Order of discharge based on the decisions in the cases of Common Cause is clearly illegal — Impugned order set aside as the same is illegal. (See para 4, 6)

Result : Application allowed.

Regional Director, Employees’ State Insurance Corporation Vs. Smt. Supriya S. Bandal & ors. 2009 (10) LJSOFT 80

Evidence Act, 1872 — Section 9 — Dacoity — Rape — Murder — Test Identification Parade.

See Ankush Maruti Shinde Vs. State of Maharashtra 2009 (10) LJSOFT (SC) 121

Evidence Act, 1872 — Section 9 — Murder — Identification of accused.

See Ram Maruthi Pawar Vs. State of Maharashtra 2009 (10) LJSOFT (SC) 140

Evidence Act, 1872 — Section 17, 18, 19, 20, 21 — Succession proceedings — Admission of plaintiff — Jurisdiction of Civil Court. See Habibuddin s/o. Sadruddin Vs. Amirbi w/o. Shujauddin Inamdar (deceased through Lrs.) & Anr. 2009 (10) LJSOFT (AUR) 169

Evidence Act, 1872 — Section 36, 60 — Encroachment — Extent of — Proof of — Second appeal.

1) Fact of encroachment may be proved partly by oral evidence — However the extent of encroachment cannot be proved in absence of public records and procedure emerging from Section 36 and Section 60 of Evidence Act — Extent of encroachment was sought to be proved by aid of Court Commissioner — Commissioner measured the encroachment without having authentic document of maps etc. with him — Courts rightly held that exact encroachment is not proved — However it would not be proper to dismiss the suit simply because the Court Commissioner has not adopted a correct procedure of measurement — Exercise of re-measurement, according to rules, will have to be got done through Court Commissioner again and again, if necessary, because failures of Cadestral Surveyors are not attributable to parties to the suit — Impugned Judgments are erroneous being rendered contrary to law as to proof of facts — Impugned Judgment and Decree of set aside and matter remanded back to the Trial Court for appointment of a qualified Surveyor as a Commissioner afresh. (See para 24, 25, 26, 38, 39)

2) Encroachment — Extent of — Proof of — Procedure to be followed — Cadestral Surveyor will have first to ascertain the boundary marks and boundaries of undisputed and unencroached area of the land, based on undisputed boundary marks, as seen in the

public record, and thereafter measure the extent of encroachment — If such report of the Commissioner is proved, as rendered, keeping in view the requirements of rules relating to measurement and if it withstands the test of cross-examination, unless admitted document, alone can be the foundation as to proof of fact and of extent of encroachment. (See para 35, 36)

Result : Appeal partly allowed.

Vijay Shrawan Shende & ors. Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (NAG) 117

Evidence Act, 1872 — Section 79 — Date of birth — Correction of — Public documents — Presumption of genuineness.

See Kishor s/o Sukhdeo Walhekar Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 165

Evidence Act, 1872 — Section 91, 92 — Sale of flat — Delivery of wrong flat — Proof of — Non-joinder of necessary parties.

See Pandurang Atmanand Camotin Vs. Sunivas Builders 2009 (10) LJSOFT (GOA) 159

Evidence Act, 1872 — Section 91, 92 — Suit for partition — Property of partnership firm — Second appeal.

See Kanihyalal Hastimal Firodiya Vs. Vasantlal Hastimal Firodiya (died) through his legal heirs 2009 (10) LJSOFT (AUR) 110

Evidence Act, 1872 — Section 113-B — Dowry death — Circumstantial evidence — Presumption — Term “dowry” — Appeal against conviction.

See Balasaheb Changdeo Ghule Vs. State of Maharashtra 2009 (10) LJSOFT 38

Evidence Act, 1872 — Section 114(e) — Daily wagers — Denial of permanency — Public employment — Mode of appointment — Burden of proof — Presumption.

See Municipal Council Vs. Bhandara Zilla General Workers Union 2009 (10) LJSOFT (NAG) 93

Evidence Act, 1872 — Section 115 — Omission to sue for certain reliefs — Second suit — Maintainability of — Doctrine of “Res judicata” — Principle of “Issue estoppel” and “Rule of estoppel” — Distinction between.

See Yamunabai Purushottam Deogirikar Vs. Mathurabai Nilkanth Choudhari 2009 (10) LJSOFT (AUR) 50

Evidence Act, 1872 — Section 137 — Municipal councillors — Disobeying the whip — Disqualification of — Mandatory procedural requirement — Non-compliance of — Principles of natural justice.

See Malti w/o Rajesh Yawalkar. Vs. Sagar s/o Raghunathrao Kautkar 2009 (10) LJSOFT (NAG) 52

Evidence Act, 1872 — Section 146(3), 147, 155 — Indian Penal Code, 1860 — Section 499, 500 — Defamation — Questions lawful in cross-examination.

Complaint filed by the Advocate General of State of Goa against the petitioner - a practicing Advocate, for certain defamatory statements allegedly made by the accused at a press conference — Cross-examination of complainant — Trial Court disallowing three questions as irrelevant viz (1) Is it not true that amongst the constitutional functionaries of State of Goa as well as the Executives of the State Government you are the highest paid Officer of the Government, per month? (2) Can you name any officer of the Government

of Goa by designation who draws a sum equivalent to the average monthly remuneration paid to you? and (3) Is it true that the Bombay High Court at Goa on various occasions expressed concern as to your conduct and performance as the Advocate General? — Allegations were made by the petitioner/accused that the complainant has claimed extra payment of bills and also that the complainant had disgraced the office of Advocate General — Petitioner-accused would be entitled to demonstrate the truth of the said allegations — None of the three questions could be said to be irrelevant or indecent or scandalous or meant to annoy or scandalise the complainant — Trial Court was not justified in disallowing any of the said three questions — Impugned orders disallowing the said questions as irrelevant are set aside. (See para 21, 22, 23)

Result : Petition allowed.

Aires Rodrigues (Adv.) Vs. Subodh Kantak & anr. 2009 (10) LJSOFT (URC) (GOA) 16

Family Courts Act, 1984 — Code of Civil Procedure, 1908 — Order V Rule 10 — Divorce by mutual consent — Initial consent — Non-appearance of spouse — Presumption of continuing consent — Service of summons — Substituted service.

See Smruti Pahariya Vs. Sanjay Pahariya 2009 (10) LJSOFT (SC) 108

Goa Children’s Act, 2003 — Section 7(c), 8(2), 8(9) — Bail — Cancellation of — Maid — Minor child — Ill-treatment — Change of circumstances — Additions of offence/s.

See Audumber alias Shubham Pednekar Vs. State of Goa 2009 (10) LJSOFT (URC) (GOA) 21

Goa Children’s Act, 2003 — Section 7(c), 8(2), 8(9) — Anticipatory bail — Grant of — Maid — Minor child — Ill-treatment.

See Minaxi A. Pednekar Vs. State of Goa 2009 (10) LJSOFT (URC) (GOA) 20

Goa, Daman and Diu Ports Rules, 1983 — Rule 2(ff), 54-A, 64 — Use of Government riverine land — Levy of rental charges — Term ‘open land’.

See Delta Engineers Vs. State of Goa 2009 (10) LJSOFT (SC) 131

Goa Panchayat Raj Act, 1994 — Section 12(1)(d), 55(4) — Constitution of India, 1950 — Article 226, 227, 329, 243 — Member of Panchayat — Disqualification of — Misuse of office.

Disqualification of respondent No.1 as a Member of Village Panchayat — Respondent No.1 participated in a meeting of panchayat for granting a revised license to the owner of a plot who had contracted with Respondent No.1 for its construction — Facts clearly show that construction was either in progress or was over on 15.3.2008 when meeting of respondent No.2 Village Panchayat took place and respondent No.2 continued to receive his dues till December, 2008 — Pecuniary interest of respondent No.1 well established on record — Respondent No.1 disqualified u/s 12(1)(d) r/w 55(4) to continue as a Member of Village Panchayat and his seat is deemed to have become vacant in terms of Section 12(1)(d). (See para 7, 11)

Result : Petition allowed.

Agnello Caridade Lobo Vs. Sanjay A. Pednekar & ors. 2009 (10) LJSOFT (GOA) 36

Guardians and Wards Act, 1890 — Section 9 — Constitution of India, 1950 — Article 226 — Custody of minor child — Nature of enquiry — Writ of habeas corpus.

1) Custody of minor child — Marriage between the parties took place in Australia, the birth of child took place in Australia — Order of custody passed by Australian Court is passed in terms of consent given by the parties and not on merits — Holding elaborate enquiry on the basis of material the Court is entitled to take independent decision having regard to welfare of the child — Petitioner No.1 is residing with her parents alongwith her partner from whom she bore three children — Said partner of petitioner No.1 has not filed any affidavit indicating that he is ready and willing to look after the upbringing of minor child — Parents of petitioner No.1 have been declared undischarged bankrupt — Petitioner No.1 is getting unemployment pension amount indicating that presently she is unemployed — Best interests of child would be served by ordering custody of the child to the respondent No.1-father — Respondent No.1 is living with his father, grand mother, mother and paternal aunt — There are three lady members in his house and his father has also retired — Minor child will be properly looked after by the first respondent — Welfare of the child will be served in a better manner by handing over his custody to the Respondent No.1-father. (See para 50)

2) Custody of minor child — Writ of habeas corpus can be pressed into service for granting custody of a child to the deserving spouse — In issuing the writ of Habeas Corpus in the case of infants the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute — Preliminary objection about maintainability of

the writ petition on the ground that the petitioners have equally efficacious alternate remedy is without any substance — Petition maintainable. (See para 19, 20)

3) Custody of minor child — What has to be examined is whether it is in the best interests of the child to order return of child without further enquiry — Whether summary enquiry or elaborate enquiry is conducted, the first and foremost consideration is the welfare of the child. (See para 39)

4) Custody of minor child — Petitioner No.1 is a divorcee of Respondent No.1 and mother of child — Marriage between the parties took place in Australia, the birth of child took place in Australia — Despite the consent order of the Competent Australian Court respondent No.1 stealthily brought the child to India — Court cannot approve the conduct of respondent No.1 in bringing child by misleading the petitioners and retaining custody in violation of the orders of Australian Court — It was highly desirable that the first respondent ought to have approached the Australian Court for variations and/or modification of consent order of custody — However the question of handing over the custody of minor child is to be considered in the light of paramount consideration namely welfare of the child. (See para 49)

Result : Petition dismissed.

Carla Gannon & Anr. Vs. Shabaz Farukh Allarakhia & anr. 2009 (10) LJSoft 40

Hindu Adoptions and Maintenance Act, 1956 — Section 11 — Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 40, 41 — Adoption — Rehabilitation of abandoned children — Conditions for valid adoption — Restriction on same gender adoptions as of existing child — Applicability of — Implied amendment — Special laws

versus general laws — Interpretation of statutes.

1) Adoption of child — Act of 1956 Act prohibits a Hindu from adopting a child when he or she already has a child of the same gender — Juvenile Justice Act creates a general right to adopt abandoned, surrendered, or orphaned children — It is a special enactment dealing with children in conflict with law and children in need of care and protection — Where the child which is sought to be adopted falls within the description of an orphaned, abandoned or surrendered child, the provisions of the Juvenile Justice Act must prevail — In such a case the embargo that is imposed on adopting a child of the same sex by a Hindu u/s 11(i) and 11(ii) of Hindu Adoptions and Maintenance Act must give way to the salutary provisions made by the Juvenile Justice Act — However where the child is not of a description falling under the purview of Chapter IV of the Juvenile Justice Act, a Hindu desirous of adopting a child continues to be under the embargo imposed by clauses (i) and (ii) of Section 11 of the Act of 1956. (See para 20)

2) Adoption of child — Petitioners profess the Hindu religion and already have a biological daughter — They have obtained guardianship under the provisions of the Guardian and Wards Act of a minor child of the same sex — Child of whom they assumed guardianship did fit the description of a child in need of care and protection u/s 2(d)(v) of Juvenile Justice Act and of a surrendered child u/s 41(2) — Petitioners were eligible to adopt the child under the Juvenile Justice Act and the order of guardianship does not destroy that entitlement — Child was a surrendered child and was legally free for adoption — Abundant material before the Court for the Court to conclude that it is manifestly in the interest

and welfare of the child that the petition for adoption should be allowed. (See para 34, 35)

3) Interpretation of statutes — When there are two special Acts dealing with the same subject matter the legislation which has been enacted subsequently should prevail — Even if there were to be a conflict between the provisions of the Hindu Adoptions and Maintenance Act and the Juvenile Justice Act, it is the latter Act which would prevail. (See para 21)

4) Implied amendment — While there is a presumption against implied amendment or repeal under Indian law, the Supreme Court has recognized that this presumption may be rebutted where the inconsistency cannot be reconciled — If the 2000 Act is held to be inconsistent with the 1956 Act, when passing the later Act Parliament impliedly amended the Hindu Adoptions and Maintenance Act to permit adoption of children in the specified subclass, irrespective of whether a person has children of the same sex. (See para 22)

5) Special laws versus general laws — Under Indian law, an Act is only special or general relative to other Acts; it may be general in some situations but special in others — Act of 1956 establishes rules of general applicability in Hindu family matters including rules for adoption whereas Juvenile Justice Act establishes specific rules for the adoption of a limited subclass of persons - abandoned, surrendered, or orphaned children — Special provision modifies the operation of the general rule without completely overriding it — Juvenile Justice Act is a special act that overrides the general provisions of the Hindu Adoptions and Maintenance Act. (See para 23, 25, 26)

Result : Accordingly.

Re : Payal @ Sharinee Vinay Pathak 2009 (10) LJSoft (URC) 9

Hindu Marriage Act, 1955 — Section 13(1)(ia) — Divorce — Cruelty — Suspicion by wife — Filing of complaint by wife.

1) Divorce petition filed by respondent-husband on the ground of cruelty alleging that appellant-wife suspected him to have an affair with a family friend — Basic dispute relating to the respondent's so-called relationship with one lady working with him — It is established that the respondent was having affair with said lady prior to marriage — She is living alone being a divorcee — Respondent-husband would return home late and some time would not return for the entire night — He would bring the said lady at the matrimonial home and they were sharing the food with each other in the same plate — Cannot be said that the suspicion or doubt of appellant was without any basis worth the name and that only by way of jealousy that she was making such allegation — It is not the law that even if the wife makes any legitimate grievance or complaint or even or pick up quarrel on a justifiable ground, then also it amounts to cruelty to the other side — Appellant was justified in making necessary enquiries about her husband as he was not often coming home upto mid night from the office — If the circumstances so warrant, wife may have some suspicion about the act and behaviour of her husband — It may not amount to an act of cruelty which can be attributed to the wife — Not a fit case in which the marriage is required to be dissolved by passing a decree for divorce on the ground of alleged cruelty attributed to the appellant by the respondent — Impugned order quashed and set aside. (See para 13, 15, 19, 20)

2) Divorce — Cruelty — Filing of complaint under the Domestic Violence Act — When the Act permits the wife to approach the Court under the provisions of Domestic Violence

Act and if that remedy is availed of, such act should not be treated as an act of cruelty — Whether the allegation is false or not is a matter of investigation before other competent court — In a given case if ill-treatment is meted out by in-laws and when the law has provided remedy, there is nothing wrong if a complaint to that effect is filed even against in-laws — That ground itself should not be taken as the basis for dissolving the marriage. (See para 16, 19)

Result : Appeal allowed.

Mrs. Deeplakshmi Sachin Zingade Vs. Sachin Ramesh Rao Zingade 2009 (10) LJSOFT (URC) 4

Hindu Marriage Act, 1955 — Section 13(1)(ib) — Divorce — Desertion — Irretrievable break down marriage.

1) Appellant-Husband sought divorce on the ground of desertion — Much variance between the pleadings and proof regarding the evidence led by the appellant — Appellant improved in his evidence stating that the respondent-wife was quarreling because of his poor financial position because he was unable to provide proper food and because she was required to look after small children — There is also improvement regarding threats by the respondent to commit suicide — From 1980 till 1984 when petition was filed the appellant did not issue any notice — Absence of any notice for four years and filing of divorce petition only after decision of maintenance order u/s 125 of Cr.P.C. makes case of the respondent-wife more trustworthy — Order of First Appellate Court reversing the decree granted by trial Court not liable to be interfered with. (See para 10, 11, 12)

2) Divorce — “Irretrievable break down” is no ground for divorce — In some cases the Supreme Court in its power under Article 142

of the Constitution granted divorce on the ground of irretrievable break down of the marriage However said powers under Article 142 of the Constitution are not conferred on the High Court or subordinate Courts nor the legislation has accepted irretrievable break down as valid ground for divorce. (See para 13)

3) Divorce — Trial Court concluded that both the parties are having evidence of equal weight in their favour and it is difficult to conclude as to actually which of the party had made sincere efforts to reconcile the matter — Merely because the Trial Court could not decide which evidence should be believed that is no reason to allow the petition for divorce. (See para 8)

Result : Appeal dismissed.

Vithal s/o. Hullaji Hivre Vs. Sumanbai w/o. Vithal Hivre 2009 (10) LJSOFT (AUR) 51

Hindu Marriage Act, 1955 — Section 13(B)(2) — Family Courts Act, 1984 — Code of Civil Procedure, 1908 — Order V Rule 10 — Divorce by mutual consent — Initial consent — Non-appearance of spouse — Presumption of continuing consent — Service of summons — Substituted service.

1) Divorce by mutual consent — Absence of husband on three dates — If petition for divorce is not formally withdrawn and is kept pending then on the date when the Court grants the decree the Court has a statutory obligation to hear the parties to ascertain their consent — Mutual consent of the parties is a jurisdictional fact — Court while passing its decree u/s 13B would be slow and circumspect before it can infer the existence of such jurisdictional fact — From the absence of one of the parties for two to three dates the Court cannot presume his/her consent — View taken

by High Court in setting aside the decree affirmed. (See para 49, 50)

2) Divorce by mutual consent — Procedural irregularity — Absence of husband on three dates — Family Court directed substituted service under order 5 rule 20 of CPC in absence of its own satisfaction that husband is evading service — On application of wife it pre-poned the date of final hearing and passed ex-parte decree on that day itself by treating the matter on the board — Pre-ponement was done ex-parte — Court's proceeding must have sanctity and fairness and it cannot be conducted for the convenience of one party alone — Family Court did not discharge its statutory obligation u/s.13B(2) of hearing the parties — This is flagrant abuse of judicial process — Decree of divorce passed by the Family Court vitiated by procedural irregularity. (See para 11 to 16)

Result : Appeal dismissed.

Smruti Pahariya Vs. Sanjay Pahariya 2009 (10) LJSOFT (SC) 108

Hyderabad Atiyat Inquiries Act, 1952 — Section 12, 13(1) — Code of Civil Procedure, 1908 — Section 9 — Evidence Act, 1872 — Section 17, 18, 19, 20, 21 — Succession proceedings — Admission of plaintiff — Jurisdiction of Civil Court.

1) Succession proceedings — Regarding the questions relating to succession, legitimacy, divorce or other questions of personal law the decision of the Civil Court shall have a binding effect and will prevail over the decision of Atiyat Court — Question raised before the Civil Court is essentially in respect of succession as well as entitlement of the defendants to succeed to the property in accordance with the personal law governing the parties — Civil Court shall have a jurisdiction to deal with the questions raised

in the suit. The argument advanced by Counsel for the appellants has been rightly turned down by both the Courts below. I do not find any error committed by the Courts below in that regard. (See para 14)

2) Succession proceedings — No specific pleading raised by defendants nor defendants have demonstrated as to how suit presented is beyond prescribed period of limitation — Decision rendered by Atiyat Court in 1964 does not deal with the aspect of entitlement of the parties to succeed to the property but it merely has an effect of declaring the successors of deceased — Decision rendered by Atiyat Court is contrary to the personal law governing the parties — Decision is opposed to the personal law and as such will not come in way in raising entitlement in respect of property by the plaintiff — Decision which is illegal need not be questioned — Judgment and decree passed by the trial Court which has been confirmed by the first appellate Court cannot be questioned on the ground that the suit is instituted beyond prescribed period of limitation. (See para 15)

3) Succession proceedings — Question in respect of title or succession to the property is a matter which can be dealt with by the Civil Court — Decision of the Civil Court in respect of question of succession will prevail over the decision of Atiyat Court — Question in respect of entitlement of the plaintiff or defendants by considering provisions of personal law governing the rights by way of succession is a domain of the Civil Court — Civil Court is the only forum for rendering decision in that regard — Admission given by plaintiff in Atiyat proceedings is opposed to the law and would not come in the way of the plaintiff. (See para 17)

Result : Appeal dismissed.

Habibuddin s/o. Sadruddin & Ors. Vs. Amirbi w/o. Shujauddin Inamdar (deceased through Lrs.) & Anr. 2009 (10) LJSOFT (AUR) 169

Income Tax Act, 1961 — Section 206-C (As substituted by Finance Act, 1992) — Collection of tax by seller — Expression “responsible”.

Petitioner manufacturing country liquor which is one of its business apart from manufacture of sugar — Vide Section 206-C the seller of alcoholic liquor and other goods described in the schedule has to collect from the buyer a sum equal to the percentages set out in the Tables — Some of the purchasers had challenged the constitutional validity of Section 206-C where petitioner was a respondent — High Court while granting Rule in that petition was pleased to grant interim relief which was by way of injunction on collection the tax — Once the petitioner was prevented from collecting the tax it cannot be said that he was “a person responsible for collecting the tax” — Expression “responsible” has to be read in the context of statutory duty to collect which the petitioner was bound to perform by virtue of the provisions — Though Section 206C casts a duty had been cast on persons like the petitioner to collect the tax but by virtue of the interim relief he could not collect the tax for the relevant period of stay — For the period when the stay petitioner would not be liable u/s 206-C(6) — Calling on petitioner to pay the amount which he was disabled to collect would be illegal. (See para 9, 10, 11)

Result : Petition allowed.

Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd. Vs. Commissioner of Income-Tax & ors. 2009 (10) LJSOFT 141

Income Tax Act, 1961 — Section 43-B, 142(1), 143(2) — Sales tax refund — Whether income.

Sales tax refund — Once an order is already passed in favour of the assessee for refund of the amount there is no reason for not treating it as income received by the assessee for the relevant assessment year — Not necessary for the Authority or the Tribunal to wait for the decision in appeal — ITAT and CIT(A) erred in concluding that unless the question about refund gets finality, the amount, in question, cannot be treated as income received by the assessee — Impugned order set aside and matter remitted to the ITAT to decide the question on merits. (See para 6, 7)

Result : Accordingly.

Commissioner of Income-Tax Vs. Beirsdorf (India) Ltd. & anr. 2009 (10) LJSOFT (GOA) 166

Indian Penal Code, 1860 — Section 147, 148, 302 r/w Section 149 — Murder — Unlawful assembly — Rioting — Appreciation of evidence — Appeal against conviction.

Murder trial — Incident occurred in the night at about 8.30 or 9.00 p.m. — Complainant did not disclose such incident immediately to the police and even after sustaining some injuries on his person, instead getting some help, either medical or police, to the deceased uncle he went to his house and waited there till morning — Conduct of complainant created reasonable doubt as to whether he was telling the truth — There was strong enmity between the political rival groups i.e. the group of the accused persons and the group of the complainant and deceased — Reasoning given by complainant for not immediately lodging any police complaint is due to fear of assault at the hands of accused persons does not sound

to reason and logic as he had admitted that in the night, he was at his house and there were about 24 persons present — Conviction on the testimony of complainant when such testimony is not trustworthy, cannot sustain — Order of conviction and sentence set aside. (See para 10 to 14)

Result : Appeal allowed.

Dnyandeo Dhandiba Jadhav & ors. Vs. State of Maharashtra 2009 (10) LJSOFT 134

Indian Penal Code, 1860 — Section 96, 147, 148, 302 r/w Section 149 — Murder — Post-mortem report — Proof of contents — Right of self defence — Burden of proof — Injuries on the person of accused — Non-explanation of — Effect of — Appeal against conviction.

1) Appreciation of evidence — Post-mortem report is not substantive evidence by itself — Mere production of post-mortem reports and the statement that the contents of the post-mortem reports were true, by itself, would not prove the contents of the post-mortem reports in the absence of specific reference to the contents of the post-mortem reports — Witness did not depose about the contents of the post-mortem reports — In the absence of any reference in the deposition of the witness as to the contents of the post-mortem reports no reliance can be placed on the post-mortem reports to hold that the injuries mentioned in the said reports were found on the deceased — Cannot be held that the death of deceased was homicidal. (See para 9)

2) Murder trial — Non-explanation of injuries sustained by the accused at the time of occurrence or in the course of altercation — Some of the accused had grievous injuries and they were found within few hours of the incident in question — Eye witnesses had not

made any reference to any assault by the deceased on any of the accused — Only inference that can be drawn is that the prosecution has suppressed the genesis and origin of the occurrence and has not presented the true version — Defence taken by the accused that they acted in exercise of right of private defence appears more probable — Even if other evidence led by the prosecution is considered the same is not sufficient to bring home the guilt to the accused — All the accused are entitled to benefit of doubt. (See para 14, 18)

3) Right of private defence — Contention that since accused have not discharged the burden of proving the same the conviction cannot be faulted cannot be accepted — Initial burden of proving the case against the accused is always on the prosecution — Mere fact that accused have taken defence that they acted in exercise of right of defence of private defence, by itself, is not sufficient to hold that the prosecution has proved its case against the accused. (See para 18)

Result : Appeals allowed.

Usha w/o Vinayak Bhagwat Vs. State of Maharashtra 2009 (10) LJSOFT (NAG) 71

Indian Penal Code, 1860 — Section 188 — Elections — Surrender of arms — Review of cases — Guidelines — Time-frame.

See Govind @ Bhai Ganesh Tilve Vs. Vikram Kumar, District Magistrate 2009 (10) LJSOFT 41

Indian Penal Code, 1860 — Section 279, 338 — Motor accident — Rash and negligent driving — Settlement/ compromise — Quashing of criminal proceedings.

See Anushree Rajkamal Bajaj Vs. State of Maharashtra 2009 (10) LJSOFT 126

Indian Penal Code, 1860 — Section 302 r/w Section 149 — Evidence Act, 1872 — Section 9 — Murder — Identification of accused — Appeal against conviction.

In all 15 accused persons faced trial for offence u/s 302/149 of IPC — Trial court convicted A12 while directing acquittal of other accused persons — Appeal was filed by State relating to accused Nos.1 and 14 — High Court allowed the appeal qua A14 while upholding the acquittal of A1 — Evidence regarding test identification parade is rejected by High Court — Identifying witness did not say anything before the police about his being an eye-witness — High Court held that just because witness has given different versions at different point of time his evidence cannot be discarded and it cannot be said that he is not an eye-witness — Conclusions of the High Court are not defensible — Evidence of witness is full of contradictions — Conviction of both the accused set aside. (See para 5, 6) Result : Appeal allowed.

Ram Maruthi Pawar Vs. State of Maharashtra & Anr. 2009 (10) LJSOFT (SC) 140

Indian Penal Code, 1860 — Section 302 — Murder of wife — Absence of explanation by accused — Appeal against conviction.

Murder trial — No evidence to show circumstantially that accused was present in the room at the time of occurrence — Time of occurrence even by approximation has not been established by the prosecution — Circumstances of unnatural death of deceased and appellant not offering any explanation in respect of the incident in which deceased had sustained burns cannot be considered to be relevant either separately or collectively — High Court arrived at some conclusions which are based on surmises and conjectures without

there being any evidence to support the conclusions — Charge against the appellant has not been established — Conviction by courts below set aside. (See para 8, 9, 10) Result : Appeal allowed.

Sohel Mehaboob Shaikh Vs. State of Maharashtra 2009 (10) LJSOFT (SC) 138

Indian Penal Code, 1860 — Section 302 — Murder — Appeal against conviction.

Accused during scuffle inflicted knife blows on person of deceased — Police Constables apprehended the assailant on the spot and knife was seized — Motive alleged was that accused developed a grudge in his mind against the deceased as deceased was unable to convince wife of accused to live with accused — Accused was alleging that the deceased wanted to keep her at his residence and was intending to grab her salary — Wives of deceased and accused are sisters and their evidence proved the motive — Delay in recording the statement of witnesses which is duly explained by Investigating Officer is neither fatal to the prosecution nor creates any doubt about the prosecution case — Accused was apprehended on the spot and witnesses identified accused in court and hence there was no need for any test identification parade — Conviction of accused u/s 302 of IPC proper. (See para 11 to 15) Result : Appeal dismissed.

Ramkumar Vaidyanath Pal Vs. State of Maharashtra 2009 (10) LJSOFT (NAG) 68

Indian Penal Code, 1860 — Section 302 — Murder — Oral dying declaration — Appeal against conviction.

Appellant was a servant in the grocery shop of deceased — In the evening at 04:00 to 04:30 appellant demanded Rs.15/- from deceased which was refused — Thereafter at 09:00 to

09:30 p.m. the appellant came to the residence of deceased with knife and assaulted him — Appellant gave successive blows by a knife on stomach of deceased — Doctor who immediately attended the deceased stated that deceased told him that the appellant came to demand the money and as he refused the appellant assaulted him — Weapon discovered at the instance of the appellant — Act of appellant was not in heat of passion but an act which was the result of pre-planned attack — Conviction of accused u/s 302 of IPC proper. (See para 10, 12, 16) Result : Appeal dismissed.

Rashid s/o Shanmohammad Shaikh Vs. State of Maharashtra 2009 (10) LJSOFT (NAG) 66

Indian Penal Code, 1860 — Section 302 — Murder — Examination of accused — Appeal against conviction.

See Shaikh Maqsood Vs. State of Maharashtra 2009 (10) LJSOFT (SC) 119

Indian Penal Code, 1860 — Section 302, 201 r/w Section 34 — Code of Criminal Procedure, 1973 — Section 313 — Murder — Circumstantial evidence — Appreciation of evidence — Falsity of defence — Statement of accused — Appeal against conviction.

1) Appreciation of evidence — Evidence of witness who was initially made accused and later on granted pardon — Single photograph of the deceased was shown and his statement was recorded after 14 days of the incident — Photograph of deceased not intermingled with other photographs in order to test powers of this witness to recapitulate the incident and identify the deceased with any degree of certainty — No reliance can be placed on his testimony that deceased was the passenger who had travelled in the car and who had

alighted with the other accused while the other accused had returned back and deceased did not return back — Though witnesses were unknown to accused yet no test identification parade had been conducted — Implicit reliance cannot be placed on the testimony of an approver unless he is corroborated in material particulars and particularly when prosecution failed to establish that deceased was a passenger travelling in the Indica car which was driven by this witness. (See para 12)

2) Murder trial — Falsity of the defence or failure to give reasonable explanation cannot be substituted as proof, particularly where prosecution has failed to establish the offence against the accused beyond reasonable doubt — Falsity of defence or failure to offer any explanation cannot be used as a circumstance against the accused in the absence of the other circumstantial evidence pointing to the involvement of the accused in the crime — Circumstances may at the most rest a suspicion against the accused but suspicion howsoever strong cannot displace the proof which is required to be established by the prosecution. (See para 14)

3) Murder trial — Blood stains found on the shirt of accused No.3 — Question which was put in 313 statement to accused No.3 was only in respect of seizure of the shirt without the question indicating that a blood stain was found — Contents of the report of the Chemical Analyzer which showed that the blood stain was of “B” group was not put to accused No.3 in his statement u/s 313 of Cr.P.C. — Existence of finding a solitary blood stain on the shirt of accused No.3 cannot be used as a circumstance against him. (See para 15)

Result : Appeals allowed.

Jagannath s/o Damaji Pol Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 139

Indian Penal Code, 1860 — Section 302, 307 r/w Section 34 — Code of Criminal Procedure, 1973 — Section 154 — Murder — Common intention — Delay in lodging F.I.R. — Appeal against conviction.

1) Murder trial — Burden to prove its case on the prosecution is an absolute burden — However a mere fault here or there or some variation in the statement not amounting to a serious contradiction relating to the actual commission of the offence would not per se justify interference in the judgment of the trial Court. (See para 9)

2) Delay on lodging F.I.R. — Occurrence had taken place at 10.45 in the night — On receiving information the Investigating Officer reached the spot and posted a policeman there — He went to the hospital where he noticed that the victim was declared dead and thereafter he recorded statement of Complainant at about 1.15 a.m. — There is no such inordinate delay in lodging the First Information Report that the accused would get an advantage — Such explained delay cannot be fatal to the case of the prosecution. (See para 11)

Result : Appeals dismissed.

Bilal Bishad Shaikh Vs. State of Maharashtra 2009 (10) LJSOFT 43

Indian Penal Code, 1860 — Section 302, 376(2)(g), 307/34, 397/395, 396 — Evidence Act, 1872 — Section 9 — Dacoity — Rape — Murder — Test Identification Parade — Proportionality of punishment.

1) Accused prosecuted for dacoity, murder and rape — Prosecution case based mainly on version of two injured eye-witness and Test

Identification Parade — One witness identified all the accused and other witness identified all except one — Medical evidence establishing allegation of rape — High Court confirmed the conviction and death sentence of three accused and the other three accused were acquitted u/s.376(2)(g) of IPC and their sentence converted to life imprisonment — Held that in view of TI Parade, version of eye-witnesses and medical evidence conviction was justified — Minor girl of about fifteen years was dragged in the open field, gang raped and done to death — Five members of a family were brutally murdered, they were not known to the accused and there was no animosity towards them — Four of the witnesses were of tender age, they were defenseless and the attack was without any provocation — Murders were not only cruel, brutal but were diabolic — Case at hand falls under the rarest of rare category — There was no reason to adopt a different yardstick for A2, A3 and A5 — All accused whether convicted for murder and rape or only of murder deserve imposition of death sentence. (See para 30, 32, 33)

2) Test identification parade — Not primarily for the Court but they are meant for investigation purposes Object of conducting TI Parade to enable the witnesses to satisfy themselves and secondly to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence — If potholes were to be ferreted out from the proceedings of the Magistrate holding such parades possibly no TI Parade can escape from one or two lapses — If a scrutiny is made from that angle alone and the result of the parade is treated as vitiated every TI Parade would become unusable. (See para 7)

3) Quantum of sentence — Criminal law

adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct — Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences — Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise — Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats — It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. — In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished. (See para 15 to 29)

4) Imposing of death sentence — Life imprisonment is the rule and death sentence is an exception — Extreme penalty of death need not be inflicted except in gravest cases of extreme culpability — While deciding the question as to whether the extreme penalty of death sentence is to be awarded a balance sheet of aggravating and mitigating circumstances has to be drawn up. (See para 23 to 29)

Result : Accordingly.

Ankush Maruti Shinde and others Vs. State of Maharashtra 2009 (10) LJSOFT (SC) 121

Indian Penal Code, 1860 — Section 304-A — Code of Criminal Procedure, 1973 — Section 482 — Medical negligence — Criminal liability — Quashing of criminal proceedings.

1) Medical negligence — Petitioner-Accused is a physician charged u/s 304-A of IPC for causing death by negligence — He possesses adequate degree of knowledge as well as skill to treat the patients — Diagnosis that patient was suffering from malaria was not incorrect and the drug generally administered is quinine — Merely because the doctor was not present when the injection was administered could not be the reason for holding him liable under criminal law — Line of treatment adopted by the doctor was correct and the drug usually administered has side effect in respect of Cardiac Toxicity — Merely because the patient reacted adversely on administration of drug cannot be attributed to the treating physician and in any case he cannot be held liable for criminal negligence — Petitioner cannot be held responsible for commission of offence u/s 304-A of IPC — Criminal proceedings quashed. (See para 9, 10)

2) Medical negligence — Medical professional — Criminal liability — Jurisprudential concept of negligence differs in civil and criminal law — What may be negligence in civil law may not necessarily be negligence in criminal law — For negligence to amount to an offence, the element of mens rea must be shown to exist — For an act to amount to criminal negligence, the degree of negligence should be much higher i.e gross or of a very high degree — Word ‘gross’ has not been used in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be ‘gross’ — Expression ‘rash or negligent at’ as

occurring in Section 304A of IPC has to be read as qualified by the word ‘grossly’ — Test for determining medical negligence as laid down in Bolam’s case holds good in its applicability in India. (See para 8)

Result : Petition allowed.

Dr. Prasanna s/o Sudhakar Rao Deshmukh & ors. Vs. State of Maharashtra & anr. 2009 (10) LJSoft (AUR) 65

Indian Penal Code, 1860 — Section 304-B, 498-A — Dowry Prohibition Act, 1961 — Section 2 — Evidence Act, 1872 — Section 113-B — Dowry death — Circumstantial evidence — Presumption — Term “dowry” — Appeal against conviction.

1) Dead body of wife of appellant recovered from well — There were several injuries on the deceased — Post-mortem notes shows the death as “cardio-respiratory failure due to asphyxia due to throttling” — Case of suicide not consistent with ante-mortem injuries — Prosecution established that prior to her death the deceased was staying with the appellant — Nothing on record to suggest that anyone else was interested in killing the deceased or this could be the job of someone else — It was for the appellant to explain how the deceased received the injuries — Having failed to do so, adverse inference needs to be drawn against the appellant. (See para 12)

2) Dowry death — Appellant and other accused used to tell the deceased that her parents had not given enough dowry and she should bring Rs.40,000/- from them for the purchase of a motorcycle — Witness does not describe this demand as a dowry demand in his evidence — Demands not made on account of any financial stringency or for meeting some urgent domestic expenses — Considering other circumstances like the earlier ill-treatment, the deceased coming to

the parents’ house, complaining about the appellant, her leaving the child with her parents and going back to the matrimonial home and her death with antemortem injuries, the only inference that can be drawn is that the demand of Rs.40,000/- was a dowry demand and was in connection with the marriage of the appellant and the deceased. (See para 23, 25)

3) Dowry death — Death occurred within seven years of the marriage of the deceased with the appellant — Ante-mortem injuries suffered by deceased establish that soon before her death she was subjected to cruelty — Circumstances establish that the harassment was in connection with dowry demand — Presumption u/s 113-B of Evidence Act must arise — Failure by appellant to explain how the deceased received ante-mortem injuries provide an important link in the chain of circumstances — All the circumstances unerringly point to the guilt of the appellant — Appellant has rightly been convicted u/s 498-A and 304(B) of IPC. (See para 29)

Result : Appeal dismissed.

Balasaheb Changdeo Ghule Vs. State of Maharashtra 2009 (10) LJSoft 38

Indian Penal Code, 1860 — Section 307 — Attempt to murder — Quantum of sentence — Appeal against conviction.

1) Accused assaulted victim - a teenaged girl with knife while she was returning home after School — Earlier accused was scolded and censured by mother of victim for eve teasing — Evidence of the victim girl P.W. No.2 corroborated by the substantive evidence of eye-witnesses — Injuries sustained by the victim girl were of very serious nature but for the timely medical treatment, those injuries would have proved fatal — Conviction

confirmed. (See para 8, 9)

2) Attempt to murder — Quantum of sentence — Contended that accused is a young boy of then 23 years and now about 28 years old and is in jail since the date of the conviction and that he is the only son of his family now consisting of only mother as his father died few years earlier — Held that there is nothing to reduce the sentence of 10 years considering the special circumstances of the matter as to deadly assault perpetrated by the appellant accused on the teenaged girl in the broad day light in presence of the public at large — There was no attempt by any pedestrian to intervene and to come to rescue of the innocent victim — Such act on the part of the appellant is indicative of no fear in his mind towards law and expression of no deterrence for violation of the law — Such type of act is definitely to be condemned and the age of the accused shall not come in the way of the court to view the matter leniently (See para 9)

Result : Appeal dismissed.

Nitin Laxman Taloskar Vs. State of Maharashtra & anr. 2009 (10) LJSoft 64

Indian Penal Code, 1860 — Section 307 — Code of Criminal Procedure, 1973 — Section 313 — Attempt to murder — Statement of accused — Appeal against acquittal.

1) Scuffle took place between complainant and Accused on the railway platform — Background to the scuffle was that the complainant had been teasing and flirting with the wife of the accused even at the railway platform — Accused allegedly assaulted the complainant with knife — It was obligatory upon the prosecution to prove that the injuries on the person of the complainant were actually caused by the accused and this fact has to be established beyond any reasonable doubt — No explanation on behalf of the prosecution

as to why a single witness much less an eye witness was not produced despite the fact that the occurrence took place allegedly at the crowded platform — Neither the Complainant nor any of the prosecution witnesses either informed Station Superintendent or even the sister of the Complainant that the injuries were caused by any weapon or otherwise by the accused — Difficult for the Court to convict a person on the basis of mere inferences — Burden of proof to establish its case is strictly upon the prosecution and for failure of prosecution the accused is entitled to benefit of doubt. (See para 16, 17, 18)

2) Statement made by an accused u/s 313 of Cr.P.C. can be used by the Court so far it is in conformity with the case of the prosecution i.e. to substantiate or aid the case of the prosecution which has otherwise been established by the prosecution — Where the prosecution fails to establish its case, there an accused cannot be convicted with reference to or on the sole basis of the statement u/s 313 of Cr.P.C. (See para 20)

Result : Appeal dismissed.

State of Maharashtra Vs. Sujay Mangesh Poyarekar 2009 (10) LJSOFT 42

Indian Penal Code, 1860 — Section 324 — Anticipatory bail — Grant of — Maid — Minor child — Ill-treatment.

See Minaxi A. Pednekar Vs. State of Goa 2009 (10) LJSOFT (URC) (GOA) 20

Indian Penal Code, 1860 — Section 324 — Bail — Cancellation of — Maid — Minor child — Ill-treatment — Change of circumstances — Additions of offence/s.

See Audumber alias Shubham Pednekar Vs. State of Goa 2009 (10) LJSOFT (URC) (GOA) 21

Indian Penal Code, 1860 — Section 339, 341 — Wrongful restrains — Offences against company — Vicarious liability of Directors — Quashing of criminal complaint — Inherent powers — Availability of alternate remedy. See Keki Hormusji Gharda Vs. Mehervan Rustom Irani 2009 (10) LJSOFT (SC) 107

Indian Penal Code, 1860 — Section 498-A — Matrimonial cruelty — Territorial jurisdiction — Quashing of process — Discharge of accused.

See Rajendra Tukaram Ahirrao Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 143

Indian Penal Code, 1860 — Section 499, 500 — Defamation — Questions lawful in cross-examination.

See Aires Rodrigues Vs. Subodh Kantak 2009 (10) LJSOFT (URC) (GOA) 16

Indian Ports Act, 1908 — Section 6(jj), 33, 35, 46, 47 — Goa, Daman and Diu Ports Rules, 1983 — Rule 2(ff), 54-A, 64 — Use of Government riverine land — Levy of rental charges — Term ‘open land’.

1) Workshop of appellant situated on the banks of river Zuari — Barge/boat repair workshop used exclusively portion of the river adjoining the workshop for berthing/beaching/mooring the barges/boats which came for repairs — Term ‘landing place’ would refer to any and every place which is used as a landing place — River surface (during high water period) and river bed (during low water period) alongside the workshop, belonging to the government will also be a part of such landing place/workshop — Boat/barge repairing workshop situated on the river bank can be said to be using the government riverine land. (See para 16)

2) Use of Government riverine land — Levy

of rental charges — 1992 and 1994 amendments to the Goa, Daman and Diu Ports Rules which enable the Port Authorities to levy, charge and recover a fee or charge for using open Government riverine land is within the rule making power of the State — It cannot be said to be ultra vires the rules making power under the Indian Ports Act. (See para 19)

3) Use of Government riverine land — Prior to the amendment to the Rules in 1994 neither the Act nor the Rules authorized or enabled the Government to levy any fee/charge — Fact that the Port Authorities were demanding a fee for use of riverine land even prior to 1992/1994 or that some workshop owners were paying such amount did not mean that the demand was lawfully made in pursuance of authority vested in them to make such demand — Amendment Rules of 1992 and 1994 are not clarificatory but are provisions investing the port authorities with the power to levy and collect charges for occupation of government riverine land — Amendment rules do not provide that they are retrospective in operation nor do the circumstances warrant such an inference — Demand for charges for use of government riverine land is valid only from 3.3.1994 — Port Authorities could not demand or recover any amount for the period prior to 3.3.1994. (See para 22, 23, 24)

4) Words and phrases — Term ‘open land’ refers to a plot of land which is open to sky — In the absence of a special or deeming definition the term ‘open plot’ cannot be read as referring to the river bed which is covered by water for part of the day and exposed for remaining part of the day — Land which is covered by any construction or water cannot be termed as an open plot. (See para 21)

Result : Appeals partly allowed.

Delta Engineers Vs. State of Goa & Ors. 2009 (10) LJSOFT (SC) 131

Industrial Disputes Act, 1947 — Section 2(oo) (bb), 25-H — Model Standing Orders — Clause 4D, 4E — Constitution of India, 1950 — Article 14, 16, 226 — Retrenchment — Surplus employee — Availability of work — Re-appointment.

Petitioner was engaged as Daily Wager Clerk — He was retrenched on the ground that he was a surplus employee — Whenever a vacancy arises, it would be obligatory on the part of the Management to give preference and priority to a person in the waiting list maintained under Clause 4D of the Model Standing Orders unless there is something to show that he was not entitled to continue — Moment the work was available the Petitioner was entitled to be given a preference — Petitioner would be entitled to re-employment from the date other person was appointed, since according to the respondent the work was available — However complaint was filed 18 years ago and the suitability of the petitioner to continue in employment of the respondent would itself be in doubt — Moulding the relief the respondent are directed to pay to the petitioner Rs.10,000/- towards compensation and also the expenditure incurred in litigation for all these years. (See para 22, 24)

Result : Petition partly allowed.

Chaganlal s/o Girdhari Kundkar Vs. Parmatma Ek Sewak Nagrik Sahakari Bank Limited & ors. 2009 (10) LJSOFT (NAG) 30

Industrial Disputes Act, 1947 — Section 9-A — Order of transfer — Conditions of service — Interim relief.

See A.C.C. Limited Vs. Associated Cement Staff Union 2009 (10) LJSOFT 155

Industrial Disputes Act, 1947 — Section 10(1) — Departmental inquiry — Validity of. Appellant filed petition challenging Part-1 Award of Labour Court holding that departmental enquiry was not valid and proper — Petition rejected on the ground that petitioner can challenge Part-I Award while challenging Part-11 Award after it would be passed — Held that Learned Judge should have applied his mind to doubts expressed by petitioner about its ability to lead evidence in the matter due to expiry of 20 years in between — Learned Single Judge ought to have considered whether the finding recorded by the Labour Court that the enquiry is not proper, is correct or not — If finding is correct then the petition should have been dismissed and not because the correctness of that finding is to be examined only after Part II of the award is made — Learned Single Judge was not justified in rejecting the petition in limine — Order is set aside and the petition is admitted for final hearing. (See para 2,3)

Result : Appeal allowed.

Hindustan Unilever Ltd. Vs. Hindustan Lever Employees Union & another 2009 (10) LJSOFT 67

Industrial Disputes Act, 1947 — Section 10(1) — Dismissal from service — Corruption charges — Accepting of bribe.

Petitioner working as a Loader with respondent no.1-Airlines — Charged for misconduct of taking a bribe of Rs.400/- from passenger for allowing her to carry her baggage without payment of excess baggage charges — In a domestic enquiry it is not necessary for the management to establish the charge beyond reasonable doubt and the strict rules of evidence are not applicable in such domestic enquiry — Petitioner had confessed in writing and this fact also has been

independently proved — Statement of witnesses clearly establishes the fact that the petitioner had accepted the bribe of Rs.400/- — Once the charge of acceptance of bribe is proved, the said misconduct is of a very serious nature and the management was justified in terminating the services of the petitioner. (See para 5, 7)

Result : Petition dismissed.

Shrikant R. Palkar Vs. Indian Airlines and Anr. 2009 (10) LJSOFT 69

Industrial Disputes Act, 1947 — Section 10(1) — Dismissal from service — Abetment of theft — Acquittal in criminal proceedings — Effect of.

Appellant was working as a driver with respondent-Port Trust — Charged for misconduct of parking the vehicle authorisedly so as to abet the commission of theft of the property of the Trust — Acquittal in criminal proceedings — Departmental enquiry and the criminal prosecution both were based on the same incident — Charges framed are also similar and the evidence was also the same — Criminal Court held that the presence of the accused on the spot is not established — Cannot be said that the acquittal of the accused is not clean — Tribunal should have held that the misconduct against the appellant has not been proved — Appellant was entitled to reinstatement and back wages — Matter remitted back to the Industrial Tribunal for consideration of the quantum of back wages. (See para 10, 11)

Result : Accordingly.

Ramkrishna Shivram Gadekar Vs. Board of Trustees of the Port of Mumbai & anr. 2009 (10) LJSOFT 153

Industrial Disputes Act, 1947 — Section 33-C(2) — Claim of dues — Arrears of wages

— Status of workman — Jurisdiction of Labour Court.

Petitioner-workman filed a recovery application u/s 33-C(2) claiming arrears of wages — There was a dispute about the status of the workman — Petitioner had not established that he was a permanent employee — Proceedings u/s 33-C(2) are in the nature of execution proceedings and the rights between the parties cannot be adjudicated by the Labour Court while entertaining an application u/s 33-C(2) — Labour Court rightly dismissed the application holding that it did not have the jurisdiction to adjudicate the said dispute and as such there was no existing right in favour of the workman. (See para 9, 11)

Result : Petition dismissed.

Motiram Lorya Patil Vs. Tata Electric Companies & anr. 2009 (10) LJSOFT 82

Industrial Disputes Act, 1947 — Section 33-C(2) — Claim of amount — Encashment of special extra ordinary leave.

Deceased-workman serving as a conductor was suffering from Tuberculosis (TB) — Encashment of special extra ordinary leave in respect of TB — Petitioner had directed him to appear before the Chief Medical Officer at Bombay who is the Competent Authority to decide about the disease/ consequential reliefs — Workman categorically informed the petitioner Corporation that he was sick and was not in a position to go out of station for taking medical treatment — Petitioner-Corporation cannot deprive of the monetary benefits in respect of TB leave only because the deceased employee had not followed the procedure as employee was not in a position to go out of station — Deceased employee had pre-existing right to encashment of special extra ordinary leave in respect of TB leave —

Order granting the amount of Rs.38,880/- towards the encashment of special extra ordinary leave in respect of TB cannot be faulted with. (See para 12, 13)

Result : Petition dismissed.

Maharashtra State Road Transport Corporation Vs. Shaikh Mehaboob Jainuddin & anr. 2009 (10) LJSOFT (AUR) 83

Industrial Disputes Act, 1947 — Section 33-C(2) — Claim of backwages — Conditional resignation — Employer-employee relationship.

Claim of backwages — Resignation given by workman was not unconditional but it was subject to the clearance of all his legal dues such as gratuity, provident fund and privilege leave — Even assuming that the Petitioner was justified in withholding the amount the resignation having been made conditional upon the payment of certain amounts did not operate unless the condition was satisfied — Resignation did not take effect and that the relationship of employer and employee continued even thereafter — Conduct of Petitioner in dropping the enquiry against the workman albeit based on a misapprehension cannot operate to the prejudice of the workman — Impugned order directing payment full back wages from 1.10.1988 to 19.8.1996 and the consequential retiral benefits not liable to be interfered with. (See para 7, 9, 12)

Result : Petition dismissed.

Devidayal Stainless Steel Ind.P.L. Vs. Ratnamma S. Panikar 2009 (10) LJSOFT 154

Institutes of Technology Act, 1961 — Section 17 — Removal from services — Wrong usage of title 'Professor' — Suspension —

Disciplinary proceedings — Initiation of — Competent authority.

See Anil Vasant Mandke (Professor) Vs. Indian Institute of Technology 2009 (10) LJSOFT (NAG) 28

Insurance Act, 1938 — Section 64UM(2) — Machinery Insurance Policy — Break down — Claim of compensation — Under-insurance — Claim towards mental harassment.

See Sikka Papers Limited Vs. National Insurance Company Ltd. 2009 (10) LJSOFT (SC) 103

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 40, 41 — Adoption — Rehabilitation of abandoned children — Conditions for valid adoption — Restriction on same gender adoptions as of existing child — Applicability of — Implied amendment — Special laws versus general laws — Interpretation of statutes.

See Payal @ Sharinee Vinay Pathak (RE:) 2009 (10) LJSOFT (URC) 9

Land Acquisition Act, 1894 — Section 9(3)(4), 11, 12(2), 18, 25 — Enhancement of compensation — Limitation — Starting point of — Non-filing of the claim in pursuant to Section 9 notice — Acceptance under protest — Maintainability of reference.

1) Enhancement of compensation — Reference — Petitioners were neither present before the Collector nor had they been represented when the award was made — Under clause (b) of the proviso of Section 18(2) the application has to be filed within the period of six weeks from receipt of the notice from the Collector u/s 12(2) or within six months from the date of the Collector's award, whichever period shall first expire — Date of the award cannot be determined solely

by reference to the time when the award is signed by the Collector or delivered by him in his office — Expression “the date of the award” used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively — Reference u/s 18 was made within the period of six weeks from the date of receipt of notice u/s 12(2) — Respondent No.2 erred in rejecting the reference on the ground that the same is barred by limitation by computing the period of six months from the date of declaration of the award by the Collector. (See para 7, 8)

2) Enhancement of compensation — Filing of application for reference u/s 18 would itself manifest the intention of claimant — Protest against the award of the Collector was implied notwithstanding the acceptance of compensation — Reference could not have been rejected on the ground that the amount of compensation was not accepted under protest. (See para 9)

3) Enhancement of compensation — Restriction that the amount of compensation awarded by the Court, shall not exceed the amount claimed u/s 9(3)(4) is removed by virtue of amendment by Act 68 of 1984 — Under substituted section 25 the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11 — Amount of compensation awarded by the Court does not depend upon claim to compensation pursuant to any notice u/s 9(3)(4) — Applications could not have been rejected on the ground of non-filing of the claim in pursuant to Section 9 notice. (See para 11)

Result : Applications allowed.

Gorakh Sripati Mahingade & Ors. Vs. District Collector, Solapur & Ors. 2009 (10) LJSOFT 124

Land Acquisition Act, 1894 — Section 18 — Acquisition of land — Enhancement of compensation — N.A. potentiality.

Acquisition of land for development of Jalgaon Industrial area by M.I.D.C. — Acquired land is within limits of Municipal Council and is situated near National Highway No.6 — Land in the sales instance relied by claimants is after 4 to 5 lands from the acquired land — Land under acquisition was black cotton soil and is surrounded by the industrial estate and NA activities for residential buildings, plots etc. are in progress — Reference Court rightly allowed the Reference filed by the respondent-claimant. (See para 13, 14)

Result : Appeal dismissed.

Special Land Acquisition Officer (I), Jalgaon Vs. Dilip Rajaram Nemade & anr. 2009 (10) LJSOFT (AUR) 59

Letters Patent — Clause 15 — Constitution of India, 1950 — Article 226, 227 — Code of Civil Procedure, 1908 — Order XXI Rule 98, 103 — Execution proceedings — Objection to execution of decree — Non consideration of — Legality of — Letters Patent Appeal — Maintainability of — Rules of precedent.

1) Letters Patent Appeal — Maintainability of — Nomenclature of the proceeding or reference to a particular Article of the Constitution is not final and conclusive — What is required to be seen in a petition either under Article 226 or 227 or under both Articles 226 and 227, is the totality of the facts and circumstances of the case, the pleadings of the party, the nature of reliefs claimed and the ultimate order passed by the learned Single Judge — Relief claimed is to bring the decree in conformity with the orders passed by High Court as well as by the executing Court and to forward the Correct precept with

appropriate directions to the Collector u/s 54 of CPC — Question of issuance of ancillary direction pertain to the realm of jurisdiction of the learned Single Judge under Article 227 of the Constitution. — Petition was rightly styled as one under Article 226 and 227 of the Constitution of India — Passing observation made by the learned Single Judge in his order dismissing petition that no interference is warranted in the impugned order in exercise of extraordinary writ jurisdiction under Article 227 of the Constitution of India is not sufficient to deprive the appellants right of appeal under Clause 15 of the Letter Patent — Letters Patent Appeal under Clause 15 is maintainable. (See para 56)

2) Execution proceedings — Appellants claim to be in possession of the property in question — Even third party in possession can claim independent right as tenant, can object and get his claim adjudicated when sought to be dispossessed by the decree holder and he need not wait until he is dispossessed — Whether, the objection goes in his favour or not, is immaterial for the locus of the appellants — Appellants have right to raise an objection to the executability of the decree and the decision on such objections does not amount to reopening of the proceedings or going behind the decree passed by the Court — Contentions of respondents that the appellants have no locus standi to participate in the proceeding or raise an objection, in the manner in which they are raised is rejected. (See para 63)

3) Execution proceedings — Objections required to be decided in the execution proceedings itself and not by a separate suit — Any decision on the objections under Order XXI Rule 98 of CPC has a force of decree under Order XXI Rule 103 of CPC — Directions of the Court are required to be

understood in the light of the provisions of law — Direction to conclude the execution proceedings within a stipulated period cannot construed to mean to pass orders in ignorance of mandatory provisions of law and without application of mind to the objections raised — Civil Court as well as the Collector were duty bound to decide the objections and the same cannot be lightly brushed aside — Neither the Collector nor the Civil Court has dealt with any of the objections raised by appellants/objectors — Impugned orders being in ignorance of provisions of law as well as without application of mind to the objections raised by the appellants are liable to be quashed and set aside. (See para 76, 80)

4) Rules of precedent — Ratio is the abstract proposition of law laid down in the judgment which alone has a force of law — Ratio has to be found out by reading the judgment in its entirety and not the line from here and there — Decision takes its colour from the question of law involved in the case in which, the decision is rendered — Mere causal expressions carry no weight at all, nor every passing observation of a judge, howsoever eminent, can be treated as ex-cathedra having weight of an authority — Decision is not an authority for the proposition which did not fall for its consideration — Decisions rendered per-incuriam or sub-silentio have no force of law under Article 141 of the Constitution of India. (See para 27)

5) Writ jurisdiction — Division Bench of the High Court exercises jurisdiction under Article 226 and 227 of the Constitution of India over the decisions of all the Courts and Tribunals, whether subordinate to it or not, similar is the width and depth of the power/ jurisdiction of the learned Single Judge under Article 226 and 227 of the Constitution of India over the Courts, Tribunals or Authorities

passing orders under any enactments specified under Rule 18 of Chapter 17 of the Bombay High Court Appellate Side Rules irrespective of the fact whether those Courts or Tribunals/ Authorities are subordinate to the High Court or not — Bare reading of Article 227 (1) of the Constitution of India no where indicate that the learned Single Judge exercises his power of superintendence over only such judicial, quasi judicial authorities and Tribunals which are subordinate to the High Court and not over the judicial, quasi judicial authorities and Tribunals which are not subordinate to the High Court — Power of the High Court under Article 227 of the Constitution of India cannot be curtailed, restricted or limited to the supervisory jurisdiction over the Courts and Tribunals or authorities which are subordinate to the High Court — Extraordinary jurisdiction conferred upon High Court under Article 226 and 227 of the Constitution of India is wide enough to include not only to issue the prerogative writs, such as the writ in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari, not only for violation of fundamental rights, but also for “any other purpose” as is clear from the language under Article 226 of the Constitution of India. (See para 48, 49)

Result : Appeal partly allowed.

Mangala w/o Sharad Mutha & ors. Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (AUR) 31

Limitation Act, 1963 — Article 54 — Dispute regarding membership — Jurisdiction of Co-operative Court — Limitation.

See Ramchandra Krushnarao Pitale Vs. Scientific Cooperative Housing Society Ltd. 2009 (10) LJSOFT (NAG) 77

Limitation Act, 1963 — Article 59, 109 — Omission to sue for certain reliefs — Second suit — Maintainability of — Doctrine of “Res judicata” — Principle of “Issue estoppel” and “Rule of estoppel” — Distinction between.

See Yamunabai Purushottam Deogirikar Vs. Mathurabai Nilkanth Choudhari 2009 (10) LJSOFT (AUR) 50

Limitation Act, 1963 — Article 113 — Eviction proceedings — Recovery of possession — Applicability of Limitation Act — Permission granted under a repealed enactment — Repeal and saving.

See Shashikant S/o. Girdhardas Bagdi Vs. Ratanlal S/o. Kanhaiyalal Rathi 2009 (10) LJSOFT (NAG) 101

Limitation Act, 1963 — Section 5 — Bringing legal representatives on record — Condonation of delay.

Death of original appellant during pendency of second appeal — Delay of 2945 days in filing application for bringing Legal Representatives of deceased appellant on record — Application of condonation of delay filed on the ground that Applicant met with an accident leading to loss of memory and could not file it within time-line — No Medical Report as to loss of memory brought on record — In case one of the applicants was suffering from some injury nothing prevented his younger brother to pursue their advocate for filing an application — Averments in the application are vague in nature not supported by any necessary documents and it does not disclose sufficient cause to take a liberal approach to condone the delay — Delay does not deserve to be condoned. (See para 13, 14, 17)

Result : Application dismissed.

Vithhal Dhondiba Chawan (Died) through LRs. Vs. Madhavrao alias Mahadev Tukaram Chavan & ors. 2009 (10) LJSOFT (AUR) 23

Limitation Act, 1963 — Section 5, 14 — Setting aside of award — Condonation of delay.

See Ashwin Neema Vs. Mangalam Clothes (Pvt.) Ltd. 2009 (10) LJSOFT 136

Limitation Act, 1963 — Section 17 — Bombay High Court (Original Side) Rules, 1980 — Rule 399, 400 — Will — Revocation of probate — Limitation.

1) Revocation of probate — Limitation — Period of three years must be counted from the date on which the Petitioner obtained knowledge of the grant of probate — Petition for revocation held to be within the period of limitation — As the Petitioner had not been served with the citation under Rules 399 and 400 of High Court (Original Side) Rules, the grant of probate would have to be revoked. (See para 9, 14)

2) Constituted Attorney — Always open to the principal to ratify an action of his representative in signing the pleadings — Such a ratification can be expressed or implied. (See para 13)

Result : Petition allowed.

Dr. Dinshah Dhunjishah Gagrati Vs. Viloo Byramji Plumber 2009 (10) LJSOFT 49

Limitation Act, 1963 — Section 31(a) — Limitation Act, 1908 — Article 142 — Section 28 — Suit for declaration of ownership — Limitation — Burden of proof — Time barred suit — Maintainability of — Plea of adverse possession.

1) Recovery of possession — Onus as per Article 142 of Limitation Act, 1908 was on plaintiff to show that before filing the suit for possession, he was in possession of the suit land within 12 years before the date of the Suit — If he failed to prove possession within 12 years before filing the suit, he could not claim any relief even on the basis of the title to the immovable property — Neither the plaintiff nor his father was at any time in possession of the suit land from 1354 Fasli (1945 A.D.) after execution of the sale deed in favour of the defendant till the date of filing of the Suit — In view of Article 142 and Section 28 of Limitation Act, 1908, his claim for recovery of possession of the suit land was barred by limitation — Right of the plaintiff to possess the suit land had extinguished in view of Section 28 of the Limitation Act, 1908 and as per Section 31 of Limitation Act, 1963 — Suit was liable to be dismissed as barred by limitation. (See para 17, 27, 35, 36)

2) Plea of adverse possession — Acts of defendants in respect of the suit land were to the knowledge of the plaintiff and his late father — It can be legitimately inferred that possession of the defendant over the suit land was on his own behalf and it was hostile to the knowledge of the true owner having the right to immediate possession — Possession of the defendant over the suit land became adverse to the plaintiff in the year 1354 Fasli (1945 A.D.) and it has continued for more than 12 years before the date of Suit — Claim of the plaintiff was also barred due to adverse possession of the defendant — Courts below erred in coming to the conclusion that defendants failed to prove their adverse possession in respect of the suit land. (See para 20, 23)

Result : Appeal allowed.

Latabai w/o Jeevanrao Bodhankar since deceased through LRs.Vs. Trimbakrao Shriramrao Deshpande 2009 (10) LJSOFT (AUR) 37

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 42(2)(a), 47(2)(a) — Trust — Claim of exemption.

Appellant-Trust filed application for exemption u/s.42(2)(a) — Requirement of Section 47(2)(a) is that the applicant should give an undertaking that the major portion of the income will be appropriated for the purpose of education or medical relief within a period of two years from the date of publication of the order granting exemption — Application could not have been rejected because the major portion of income has not been spent — Exemption can be granted on the basis of an undertaking that the amount will be spent within a period of two years — This aspect have been overlooked — Impugned judgment set aside and matter is remanded back to the learned Single Judge for fresh consideration. (See para 6, 7)

Result : Accordingly.

Goaldas Deosthan, Bhidi Vs. State of Maharashtra & another 2009 (10) LJSOFT (NAG) 129

Maharashtra Agriculture Produce Marketing (Development and Regulation) Act, 1963 — Denial of permanency — Regularization of services — Regularization and conferment of permanence — Distinction between.

See Anna Pandurang Vaidya (since deceased) through LRs. Vs. Nagpur Agricultural Produce Market Committee 2009 (10) LJSOFT (NAG) 97

Maharashtra Control of Organised Crime Act, 1999 — Section 21(2) — Grant of bail — Compulsive bail — Delay in filing charge-sheet — Power of extension — Grant of second extension — Validity of.

See Mustaq Ahmed Mohammed Isak Vs. State of Maharashtra 2009 (10) LJSOFT (SC) 112

Maharashtra Co-operative Societies Act, 1960 — Section 23, 92 — Limitation Act, 1963 — Article 54 — Dispute regarding membership — Jurisdiction of Co-operative Court — Limitation.

1) Allotment of plot — Society disputed the status of the petitioner as a member — Petitioner ought to have first got determined the status as a member — Question as to whether a disputant is or is not a member cannot be entertained by the Co-operative Court by virtue of the provisions contained in Section 23 — Jurisdiction exclusively lies with the Registrar. (See para 12)

2) Limitation — There are two starting points of limitation under Article 54 of Limitation Act — First the time begins to run from the date on or by which the contract is required to be preformed and secondly if no time is fixed from the date of refusal — Postponement does not and cannot amount to refusal at all — It at the most may amount to avoidance but not refusal — Dispute cannot therefore be said to be barred by limitation. (See para 15)

Result : Petition dismissed.

Ramchandra Krushnarao Pitale Vs. Scientific Cooperative Housing Society Ltd. & ors. 2009 (10) LJSOFT (NAG) 77

Maharashtra Co-operative Societies Act, 1960 — Section 133, 136(3) — Maharashtra Co-operative Societies Rules, 1961 — Rule 107 — Recovery proceedings — Sale of

mortgaged properties —

1) Auction sale of mortgaged properties — In spite of this public notice no objection have taken by the mortgagor — Defaulter conveyed to the authorities that he had no complaint in respect of the said auction sale — Not shown that any of the provisions of Section 133 have been breached — Merely by repeatedly saying that provisions of Section 133 have not been followed one cannot alter the fact that the provisions have in fact been followed. (See para 6, 7)

2) Auction sale of mortgaged properties — Rights of the purchaser at auction sale are protected in view of the provisions of Section 136(3) which lays down that the title of the purchaser shall not be questioned even on the ground that the circumstances required for authorizing the sale had not arisen, or due notice of sale was not given, or power of sale was otherwise an irregular exercise — This provision has been made in order to ensure that people who purchased properties at public auctions do not suffer on account of vicissitudes of fortune of the lis. (See para 10)

Result : Petition allowed.

Kantilal S/o. Dhanrajji Ostwal Vs. Divisional Joint Registrar, Cooperative Societies, Nagpur & ors. 2009 (10) LJSOFT (NAG) 85

Maharashtra Co-operative Societies Act, 1960 — Section 23(2), 25, 30 — Banking Regulation Act, 1949 — Section 21 — Death of member — Transfer of interest.

1) Cooperative Bank — Transfer of shares on death of member — Petitioner-Bank informed the heirs to take back their share money according to policy that no new members should be admitted — Nothing in the bye laws which says that upon death of a Member the shares would be compulsorily redeemed in

favour of the heirs — Though Reserve Bank of India has instructed to see that an individual membership is reduced to minimum — However even RBI would not have a right to issue instructions not to transfer the shares to the heirs of the deceased — RBI cannot even prohibit transfer of shares of those members who may be alive and wish to transfer their share inter vivos — That can be done by the legislative act alone and not by administrative instructions — Individual will have a right to transfer the share unless prohibited by law — Endeavor to reduce membership does not necessarily mean compulsory redemption — Where a death of a member holding share occurs the share upon proof of heirship would be entitled to have them transferred to them. (See para 5)

2) Co-operative Society — Transfer of interest on death of member — Section 23 would apply only to the members who desire to be admitted as new members — Section 23 does not apply to the heirs — Distinction has to be made between the persons who seeks to become a member and the heirs upon whom shares as a property devolve — Every heir of a dead member would automatically become a member because the Cooperative Societies Act provides for transfer of shares. (See para 6)

Result : Accordingly.

Gondia District Central Cooperative Bank Ltd. Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (NAG) 90

Maharashtra Co-operative Societies Act, 1960 — Section 73-C(3) — Election — Voter of one category — Right to vote to the constituency of other category.

Elections to Managing Committee — Non-borrower category voters prevented to vote to the candidate from borrowers category and

borrower category voters prevented to vote to the candidate from non-borrowers category — Such classification is permissible only when the bye-law permits such separation — Bye-laws of Respondent No.2 society does not provide for separate consequences for borrowers and non-borrowers in specific — Restriction is only provided on the number of such members in the Managing Committee so that there should be a representative of the non-borrower members on the Managing Committee — When bye-law does not provide for such restricted right of voting the restriction on such right as provided in Clauses 4 & 5 by the Election Officer would be without any authority and liable to be struck down. (See para 21, 26)

Result : Petition allowed.

Sudhakar Narayanrao Bharsakale Vs. Assistant Registrar, Co-op. Societies, Distt.Amravati & Ors. 2009 (10) LJSOFT (NAG) 157

Maharashtra Cooperative Societies Act, 1960 — Section 107, 155, 163 — Dues of gratuity amount — Recovery proceedings — Attachment of immovable properties.

See Shri Jagdamba Sahakari Sakhar Karkhana Ltd. Vs. Tahsildar Karjat 2009 (10) LJSOFT (AUR) 122

Maharashtra Co-operative Societies Act, 1960 — Section 149 — Code of Civil Procedure, 1908 — Order XLI Rule 31 — Recovery of amount — Appeal — Failure to frame points for determination — Territorial jurisdiction — Jurisdiction of Co-operative Court.

Recovery of amount on account of the payment due for goods sold in favour of the opponent — Opponent specifically raised the objection regarding territorial jurisdiction of

the court — However Co-operative Court failed to frame issue in respect of jurisdiction of the court and after recording evidence application was dismissed — Appeal was allowed by Co-operative Appellate Court — Provisions of Order 41 of CPC are specifically made applicable to the proceedings before the Co-operative Appellate Court in view of provisions of section 149 of MCS Act — Appellate court failed to frame the points for consideration and has not at all dealt with the evidence of the parties — Findings recorded by the trial court reversed without recording reasons for disagreement with the reasons recorded by the trial court — Objection in respect of jurisdiction of the court has not been dealt with by either trial court or the first appellate court — It was incumbent upon the trial court to deal with the objection which goes to the root of the matter — Order passed by the Co-operative Appellate Court and also the judgment of Co-operative Court quashed and set aside and matter remitted back to the co-operative court. (See para 13, 14, 16)

Result : Petition allowed.

Deepak R. Raut Vs. Maharashtra Co-op. Marketing Federation Ltd. 2009 (10) LJSOFT (AUR) 161

Maharashtra Educational Institution (Management) Act, 1976 — Section 3 — Extension to appointment of Administrator — Word “Extension”.

Taking over the management of the school — Administrator was appointed for a period of two years — Said term came to an end by efflux of time — Extension order should have been passed before the expiry of the first term — If any order of extension is to be passed after expiry of period of term then a fresh exercise would be required — As the extension order is passed after the original

time fixed had expired the exercise u/s 3 would be absolutely necessary — No fresh notice was given to the petitioners — Order extending the time or making an appointment of an administrator for a fresh period of one year would be an order which is bad in law. (See para 8, 9)

Result : Petition allowed.

Sadhana Shikshan Prasarak Mandal, Rui (Wai) & anr. Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (NAG) 98

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 2(21), 9 — National Council for Teacher Education Act, 1993 — D.Ed./B.Ed. Colleges — Whether “Recognized School” — Jurisdiction of School Tribunal.

Whether the D.Ed./B.Ed. Training Institutes/Colleges come within the ambit of definitions envisaged u/s 2(20), 2(21) r/w section 2(24) of MEPS Act and that the School Tribunal is competent to entertain the appeals preferred by the petitioners? (No) (See para 22, 23)

Result : Petitions dismissed.

Ravindra s/o Motiram Firake Vs. Janata Shikshan Mandal & ors. 2009 (10) LJSOFT (AUR) 76

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5 — Termination of services — Deemed confirmation — Nature of appointment.

1) Respondents-teachers appointed for a period of three years — In the appointment order neither the blanks are filled nor unwanted or irrelevant portion is scored out — Not clear if the appointment is temporary or on probation or on leave vacancy or on deputation — Evidence placed on record shows that the appointment was purely on

clock hour basis and they were entitled to honorarium alone — They were not liable to be confirmed u/s 5 of M.E.P.S. Act — Impugned order passed by the School Tribunal directing reinstatement set aside. (See para 7)

2) Termination of services — Plea of deemed confirmation — Whether the appointment order alone could be looked into to find out what was exactly the service contract or the attendant circumstances also can be looked into — Letter of appointment alone would not be a determinative factor to determine the nature of the appointment always — In the appointment order neither the blanks are filled nor unwanted or irrelevant portion is scored out — Not clear if the appointment is temporary or on probation or on leave vacancy or on deputation — If the appointment order is alone read it would be absolutely impossible to determine the nature of appointment. (See para 6)

3) Appointment of teachers made without issuing any advertisement — Appointments were made without inviting applications from eligible persons — Appointments were not even approved by the Deputy Director — Appointments made without following any procedure could be said to be back door entry. (See para 7)

Result : Petition allowed.

Jamdar High School Education Society Vs. Sunil Wasudeorao Bhoyar & anr. 2009 (10) LJSOFT (NAG) 92

Maharashtra Government Rules for Conduct of Business, 1975 — Rule 3, 12 — Development of Government lands — Joint venture — Public Private participation — Suo motu development proposals — Originator of proposal — Preferential treatment — Swiss Challenge Method — Discrimination — Government contracts — Judicial review —

Scope of.

See Ravi Development Vs. Shree Krishna Prathisthan 2009 (10) LJSOFT (SC) 109

Maharashtra Housing and Area Development Authority Act, 1976 — Section 164 — Development of Government lands — Joint venture — Public Private participation — Suo motu development proposals — Originator of proposal — Preferential treatment — Swiss Challenge Method — Discrimination — Government contracts — Judicial review — Scope of.

See Ravi Development Vs. Shree Krishna Prathisthan 2009 (10) LJSOFT (SC) 109

Maharashtra Local Authority Members Disqualification Act, 1986 — Section 3(1)(b) — Maharashtra Local Authority Members Disqualification Rules, 1987 — Rule 6, 7, 8(1) — Evidence Act, 1872 — Section 137 — Municipal councillors — Disobeying the whip — Disqualification of — Mandatory procedural requirement — Non-compliance of — Principles of natural justice.

1) Disqualification of Municipal councillors for disobeyed the whip — Respondent no.2 has given a complete go-bye to the procedure prescribed under Sub-rule 1 to 6 of Rule 7 — In the absence of the service of the statement of imputation along with the relevant facts and the list of documents and witnesses and in the absence of a preliminary enquiry the petitioners were not able to raise a reasonable defence — Cannot be said that there was a waiver of the mandatory requirement as the petitioners had filed the written statement and had also sought permission to cross-examine the witnesses and had specifically requested the respondent no.2 to atleast hold a preliminary enquiry — Respondent no.2 has

not recorded any reason, much less any cogent reason to reach to the finding that the whip was actually served on the petitioners and the petitioners had disobeyed the whip — Impugned order cannot be sustained and is liable to be set aside, specially as it entails serious penal consequences and there is apparent non-compliance of the mandatory provisions of law and non-adherence to the principles of natural justice. (See para 16, 17, 18, 20)

2) Disqualification of Municipal councillors — Cross-examination of two material witnesses recorded in a novel way by giving the gist of their statements — Recording of the cross-examination of the material witnesses in this fashion has also caused prejudice to the petitioners as it is difficult to gather as to what questions were posed to the witnesses and what answers were tendered by the witnesses thereto — Enquiry conducted by the respondent no.2 was not in accordance with the principles of natural justice. (See para 19)

3) Absence of reasons — An order sans reasons is not an order in the eye of law and cannot be sustained as it does not disclose the mind of the authority which passes the order. (See para 18)

Result : Petition allowed.

Malti w/o Rajesh Yawalkar & anr. Vs. Sagar s/o Raghunathrao Kautkar & ors. 2009 (10) LJSOFT (NAG) 52

Maharashtra Municipalities (Octroi) Rules, 1968 — Item 40(b), 85 — Classification of goods — Levy of octroi. Petitioners carry on business of micro-fertilizers — Importing Borax within the limits of Municipal Corporation — Borax is specified as one of the chemicals under Item 40(b) — Term “chemical manure” occurring

in Entry No.85 have to be interpreted as including those chemical manures including chemicals which are not already included in the earlier entry — Specific entry would override a general entry and a resort may be had to residuary heading only when a liberal construction of the specific heading cannot cover the goods in question — There is no warrant for classification of Borax as a chemical manure. (See para 7)

Result : Petition dismissed.

Ramchandra Sitaramji Heda & anr. Vs. Union of India & ors. 2009 (10) LJSOFT (NAG) 99

Maharashtra Project Affected Persons Rehabilitation Act, 1999 — Section 10(6) — Project Affected Persons (PAP) — Appointment of — Rehabilitation of — Priority quota.

Project affected persons can be appointed only after they are found to be meritorious and worthy of being appointed to a particular post — Mere fact that a person is “project affected” would not ipso-facto give a right of appointment to a post, regardless of his merit — Minimum educational qualification cannot be ignored while appointing persons from the project affected category — Reservation available for project affected persons cannot be filled in without advertising the posts available in order to ensure transparency in public employment — Observations and directions passed by Division Bench of High Court in 2008 (9) LJSOFT 117 disagreed with — Matter referred to larger Bench. (See para 7, 8, 9)

Result : Accordingly.

Sachin Sahebrao Patil and others Vs. State of Maharashtra and ors. 2009 (10) LJSOFT (AUR) 163

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Schedule IV Item 6 — Evidence Act, 1872 — Section 114(e) — Daily wagers — Denial of permanency — Public employment — Mode of appointment — Burden of proof — Presumption.

Daily wagers — Denial of permanency — Whether entry in public service was after following prescribed procedure or a fair procedure is a question of fact and would require pleading as well as proof — Petitioner-a local self governing body could not be presumed to have acted irregularly when the employees concerned were appointed — Petitioner had nowhere even whispered that the employees concerned were appointed in violation of prescribed procedure — Throwing away such employees on the assumption that their entry was illegal would amount to punishing the victim for bully's wrongs without proof of victim being an accessory to the wrong. (See para 8)

Result : Petition partly allowed.

Municipal Council, Gondia & anr. Vs. Bhandara Zilla General Workers Union 2009 (10) LJSOFT (NAG) 93

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Schedule IV Item 6 — Maharashtra Agriculture Produce Marketing (Development and Regulation) Act, 1963 — Denial of permanency — Regularization of services — Regularization and conferment of permanence — Distinction between.

1) Claim of regularisation — APMC having already regularized the services, it would not be open for the APMC to now contend that the workmen were not entitled to regularization at all — APMC cannot now take advantage of its own wrong, if any, in

by-passing the regular procedure of recruitment or the requirements of Articles 14 and 16 of the Constitution and seek to throw out the workmen on this count — Question of regularization need not now be reopened after the APMC itself regularized the services of the workmen concerned. (See para 28, 29)

2) Regularisation of services — Posts came to be sanctioned on 17-12-1989 — After posts were sanctioned APMC had offered appointments to the respondents in the year 1991 on a regular basis — Respondents declined claiming that they were working on the posts of Clerk — However the fact would remain that the APMC had offered appointments on regular basis in the year 1991 — Regularization granted by the Industrial Court with effect from 17-12-1991 cannot at all be questioned by the Committee as improper. (See para 29)

3) Regularisation of services — Posts came to be sanctioned on 17-12-1989 — Would have been impracticable to expect the APMC to instantly order regularization upon creation of a post — It would have to ensure that the claims of any superior claimants are first considered and this would entail loss of some time — Regularization granted to one of the workmen w.e.f. 17-12-1989 liable to be set aside — Regularization ought to have been granted w.e.f. 17-12-1991 as in the cases of other employees, also in order to avoid discrimination as also because the APMC had itself offered appointments in the year 1991. (See para 30)

4) Distinction between regularization and conferment of permanence — Difference between the concept of grant of pay scale is distinct from the grant of permanency — It would have to be left to the APMC to consider whether the workmen could be confirmed — Not permissible for the Industrial Court or for

High Court to direct that the workmen concerned should be granted permanency — Order of Tribunal granting permanency to the workman from the dates of their regularization would have to be set aside. (See para 31 to 35)

Result : Accordingly.

Anna Pandurang Vaidya (since deceased) through LRs. & ors. Vs. Nagpur Agricultural Produce Market Committee & ors. 2009 (10) LJSOFT (NAG) 97

Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 — Schedule IV Item 9 — Non payment of correct wages — Direction to make reference — Powers of High Court.

1) Unfair Labour Practices — Industrial Court held that the complaint was not maintainable — Order challenged before the High Court — Learned Single Judge held that the complaint itself was not maintainable and the petition was liable to be rejected — However learned Single Judge directed the appropriate Government to make a reference under the I.D. Act and the terms of reference were also stated in the order — No reason given anywhere for issuing direction to the appropriate Government to make the reference and even the appropriate Government is not even a party to the writ petition — There was no prayer in writ petition seeking direction to make reference — Order directing the appropriate Government to make the reference is set aside. (See para 4, 6)

2) Reference of dispute — High Courts will not straightaway direct the appropriate Government to refer the dispute — It is for the appropriate Government to apply its mind to relevant factors and satisfy itself as to the existence of a dispute before deciding to refer the dispute — Exception to the above is, when

the Court finds that the appropriate Government refusal to make a reference of a dispute, is unjustified, the Court may direct the Government to make a reference. (See para 4)

Result : Appeal allowed.

Tancom Electronics Vs. Bhartiya Kamgar Karmachari Mahasangh and others 2009 (10) LJSOFT 167

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28 — Filing of additional written statement.

Complaint filed by respondent challenging her termination of services — Petitioner filed an application to file additional written statement on 17-2-2007 raising the plea of closure for the first time alleging that the company had closed its business in Bombay — If the establishment had been closed down in 1996 petitioner had ample opportunity to incorporate such a plea when the first written statement was filed in 1999 — Petitioner company was rightly not permitted to file additional written statement at a belated stage when the matter was to be decided within six months as directed by High Court — Labour Court was justified in coming to the conclusion that application was made with sole intention to protract the proceedings — Impugned order not liable to be interfered with. (See para 14, 15, 16)

Result : Petition dismissed.

Cimco Birla Limited Vs. Rowena Lewis 2009 (10) LJSOFT 79

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28 — Schedule IV Item 5, 9 — Piece rated workers — Maintainability of complaint.

1) Respondents engaged as piece-rated employees whose wages were allegedly converted into fixed rate for eight hours of working — Respondents being piece rated workers did not qualify to be the “employees” under the Rules of petitioner Corporation — It was not open to them to make a complaint u/s 28 of MRTU & PULP Act. (See para 16)

2) Unfair Labour Practices — Respondents engaged for dying yarn used in weaving hand loom cloth — It is not shown by the respondents that any other set of dyers or piece rated workers has been treated differently — Industrial Court could not have held that unfair labour practice as defined in Item 5 of Schedule IV had been proved — In the absence of any award, settlement or agreement shown to have been breached, he could not have held that unfair labour practice as described in Item-9 of Schedule IV had been committed by the petitioner — Impugned order quashed and set aside. (See para 16)

Result : Petition allowed.

Maharashtra State Handloom Corporation Limited & anr. Vs. Krishna Shankar Kamble & ors. 2009 (10) LJSOFT (NAG) 100

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2) — Schedule IV Item 3, 9 — Industrial Disputes Act, 1947 — Section 9-A — Order of transfer — Conditions of service — Interim relief. Ten employees engaged in Share Department transferred from Mumbai to diverse places all over India due to reduction of work of physical transfer of shares in view of dematerialization — While the Industrial Tribunal has jurisdiction to grant interim orders, such orders ought not to be passed as a matter of course unless a prima facie case is made out

in regard to the commission of an unfair labour practice — Cannot be said that mere order of transfer would affect adversely the workmen concerned where transferability is a condition of service — Finding regarding breach of section 9-A is prima facie unsustainable — Reasons indicated by the management cannot be regarded as extraneous or colourable, in any event at the interim stage — Interference of learned Single Judge was warranted in order to correct a manifest error on the part of the Industrial Court — Impugned judgment set aside and the application for the grant of interim relief before the Tribunal is dismissed. (See para 13, 14)

Result : Appeal allowed.

A.C.C. Limited Vs. Associated Cement Staff Union 2009 (10) LJSOFT 155

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 48(1) — *Termination of services — Breach of order passed by the Industrial Court — Issuance of process — Quashing of criminal proceedings — Maintainability of petition — Alternate remedy.*

See Indian Tourism Development Corporation Vs. Presiding Officer 2009 (10) LJSOFT 75

Maharashtra Regional and Town Planning Act, 1966 — Section 126, 154 — Development Control Regulation — Regulation No.N-2.4.17 — Acquisition of land — Grant of TDR/DRC in lieu of compensation — Right of private land-owners — Notification dated 3-2-2007 — Legality of. Acquisition of land for the purposes of garden — Compensation for had been offered to the petitioner-Society in 1987 when the award

was passed but the same has not yet been accepted by the petitioner — Petitioner claimed that in view of the Development Control Regulation No.N-2.4.17, it was entitled to TDR/DRC in lieu of compensation — Modified DCR No.N-2.4.17(ii) offers TDR in lieu of compensation at the request of the owner provided the land was acquired or taken possession of 12 years prior to 30-9-1993 — Regulation No.2.4.17 has been framed by the respondents themselves and they cannot claim that this Regulation is in contravention of the provisions of the MRTP Act — Notification dated 3-2-2007 amounts to modifying Regulation No.2.4.17 which could not have been done in exercise of power u/s 154 of the MRTP Act — Notification dated 3-2-2007 is quashed and the respondents are directed to grant TDR to the petitioner-Society in terms of Regulation No.2.4.17. (See para 6, 8, 10, 11)

Result : Accordingly.

Kausarbag Co-operative Housing Society Ltd. Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (URC) 10

Maharashtra Regional and Town Planning Act, 1966 — Section 47, 66, 127 — Purchase notice — Lapsing of reservation. Land of petitioners reserved for open space in the development plan — No concrete and effective steps had been initiated for acquisition of the said land by the Municipal Council — Petitioners issued a purchase notice on 10-10-2003 — Proposal was initially submitted to the Collector for acquisition of the said land — Thereafter Municipal Council passed a resolution expressing its inability to proceed with the acquisition considering its financial position — Held that reservation in the development plan pertaining to the land of the petitioners has lapsed — Impugned

orders quashed and set aside. (See para 4, 5)

Result : Petition allowed.

Smt. Vatsalabai Panditrao Lad & ors. Vs. State of Maharashtra, through its Secretary, Department of Urban Development & ors. 2009 (10) LJSOFT (AUR) 162

Maharashtra Rent Control Act, 1999 — Section 15, 16, 58 — Limitation Act, 1963 — Article 113 — Eviction proceedings — Recovery of possession — Applicability of Limitation Act — Permission granted under a repealed enactment — Repeal and saving.

1) Landlord obtained permission to issue quit notice on 10.01.1997 — No limitation prescribed for issuing notice — As the Rent Control Order did not prescribe any limitation for issuing notice after permission was granted, general law under Limitation Act would not apply — Cause of action to file the suit accrued only after the quit notice was issued on 07.01.2001 and was not complied with by the tenant — Suit filed on 16.06.2001 was within limitation. (See para 9, 10)

2) Landlord obtained permission to issue quit notice on 10.01.1997 — Maharashtra Rent Act came into force on 31.03.2000 and the C.P. & Berar Rent Control Order was repealed — Suit based on a notice issued in pursuance of permission granted under a repealed enactment — Suit cannot be held as barred by provision of Sections 15 and 16 of the new Act in view of the necessity of interpreting the saving clause so as to make it meaningful, workable. (See para 10)

Result : Application dismissed.

Shashikant S/o. Girdhardas Bagdi & ors. Vs. Ratanlal S/o. Kanhaiyalal Rathi 2009 (10) LJSOFT (NAG) 101

Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 — Section 3 — Invalidation of caste certificate — Cancellation of admission to MBBS Course — Claim of protection.

Invalidation of caste certificate — Claim of Petitioner that her education is almost complete is an incomplete and incorrect statement — petitioner's case does not stand on par with students who have, 'years before' cancellation of Caste/Tribe Status Certificate, completed the course secured the passing and now what remains is formal act of award of degree — Claim made by the petitioner that her case falls within the bracket of the class carved out by Sandeep Parate's case is an argument which does not have any factual foundation — No merit in the Review Application. (See para 33, 34, 38, 42)

Result : Application dismissed.

Mayuri d/o. Manohar Bende Vs. State of Maharashtra & Ors. 2009 (10) LJSOFT (NAG) 148

Maharashtra Universities Act, 1994 — Section 32(6)(a), 96 — Constitution of India, 1950 — Article 226 — Plagiarism — Malpractices in examinations — Degree obtained by fraud — Principles of natural justice — Writ jurisdiction.

1) Petitioner was awarded Ph.D. in 1990 — Upon a complaint of Professor Nazir in 2006 respondents came to know about that the dissertation submitted by the petitioner was verbatim copy of the dissertation submitted by Prof. Nazir — There is absolutely no delay on the part of the respondents in taking action against the petitioner — Dissertation

submitted by the petitioner is verbatim copy of the dissertation submitted by Prof. Nazir and there is absolutely no explanation offered by the petitioner not only before the Committee but also before the Court — This is nothing but a flagrant case of "plagiarism" — Considering the scope of the enquiry which was to be undertaken by the Committee the grievance made by the petitioner that he was not given reasonable opportunity of defending himself found to be absolutely baseless — Since the petitioner has resorted to Plagiarism in securing M. Phil degree, even if there is violation of natural justice as contended by the petitioner, Court declines to exercise writ jurisdiction in favour of the petitioner. (See para 18, 21, 31)

2) Degree obtained by fraud — Fraud vitiates all actions — Judgment of the Apex Court regarding the principles relating to a decree obtained by fraud has to be applied to a degree obtained by a candidate. (See para 20)

3) Degree obtained by fraud — Invoking of emergency powers — Meeting of Board of Examinations was scheduled in December 2006 and the petitioner was not only an approved teacher but also a sitting member of the Management Council of the University and as such was empowered to visit the examination centres — In the petitioner who had indulged in plagiarism was allowed to visit the examinations centres the same was bound to cause damage to the reputation of the University — Respondent no.2 was perfectly justified to invoke emergency power u/s 32(4) of the Act. (See para 22, 23)

Result : Petition dismissed.

Shashikant s/o Vishwanathrao Choudhari Vs. Sant Gadge Baba Amravati University & anr. 2009 (10) LJSOFT (NAG) 113

Maharashtra Village Panchayat (Payment of

Lump Sum Contribution by Factories) Rules, 1961 — Rule 3, 4, 6, 7 — Levy of taxes and fees — Causing of financial loss — Disqualification.

See Prabhakar Dhonge Vs. Harichandra s/o Santoshrao Aaswale 2009 (10) LJSOFT (NAG) 132

Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 — Rule 6, 7 — Disciplinary enquiry — Quashing of findings — Review.

Disciplinary enquiry — Form and content of notice connotes that in the very beginning proposed enquiry was not restricted to minor penalty — By its corollary the enquiry proposed to be conducted was under Rule 6 as well as Rule 7 — Procedure which was bound to be followed was as laid down in Rule 6 — At the time of quashing the findings of Enquiry Officer and order of punishment the High Court did not put any rider or embargo on the employer that no further enquiry should be conducted in the same chargesheet — Order sought to be reviewed does not cause any prejudice to the applicants-employer — Review application has no merit. (See para 7, 10, 11, 13)

Result : Application dismissed.

Additional Chief Executive Officer, Zilla Parishad, Buldana & anr. Vs. Additional Commissioner, Amravati Division & ors. 2009 (10) LJSOFT (NAG) 151

Motor Vehicles Act, 1939 — Section 110 — Motor accident — Negligence of pedestrian — Claim of compensation — Contributory negligence.

1) Motor accident — Deceased while crossing the road was knocked down by a car — Deceased ought to have crossed road only at the pedestrian crossing — However mere fact

that the pedestrian had not used the Zebra crossing cannot absolve the driver of the car from payment of compensation. (See para 9)
2) Motor accident — Deceased while crossing the road was knocked down by a car — Car was not speeding and the driver of the car was not rash — However the driver had sufficient opportunity to avert the accident — Impact occurred about 236' away from the traffic signal where the car had halted for the signal to change — Deceased was crossing the road more than 200' away from the traffic signal and when the time the car started after the signal turned green, the driver would certainly have seen the deceased trying to cross the road — No record to show that the driver had braked in order to avert the accident — Driver had not bothered to take due care and precaution while driving the vehicle along Marine Drive — Ratio accepted by the Tribunal apportioning the liability at 80% for appellants and 20% for respondents for assessing contributory negligence cannot be faulted. (See para 9)

Result : Accordingly.

Meghraj Sethi and Sons & Anr. Vs. Smt.Sunita Jitendranath & Ors. 2009 (10) LJSOFT (URC) 12

Motor Vehicles Act, 1939 — Section 110-A — Motor accident — Compensation — Quantum of — Contribution towards family.

Quantum of compensation — deceased was Civil Engineer and was working with Irrigation Department — He was earning a sum of Rs.1856/- p.m. — Only 1/3 amount to be deducted for net contribution of the deceased towards his family — Trial Court erred in concluding that the deceased used to contribute only 1/3 of his salary to his family — Trial Court has not awarded compensation

properly — On the basis of contribution of Rs.1130/- the claimants are entitled a sum of Rs.2,03,400/- towards the compensation instead of Rs.1,03,900/- as awarded by the trial Court — Claimants entitled interest @ 7% p.a. on enhanced compensation from the date on which they filed Cross Objection till realisation of the amount. (See para 10, 19, 20)

Result : Accordingly.

Asstt. Engineer, Cl. II, Kukadi Left Canal & anr. Vs. Dattatraya Ganpat Kenge & ors. 2009 (10) LJSOFT (AUR) 111

Motor Vehicles Act, 1988 — Section 147 — Motor accident — Claim of compensation — Person travelling in goods vehicle — Liability of Insurance Company.

Motor accident — Person travelling in the goods vehicle accompanying the goods for which he had paid the freight charges — Premium been paid the Insurance Policy covered a class of victims like the deceased — It cannot be read from the policy document that by any permutations and combinations, the amount of premium paid is for a restricted liability, i.e., excluding one of the classes of claimants — Oral submission or a pleading for that matter that the premium paid did not cover the liability of the class of passengers of the present nature is a “pleading and argument” without proof of facts — Cases are decided on evidence and not on bare pleadings and oral arguments — Insurer-appellant failed to prove its plea of exclusion of liability. (See para 10 to 13)

Result : Appeal dismissed.

New India Assurance Co. Ltd. Vs. Smt. Rukhmabai wd/o Laxman Charde & ors. 2009 (10) LJSOFT (NAG) 78

Motor Vehicles Act, 1988 — Section 169(2) — Motor Vehicles Rules, 1989 — Rule 276 — Code of Civil Procedure, 1908 — Order I Rule 10(4) — Motor accident — Claim of compensation — Service of summons.

1) Claim of compensation — Appellant is the owner of offending vehicle — Contended that no summons as per provisions of Order I Rule 10(4) of CPC was issued to any of the newly added respondents including the appellant — Delivery of summons without copy of application or without copy of Claim Petition is not a due service — Impugned Award is set aside and Claim Petition is remanded to Motor Accident Claims Tribunal for disposal according to law. (See para 8, 19)

2) Claim of compensation — Though trial of Claim Petition is to be summary, there cannot be dispensation of service of summons — Use of procedure for service under CPC is not just a guiding path of procedure, but is mandatory, in absence of any special procedure being provided under M.V. Act — Under Rule 276 various provisions of CPC have been made applicable to the procedure to be adopted by the Tribunal — Argument that provisions of CPC do not apply to the trial of Motor Accident Claim Petition and service of summons is untenable. (See para 15, 16, 18)

Result : Appeal allowed.

Satish Balkrushna Mundle Vs. Ramdas Pandurang Lunge & ors. 2009 (10) LJSOFT (NAG) 84

Multi-State Co-operative Societies Act, 2002 — Section 85(1)(a) — Dishonour of cheque — Recovery of loan — Limitation — Time-barred debt — Legally enforceable debt — Appeal against acquittal.

See Sarla Rashmikant Doshi Vs. State of Maharashtra 2009 (10) LJSOFT (URC) 2

Mumbai Municipal Corporation (Amendment) Act, 1962 — Section 394 r/w Section 471 — Business premises — Installing of tea/ coffee vending machines without licence — Quashing of criminal complaint.

Complaint filed against two companies for installing coffee vending machines without licence — Petitioners contended that they are not running any business of selling tea or coffee but have installed vending machine for tea and coffee for the use of their employees — Office is run in a premises of about 20,000 sq.ft. having 85 persons in its employment — Held that it would not be unusual that the office maintains a tea and coffee machine and if tea and coffee are offered to the employees and guests and that would not constitute it to be a catering shop — Complaints do not disclose any offence and the process cannot be allowed to go — Complaints liable to be quashed. (See para 2)

Result : Petitions allowed.

Northern Marine Management (India) Pvt. Ltd. & Anr. Vs. Municipal Corporation of Greater Mumbai & Ors. 2009 (10) LJSOFT (URC) 14

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 37, 20(a)(i) — Grant of bail — Quantity of contraband. Applicant cultivated 10 cannabis plants in his agricultural field — Weight of the plant was 172 Grams which indicates that the plants were very small — Applicant does not have any criminal antecedents — Bail granted. (See para 5)

Result : Application allowed.

Damodhar Laxman Chede Vs. State of Maharashtra 2009 (10) LJSOFT (AUR) 74

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii)(C) — Possession of charas — Samples — Discrepancy in weight — Appeal against conviction.

Accused found in possession of suspected drugs which were seized and sealed — Chemical analyzer confirmed to be charas for the possession of which the accused did not have any document to support, and, that too in commercial quantity — Seized article was properly packed and sealed and the seal was handed over to the Dy.S.P. so as to eliminate any doubts as regards allegations of tampering — Charas is concentrated raisin taken from the leaves and stems of the plant, it is quite probable that with the passage of time and by evaporation of its moisture content it reduced in weight — Explanation regarding less weight being found at the time of analysis appears to be plausible and probable — Prosecution evidence is consistent and corroborated by the evidence of independent pancha witness and has rightly been relied upon by the learned trial Court — Conviction confirmed. (See para 9, 10, 11)

Result : Appeal dismissed.

Ganesh Bhandari Vs. State of Goa 2009 (10) LJSOFT (GOA) 135

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20(b)(ii)(C) — Recalling of witnesses.

See Sher Singh Vs. State of Goa 2009 (10) LJSOFT (GOA) 150

National Commission for Minority Educational Institutions Act, 2004 — Section 10, 11, 12 — Constitution of India, 1950 — Article 30(1), 226 — Right to establish a Minority Educational Institution — Grant of permission — Power of

Commission.

Establishing of Minority Institution — Commission has a power to enquire, suo motu or otherwise into the question relating to deprivation or violation of a right of the minority to establish and administer educational institutions of their choice — Commission not empowered to entertain a specific case of permission to start a minority educational institution and to direct that such a permission be granted — Impugned order of the Commission directing the petitioner and the respondent no.2 University to grant permission to Respondent no.1 to start minority educational institution is without jurisdiction. (See para 11, 13)

Result : Petition allowed.

State of Maharashtra Vs. Mehmuda Shikshan and Mahila Gramin Vikas Bahuudheshiya Sanstha & anr. 2009 (10) LJSOFT (NAG) 39

National Council for Teacher Education Act, 1993 — D.Ed./B.Ed. Colleges — Whether “Recognized School” — Jurisdiction of School Tribunal.

See Ravindra M. Firake Vs. Janata Shikshan Mandal 2009 (10) LJSOFT (AUR) 76

Negotiable Instruments Act, 1881 — Section 138 — Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheque — Cheque issued by third party — Liability — Quashing of criminal proceedings.

Dishonour of cheque — Transactions were between the respondent no.2 and the applicant — Applicant handed over the cheques issued by a third party to discharge the financial liability of the applicants — Respondent no.2 may avail civil remedy for recovery of the amount due but for the purpose of Section 138 criminal action could be taken only against

the drawer of the cheque — Unless it is shown that the applicant could be treated as drawer of the cheque in the eye of law, no criminal action can be instituted against him — Averments in the complaint do not show prima facie, the necessary ingredients of the offence punishable u/s.138 of N.I. Act — Process issued against the applicant is unsustainable and may amount to abuse of the process of the court — Complaint cases to the extent of the applicant are quashed. (See para 7, 8, 9)

Result : Applications allowed.

Viral Filaments Ltd. Vs. State of Maharashtra & anr. 2009 (10) LJSOFT (URC) 6

Negotiable Instruments Act, 1881 — Section 138 — Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheques — Death of authorised signatory — Validity of cheques — Quashing of criminal proceedings.

Dishonour of cheques due to insufficiency of funds — Cheques signed by authorized signatory issued for and on behalf of the applicants-proprietary concern — Death of signatory before the presentation of the cheques — Whether the cheques in question lost validity due to the death of the authorized signatory — Held that cheques were drawn on account of the applicants and they were liable to pay the amount shown under the cheques in question — Cheques could not be regarded as invalid instruments as on date of death of the signatory qua the payee bank unless the death was duly intimated to the bank — Unless there is tangible evidence to infer that the Bank was duly intimated about death of signatory prior to presentation of the cheques it cannot be said that the instruments became invalid — Question whether the

signatory of the cheques, died prior to the dates of the presentation of the cheques and the question whether the applicants gave due intimation about the death of the authorized signatory to the Bank are disputed questions of fact — Applicants being drawers of the cheques are prima facie liable to face the criminal prosecution — Applications dismissed. (See para 8, 9, 10)

Result : Applications dismissed.

Karishma Consultant & anr. Vs. Om Prakash Agarwal & anr. 2009 (10) LJSOFT (URC) 7

Negotiable Instruments Act, 1881 — Section 138 — Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheques — Plea of fraud — Quashing of criminal complaint.

Dishonour of cheque of Rs.50,000/- being the amount due and payable towards arrears of the Society for maintenance and other dues — Cheque was returned with the remark “Date not clear” — Petitioner-accused alleged that the cheque issued was the result of fraud — Held that fraud is a question of fact and has to be proved before the consequences follow — In the present proceedings, it is not possible for High Court to come to a conclusion that the prosecution u/s 138 was result of a fraud — Petitioners did not challenge issuance of cheques or their bouncing — Unless they discharge the onus, the Court will believe that the cheques were issued for payment of debts — Complaints disclose a prima facie case and the petitions deserve to be dismissed. (See para 12, 14, 15)

Result : Petition dismissed.

Chanchal Choudhary Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (URC) 11

Negotiable Instruments Act, 1881 — Section 138 — Code of Criminal Procedure, 1973 — Section 378(4) — Dishonour of cheques — Authority of signatory — Leave to file appeal against acquittal.

Accused a Karta of Hindu Undivided Family (HUF) and relative of the complainant — Cheques given from the account of HUF, but were signed by one relative of the accused who had no authority to put signature for on behalf of HUF — No documents to show the authority given to signatory by the accused to sign on his behalf — Applications for leave to file appeal against acquittal dismissed. (See para 3, 4, 5)

Result : Applications dismissed.

Misha M. Jashnani Vs. State of Maharashtra & Anr. 2009 (10) LJSOFT 73

Negotiable Instruments Act, 1881 — Section 138 — Dishonour of cheques — Legally enforceable debt/ liability — Presumption — Rebuttal of — Appeal against acquittal.

Dishonour of four cheques — Accused produced the carbon copies of cheques and proved by balance of probabilities that the cheques issued by him were blank — Accused further proved that his liability if at all was limited to Rs.25,00,771/- and not to the extent reflected by the said four cheques — Accused has successfully rebutted the presumption available to the Complainant in terms of the relevant provisions of the Act — Complainant also failed to prove that there was a debt or liability to the extent claimed by the Complainant — Order of acquittal not liable to be interfered with. (See para 11 to 15)

Result : Appeal dismissed.

Western India Shipyard Ltd. Vs. Deekay Steels & ors. 2009 (10) LJSOFT (GOA) 145

Negotiable Instruments Act, 1881 — Section 138 — Dishonour of cheque — Service of notice — E-mail — Appeal against acquittal.

1) Dishonour of two cheques — Demand notice was issued — Payment towards amount under first cheque was made and acknowledged by complainant — Trial Court proceeded on the assumption that once cause of action in respect of one cheque did not survive, nothing further was required to be said in respect of the other cheque — Reply of Accounts Manager clearly acknowledges liability in respect of this cheque — As a person in the know of the affairs of the company, particularly the accounts of the company, his word that the Company would make the payment should have weighed with the trial Court — Trial Court should have held that the complainant had proved that the accused failed to pay the amount under the other cheque of Rs.2 lacs which was dishonoured — Offence in respect of dishonour of this cheque was duly proved — Order of acquittal set aside and instead the respondent is convicted u/s 138 of N.I. Act and is sentenced to pay a fine of Rs.5000/- and compensation of Rs.3,00,000/-. (See para 7, 11, 14)

2) Dishonour of cheque — Complainant informed the accused by e-mail that the cheque for Rs.2,00,000/- had bounced and had requested the accused to immediately clear the cheque mentioned in the e-mail — Notice demanding payment of amount under a dishonoured cheque could be sent electronically as well — Since no format is prescribed, said e-mail would qualify to be a notice contemplated u/s 138 of N.I. Act. (See para 9)

Result : Appeal allowed.

Paul Dias and Sons Vs. SDS Shipping Pvt. Ltd. 2009 (10) LJSOFT (GOA) 171

Negotiable Instruments Act, 1881 — Section 138 — Multi-State Co-operative Societies Act, 2002 — Section 85(1)(a) — Dishonour of cheque — Recovery of loan — Limitation — Time-barred debt — Legally enforceable debt — Appeal against acquittal.

Accused obtained a loan from the Co-operative Bank on 17.9.02 — Accused made the last payment of installment on 15.3.03 — Later accused gave two cheques, one dated 20.4.06 for Rs.20,000/- and other dated 25.4.06 for Rs.18,000/- — Both the cheques were dishonoured — Trial Court erred in holding that period of limitation ought to have been reckoned from 15-3-03 when last payment was made — Loan was payable in 36 equal monthly installments and the last installment due was on 16.9.05 — Complainant would have had three years to initiate recovery proceedings from 16.9.05 — Even Section 85(1)(a) of the Act of 2002 makes a special provision and the period to recover the loan would have been six years and not three years — Cheques issued by accused were issued in repayment of the loan before it could be said that it had become time barred — Impugned order of acquittal set aside and the accused is convicted u/s 138 of N.I. Act — In view of concession made by complainant, the accused is directed to pay the said sum of Rs.38,000/- within a period of 15 days and i/d undergo 6 months S.I. (See para 6, 7, 8)

Result : Appeals allowed.

Goa State Co-operative Bank Ltd. Vs. Mohan Surya Naik 2009 (10) LJSOFT (URC) (GOA) 17

Negotiable Instruments Act, 1881 — Section 138, 141 — Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheque — Offences by companies — Vicarious liability of Directors — Quashing of criminal proceedings.

Applicants were made non executive directors of Accused No.1-company — Mere sweeping allegations that the accused persons are directors of the company would not suffice the purpose — Applicants are not shown to be persons in-charge of the business of the company nor it is demonstrated that they are responsible for the conduct of its business — No material on record to infer that the applicants were served with demand notices — Verified statement of the complainant does not shed any light on the issue pertaining to complicity of the applicants — Applicants deserve exoneration from the criminal liability — Complaint case to the extent of the applicants is liable to be quashed. (See para 7, 8)

Result : Applications allowed.

Mrs. Sarla Rashmikan Doshi and ors. Vs. State of Maharashtra and anr. 2009 (10) LJSOFT (URC) 2

Partition Act, 1983 — Section 2 — *Suit for partition — Property of partnership firm — Second appeal.*

See Kanihyalal Hastimal Firodiya Vs. Vasantlal Hastimal Firodiya (died) through his legal heirs 2009 (10) LJSOFT (AUR) 110

Partnership Act, 1932 — Section 14, 15 — Evidence Act, 1872 — Section 91, 92 — Partition Act, 1983 — Section 2 — Code of Civil Procedure, 1908 — Section 100 — Suit for partition — Property of partnership firm — Second appeal.

1) Original tenant was survived by five sons — Vide partnership deed dated 22.08.1964 Original tenant and his two sons formed a partnership firm for running cosmetic shop in suit premises — Suit premises was purchased by sale deed dated 02.11.1979 in favour of five brothers — If there was intention to purchase the property for and on behalf of partnership firm in that case the purchase would have been in the name of partners of the firm as it existed then and not in the name of all five brothers — No evidence to show that family had any source of income other than the partnership firm business — It does not appear that the partners or their brothers treated the property as owned by the partnership firm rather it was treated as property owned by the joint family — Evidence shows that the partnership firm was neither owner nor tenant of the suit premises, though it has been using premises belonging to its partners and their brothers without any contract and without any rent — Courts below rightly passed the decree of partition and separate possession and declared that the plaintiff is entitled to get 1/5th share by way of partition and possession in suit property. (See para 15, 17, 22, 25)

2) Suit for partition — Contended that partition suggested by Court Commissioner is impractical and would harm the interest of all parties and the appellants are ready to purchase 1/5th share of plaintiff/respondents at market price — Held that how partition should take place is a matter to be considered in final decree proceedings and same cannot be considered at the time of confirming the preliminary decree — Appellants entitled to make their submissions regarding actually effecting partition during final decree

proceedings.(See para 34, 35)

Result : Appeal dismissed.

Kanihyalal Hastimal Firodiya Vs. Vasantlal Hastimal Firodiya (died) through his legal heirs & anr. 2009 (10) LJSOFT (AUR) 110

Partnership Act, 1932 — Section 69 — Code of Civil Procedure, 1908 — Order VII Rule 11 — Order XIV Rule 1, 2 — Suit for declaration — Un-registered partnership firm — Maintainability of suit.

1) Plaintiff filed a suit for declaration that certain shares of Defendant No.4-Company are the property of a partnership firm-Defendant No.3 — Further prayed that the transfer/transmission of the said shares in favour of Defendant No.1-partner be cancelled — Suit had been instituted against Defendant No. 4-Company primarily though the partnership concern and other partners had also been impleaded as Defendants in the suit — Reliefs claimed were based primarily on the ground that there was a supplemental deed where all the partners had equal shares and that upon the death of husband of Defendant No.1, the legal representatives have no right to the shares to the exclusion of others as they belonged to partnership firm — Reliefs claimed, primarily against Defendant Nos.4 Company, were neither arising out of any contract nor were they in any way dependent upon the status of the partnership — Reliefs claimed against Defendant No.4 Company are primarily available in the realm of Companies Act and/or in common law — Bar contained u/s 69 of Partnership Act was not attracted, in any case, in its entirety — Impugned order passed by the learned Single Judge set aside and matter remanded back. (See para 18, 20, 24, 25)

2) Dismissal of suit under Order VII Rule 11 of CPC if the suit is barred or its institution is impermissible under any other law for the time being in force — For the purpose of examining such bar of law to the maintainability or institution of a suit, the Court has to act on the plea of demur — Averments made in the Plaint have to be taken as correct and the law has to be applied on that basis — Provisions of Order XIV Rule 1 of CPC makes it obligatory upon the Court to frame issues on the question of facts and law where the claims of the parties are in dispute — Court is to pronounce its judgment on all the issues and while framing the issues in terms of Order XIV Rule 2, the Court can even frame preliminary issue which may dispose of the suit itself, if the issues relate to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. (See para 22, 24)

3) Interpretation of statutes — Bar to maintainability of a Suit in terms of Section 69 is a bar created by law and it ought to be taken up and decided at the very initial stage of the proceedings — Principle of strict construction would be applicable to the provisions of Section 69 which in turn has serious consequences of dismissal of a Suit right at the threshold — Ingredients of Section 69 should be satisfied in absolute terms and it will be difficult for the Court to apply the bar of Section 69 on inferences. (See para 12, 14) Result : Appeal allowed.

Kuljinder Singh Ahluwalia Vs. Smt. Sandeep Kaur Ahluwalia & ors. 2009 (10) LJSOFT 26

Payment of Gratuity Act, 1972 — Section 8, 14, 15 — Maharashtra Cooperative Societies Act, 1960 — Section 107, 155, 163 — Dues of gratuity amount — Recovery

proceedings — Attachment of immovable properties.

Recovery of gratuity amount dues payable to ex-worker — Payment of Gratuity Act is Central Legislation and will have overriding effect over the State Legislation if any conflict in two provisions would be noticed — Power to recover the gratuity is a special power — Respondent No.1 is only executing agency and it cannot be said that the execution is in respect of the amount due to the Government — Recovery of gratuity amount is through the process provided under the law and is not inconsistent with Section 155 of MCS Act — No bar to such recovery proceedings U/s 163 of MCS Act since the jurisdiction of Civil or Revenue Court is barred only to the extent of the disputes which fall within relevant sub-clauses of sub-clause (1) of Section 163 of MCS Act — Liquidator is required to give priority to the claim of the Respondent No.2 which has precedence over the other claims — Recovery proceedings not liable to be interfered with. (See para 5)

Result : Petition dismissed.

Shri Jagdamba Sahakari Sakhar Karkhana Ltd. Vs. Tahsildar Karjat, Dist. Ahmednagar & anr. 2009 (10) LJSOFT (AUR) 122

Prevention of Corruption Act — Investigation — Circular dated 21-2-1972 — Legality of.

Corruption case — Circular dated 21-2-1972 issued by Government of Maharashtra provided that when there is an allegation of corruption against an officer, before the Anti Corruption Department starts investigation it is required to refer the matter to the department to which such officer belongs, for a preliminary enquiry — Circular prima facie

restricts the statutory powers of the Investigating Agency to investigate the case of omission and commission which are offences under the P.C. Act — Any circular placing restrictions on the power of Investigating Agency which is available to them under P.C. Act and Cr.P.C. appears to be illegal — Directed that the circular dated 21.2.1972 shall not be implemented by the Anti Corruption Agency. (See para 1, 2)

Result : Accordingly.

Anna Kishanrao More Vs. P.R.Menon, Executive Engineer, Mechanical Stores & Development Division & Others 2009 (10) LJSOFT (URC) 8

Protection of Women from Domestic Violence Act, 2005 — Section 2(q), 12 — Female relatives of husband — Complaint against — Maintainability of — Word “Relative” — Meaning of.

1) Petitioner filed a complaint against her husband, mother-in-law, and two sisters-in-law demanding, among other things, that she be allowed to live in the matrimonial house — “Relative” within the meaning of proviso to section 2(q) cannot be only a male relative — If a narrow interpretation is put to proviso to section 2(q) to the effect that the relative referred to therein is only a male relative the proviso to Section 19(1) becomes meaningless — Word “relative” in proviso to section 2(q) includes a female relative — Learned Sessions Judge erred in holding that an application u/s 12 was not maintainable against the female relatives of the husband — Part of the impugned order dismissing the application u/s 12 of against the female relatives is quashed and set aside. (See para 11, 13, 14, 16)

2) Petitioner filed a complaint demanding, among other things, that she be allowed to live

in the matrimonial house — Alleged shared household standing in the name of her mother-in-law — Learned Judge was not finally deciding the application u/s 12 but was dealing with an application for interim relief — Learned Judge rightly held that the documents placed on record show that mother-in-law was the owner of the said house and therefore the said house cannot be treated as a shared household. (See para 16)

Result : Application partly allowed.

Archana Hemant Naik Vs. Urmilaben I. Naik and Anr. 2009 (10) LJSOFT (URC) 19

Representation of People Act, 1951 — Section 36(1), 36(2), 100 — Election petition — Rejection of nomination paper — Decision making process — Jurisdiction of High Court — Scope of — Concession made by counsel — Effect of — Judicial review.

1) Election petition — Rejection of nomination form — Dispute regarding signatures of proposers — High Court acts as a Court of original jurisdiction — Election petition is a civil trial and the jurisdiction in such a trial *stricto sensu* cannot be said to be appellate in nature — High Court was duty bound to treat the matter on merits by framing issues and thereafter calling for production of evidence in support of their respective cases — High Court acted illegally in treating its power only as an appellate authority and not as an original authority for it only proceeded to try and determine as to whether or not the decision making process is legal — Approach of the High Court was illegal and unjustified — Impugned judgment set aside and matter remitted to the High Court for consideration of the matter afresh. (See para 40)

2) Election petition — Concession made by the counsel of appellant that the election petition was limited to the challenge to the decision making process of the returning officer — Contended that it is impermissible to allow him to raise a contention that the signatures of two of the proposers were in fact genuine — Rejecting the contention held that statutory right of a party should not be denied only on the basis of a wrong concession made by a counsel — Right vested in a suitor by reason of a statute could not have been taken away. (See para 41)

3) Elections — It is incumbent upon the Returning Officer to follow the instructions contained in the Handbook for Returning Officers issued by Election Commission of India — Said instructions are binding being statutory in nature — Instructions contained in the Handbook provides for a presumption of validity of such nomination paper — When there exists a presumption in favour of a party, it is for the other party to adduce evidence — High Court was required to consider whether the returning officer had wrongly shifted the onus which would come within the purview of an error apparent on the face of record. (See para 29, 30, 31, 37)

4) Election petition — Improper rejection of nomination — Election petitioner can show an error in the decision making process by a Returning Officer and also the correctness of the said decision — There exists a distinction between a decision making process adopted by a statutory authority and the merit of the decision — In the former the court would apply the standard of judicial review whereas in the latter, it may enter into the merit of the matter — Scope of judicial review having been expanded in recent times, viz., other than,

(i) illegality, (ii) irrationality and (iii) procedural impropriety, an error of fact touching the merit of the decision vis-a-vis the decision making process would also come within the purview of the power of judicial review. (See para 27)

Result : Appeal allowed.

Uttamrao Shivdas Jankar Vs. Ranjitsinh Vijaysinh Mohite-Patil 2009 (10) LJSOFT (SC) 106

Representation of People Act, 1951 — Section 61 — Impersonation of electors — Identity of voter — Proof of — Ration cards — Public Interest Petition.

Elections — Petitioner challenging the order dated 11-4-2009 permitting the 'Ration Cards' issued on or before 28-2-2009 as an additional document for establishing the identity of electors — Petitioners contended that ration cards are not basically identity cards and should not be taken as proof of identity of a voter — Held that though there may be some bogus ration cards but vast majority of ration cards would be genuine — Even if there can be a bogus ration card, there can be a bogus passport as well — Number of genuine voters not having Elector Photo Identity Card (EPIC) cannot be deprived of their right to vote — Also though the order was passed on 11-4-2009 but petitioners did not complain till 3-8-2009 and petition was filed only when the elections were about to be held — Court would not be in a position to sit in appeal over the order passed by the Election Commission — Staying the operation of the said order will amount to either hampering the election process itself or it will amount to depriving the sizable number of voters from casting their votes. (See para 9)

Result : Petition dismissed.

Maharashtra Navnirman Sena & ors. Vs. Union of India & ors. 2009 (10) LJSOFT (URC) 5

Reserve Bank of India Pension Regulations, 1990 — Revision of pension — Withdrawal of benefits — Opportunity of hearing. See Arvind Ganesh Karnik Vs. Reserve Bank of India 2009 (10) LJSOFT 127

Right to Information Act, 2005 — Section 4 — Bombay Public Trusts Act, 1950 — Section 2(13) — Public Trust — Applicability of R.I. Act — Term "Public authority".

Public trust registered under the Public Trust Act — Public trust cannot be said to be falling within meaning of Article 12 of the Constitution of India — It is neither a local authority or other authority of India or an authority under the control of Government — Public trust does not fall in either of the categories in the definition of public authority as given in R.I. Act — Right to Information Act cannot apply to the Public Trust — Impugned Order passed by both the authorities are set aside and quashed. (See para 8)

Result : Petition allowed.

Bhaskarrao Shankarrao Kulkarni Vs. State Information Commissioner, Nagpur & ors. 2009 (10) LJSOFT (NAG) 123

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 — Section 3(1)(xi), 18 — Bail — Cancellation of — Maid — Minor child — Ill-treatment — Change of circumstances — Additions of offence/s.

See Audumber alias Shubham Pednekar Vs. State of Goa 2009 (10) LJSOFT (URC) (GOA) 21

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 — Section 3(1)(xi), 18 — Anticipatory bail — Grant of — Maid — Minor child — Ill-treatment.

See Minaxi A. Pednekar Vs. State of Goa 2009 (10) LJSOFT (URC) (GOA) 20

SEBI (Employees Service) Regulations, 2001 — Regulation 3(1)(e), 88 — Constitution of India, 1950 — Article 226 — Dismissal from service — Alternative remedy — Maintainability of petition.

1) Dismissal from service — Petitioner was appointed to the post and his order of punishment has been passed by the Executive Director of Respondent No.1-Board — Competent Authority to hear the Appeal should be the Chairman or whole-time member of the Board — Competent Authority as defined under Regulation 3(1)(e) means the Chairman in the case of officers, which expression shall also include whole-time member of the Board or Executive Director, in regard to any matter or power to be dealt with or exercisable by the Chairman under these Regulations, which are delegated to him — Contention that the whole-time member of the Board is not Competent Authority to hear his appeal cannot be accepted in law. (See para 7)

2) Dismissal from service — Petitioner filed Appeal under Regulation 88 and without arguing his case before the Appellate Authority filed the present Writ Petition — Availability of statutory alternate remedy normally would be an impediment to exercise the powers under Article 226 of the Constitution of India unless it satisfies the ingredients stated in the various Judgments of the Supreme Court as well as High Court —

Petitioner should exhaust his alternative remedy — Petitioner is being granted hearing in accordance with the Regulations and no gross injustice has been done to the Petitioner — When an alternative remedy is available and has been invoked by the party, the Court would be reluctant in deciding such proceedings.

Result : Petition dismissed.

Girreddi Suryanarayana Reddy Vs. Securities and Exchange Board of India & ors. 2009 (10) LJSOFT 29

Secondary School Code, 2002 — Rule 26.3, 26.4 — Evidence Act, 1872 — Section 79 — Date of birth — Correction of — Public documents — Presumption of genuineness.

Petitioner applied for correction of date of birth in the General Register of the School — Petitioner relying upon the birth certificate issued by Grampanchayat contended that date of birth is wrongly mentioned in the school records — Dates mentioned in the School record without verifying the public document as birth certificate issued by a Municipal Corporation or a Gram Panchayat cannot be authenticated as it would make those documents admissible as evidence with probative value in law — Whenever there is a variation between an unproved private document or its copy and an extract of a public record the latter must prevail as a probative value carrying presumption u/s 79 of Evidence Act — Authorities directed to consider the application for change of his birth date. (See para 7, 8)

Result : Petition allowed.

Kishor s/o Sukhdeo Walhekar Vs. State of Maharashtra & ors. 2009 (10) LJSOFT (AUR) 165

LJSOFT COMPUTER CASE FINDER

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

Specific Relief Act, 1963 — Section 14 — Suit for specific performance — Agreement to sale — Subsequent events.

Suit for specific performance of agreement to sale of immovable property — Respondents lost control over 45 Are of land as the same was given to the Government of India — Suit land not available for execution of sale due to subsequent development — Trial Court rightly declined to grant specific performance of suit agreement and directed refund of the consideration paid along with interest. (See para 11, 12, 13)

Result : Appeal dismissed.

Dr.Jitendrasinh Mohansinh Parmar since deceased through his LRs. Vs. Ambaben Ramabhai Patel (widow) & ors. 2009 (10) LJSOFT 130

Specific Relief Act, 1963 — Section 20 — Contract Act, 1872 — Section 23 — Specific performance — Oral agreement — Money decree — Amount paid by way of black money.

1) Suit for specific performance — Plaintiff claims that he entered into an oral agreement

with respondent No.3 for purchase of immovable property — Respondent No.3 was the estate agent of respondent Nos.1 and 2 who were the owners — Role of respondent No.3 as an agent was limited and he was obliged to bring two parties together — In the absence of proper authority given to respondent No.3 to negotiate and execute documents on behalf of respondent Nos.1 and 2, respondent No.3 cannot be equated to a status of a vendor — Any transaction that the appellant may have had with respondent No.3 in his capacity as the estate agent would not bind respondent Nos.1 and 2 — Trial Court Judge rightly declined to grant specific performance. (See para 8)

2) Suit for specific performance — Oral agreement regarding the purchase of immovable property — Appellant admitted in his evidence that amount of Rs.1,38,375/- was paid by way of black money in violation of provisions of Section 23 of Contract Act — No Court will assist the person whose acts are not in consonance with the provisions of law — Trial was right in not passing the decree against the respondents regarding the said amount which the appellant has termed as an amount by way of black money. (See para 9)

Result : Appeal dismissed.

Chandahas Narayan Shetty Vs. Smt.Misribai Ramkuvar Pandit & ors. 2009 (10) LJSOFT 133

Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 5, 23(1) — Standards of Weights and Measures Act, 1976 — Schedule III — Constitution of India, 1950 — Article 14, 19(1)(g) — Pre-packed commodities — Standard packages — Providing of extra commodity free of cost in same pack — Use of non-standard weight/ measure — Freedom

to do business.

1) Biscuits packed in 75 grams of standard pack along with 15-20 per cent extra, free of cost in the same pack — Rule 5 mandates that specified commodities are to be packed and sold only in the standard package as mentioned in the Third Schedule — Rules would have to be strictly adhered to — If the manufacturer or distributor is interested in giving something free of cost, it would be open for them to pack the said quantity in a separate package along with standard package or pack it in a standard quantity package — Commodity, which is given free or extra along with the commodity packed in the standard package infringes Rule 5. (See para 20)

2) Pre-packed commodities — Reasonable restrictions can be placed by the Government on the right to do business — No impediment on a manufacturer or distributor to prepack the commodity which he intends to give free of cost in a separate package or pack it in a package of a standard quantity, mentioned in the Schedule — Requirement to pack particular commodity in a standard package cannot be said to be arbitrary or violative of Article 14 or 19(1)(g) of the Constitution of India. (See para 21, 22)

3) Use of non-standard weight/ measure — Prosecution launched against the Petitioner — Sufficient time has now elapsed and no process has been issued — Petitioner has discontinued the said practice — Authorities should take into consideration whether the prosecution launched against the Petitioner should be proceeded with in the light of the aforesaid facts. (See para 24)

Result : Petition dismissed.

Britannia Industries Limited Vs. Union of India & ors. 2009 (10) LJSOFT 48

Trade Unions Act, 1926 — Trade Union —

Recognition of — Verification of membership — Holding of secret ballot.

1) Trade Union — Petitioner that it had given its consent for verification of the membership of the trade union by system of secret ballot procedure long back in 1996 — System of secret ballot has been adopted by ONGC as a matter of policy — There is no challenge to the policy — Unless the policy adopted by ONGC is challenged and an order is sought for setting aside that policy, the process of secret ballot initiated pursuant to the policy decision cannot be set aside. (See para 1)

2) Writ jurisdiction — Petitioner-Union was recognized as majority union pursuant to the secret ballot held in the year 2004 for a term of two years — After the term was over Petitioner-Union filed the petition challenging the process of secret ballot and obtained interim order — Conduct of the petitioner of enjoying the status of recognized union which is secured by it by following the same system and then challenging it and preventing further verification of membership dis-entitles the petitioner to any relief — If it was genuinely felt by the petitioner-Union that the system of secret ballot is invalid it first should have given up its status as recognized union and then should have filed the petition — Conduct of the petitioner-Union dis-entitles it to any relief at the hands of High Court in its extraordinary jurisdiction. (See para 2)

Result : Petition dismissed.

Petroleum Employees Union Vs. Chief Labour Commissioner & ors. 2009 (10) LJSOFT 70

Transfer of Property Act 1882 — Section 106 — *Eviction proceedings — Arrears of rent — Transfer of running business — Eviction of transferee/assignee — Service of notice.*

See Shankar Vishnu Sonar (Lohokare) since

deceased by his LRs. Vs. Kusum Gajanan Pawar 2009 (10) LJSOFT 149

UCO Bank (Officers') Service Regulations, 1979 — Regulation 20 — Termination of service — Non-service of charge-sheet.

Service law — Departmental proceedings shall be deemed to have been initiated only with the service of the charge sheet — Petitioner superannuated on 1-8-1991 and the charge sheet was served upon him subsequently on 7-12-1991 — No charge sheet was served upon the Petitioner till the date of his superannuation — No disciplinary proceedings could be deemed to have been commenced against him in law. (See para 16, 23)

Result : Petition allowed.

M.B. Motwani Vs. UCO Bank & ors. 2009 (10) LJSOFT 24

Uco Bank Officer Employees (Conduct) Regulations, 1976 — Regulation 3 — Constitution of India, 1950 — Article 226 — Dismissal from service — Discrimination.

Petitioner and one other person subjected to identical charge regarding same SGL transaction — Disciplinary authority imposed the punishment on petitioner of dismissal from service whereas the other person was subjected to penalty of reduction to a lower stage in time Scale in MMG Scale-II by three stages — Charges levelled against both of them are identical in all respects — When two delinquents are charged for the identical misconduct and when the evidence and facts and circumstances of the case are identical, the disciplinary authority is required to act in a fair manner in the matter of awarding punishment and no discriminatory attitude should be shown — Disciplinary authority is not required to act in a different manner and

on the basis of equity and fair play, no discrimination is required to be shown in the matter of awarding of punishment — Impugned order of dismissal quashed and set aside and the petitioner shall also be subjected to reduction to a lower stage in time scale in MMG Scale-II by three stages — Petitioner shall be entitled to all retiral dues and back wages to the extent of 30 per cent for the intervening period i.e. from the date of dismissal till the petitioner reached superannuation. (See para 15, 16, 17)

Result : Petition allowed.

P.M. Ratnakar Vs. Uco Bank & ors. 2009 (10) LJSOFT 62

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 2(d) — Newspaper establishments — Classification of — Integrality between various units.

Demand of workmen for reclassification of the newspaper establishment in Class-II for the purpose of determining service conditions as per Palekar award which classified newspapers on the basis of their gross revenue — Till 31-12-1982 all the units formed one establishment — Dissolution of partnership and re-organisation is with the avowed purpose of reducing burden for avoiding implications of Palekar Award — Dissolution would have to be ignored for the purpose of ascertaining the entitlement of workmen and all the units would have to be treated as one establishment. (See para 19, 27, 28)

Result : Petition allowed.

Nava Bharat Press (Nagpur) Vs. P.P. Patil, Presiding Officer, Industrial Tribunal, Nagpur & anr. 2009 (10) LJSOFT (NAG) 102