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Administrative Tribunals Act, 1985 — Section 19 — Constitution of India, 1950 — Article 227 — Transfer order — Production of additional evidence.

1) Transfer order was set aside by the Tribunal — In a earlier petition Division Bench of High Court directed the Tribunal to hear and decide the review petition expeditiously and also permitted both parties to produce additional evidence — However Tribunal has not taken the documents on record on the ground that no explanation is given for such late production — When High Court permitted the parties to produce additional evidence before the Tribunal, it was expected of the Tribunal to allow such production and the order of this Court should have been taken seriously — Directions of High Court are to be observed in letter and spirit by the Tribunal. (See para 13)

2) Petitioner only challenged the order of transfer before the Tribunal — Tribunal could not have gone into the issue of reversion. (See para 14)

Result : Petition allowed.

Union of India, through the General Manager, Western Railway Vs. R. Mohankumar 2009 (12) LJSOFT 155

Airports Authority of India Act, 1994 — Section 42 — Service Regulations for Employees (Other than those in the Flying Crew and those in the Aircraft Engineering Departments) Regulations — Regulation 12(b) Proviso — Voluntary retirement — Interpretation of statutes.

1) Appellant issued a notice of voluntary retirement — Competent authority neither

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gave approval nor indicated disapproval within the notice period of three months — After expiry of notice period the appellant continued to attend his duties for many months thereafter — Under proviso appended to Regulation 12(b) the notice for voluntary retirement is subject to approval by the competent authority — As the approval was not granted the voluntary retirement of the respondent never came into effect. (See para 32)

2) Interpretation of statutes — Proviso — Cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision — Scope of the proviso is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule — Use of the word ‘shall’ in the proviso to Regulation 12 prima facie leads to an inference that provision is imperative — There is nothing in the context to suggest that it is merely directory. (See para 27 to 32)

Result : Appeal dismissed.

Padubidri Damodar Shenoy Vs. Indian Airlines Limited & Anr. (SC) 2009 (12) LJSOFT (SC) 48

All India Services (Discipline & Appeal) Rules, 1969 — Rule 3(8)(d) — Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 6(1) — Code of Civil Procedure, 1908 — Section 9 — Suspension order — Challenge to — Place of filing application — Expression “ordinarily” — Territorial jurisdiction — Doctrine of jurisdictional error — Distinction between lack of inherent jurisdiction and jurisdictional error.

1) Application filed before Central Administrative Tribunal at Mumbai — Maintainability of — Reliefs claimed by the

Applicant is on the disciplinary proceedings its quashing and matters arising from the chargesheet dated 20-4-2007 — All these reliefs had actually been claimed by the Applicant in the proceedings before the Central Administrative Tribunal Bench at Chandigarh — Even assuming for the sake of argument that some or any part of the relief was not claimed by the Applicant in that application before the Chandigarh Bench of the Tribunal still the Applicant in any case cannot claim the relief before the Mumbai Bench as any relief which is not claimed would be deemed to have been given up or abandoned by the Applicant — When an applicant makes his free choice with his own preference to institute proceedings in either of the two fora available, normally he would be debarred from instituting the proceedings on the same cause of action before another forum — Relief and issue raised before the Mumbai Bench are substantially and materially pending before the Tribunal at Chandigarh and Punjab and Haryana High Court — It could be unjust, unfair and improper for the Mumbai Bench of the Tribunal to exercise its jurisdiction — Impugned order of the Tribunal is set aside. (See para 20, 31, 33)

2) Distinction between lack of inherent jurisdiction and jurisdictional error — Former is primarily a question relating to law while the later may be an error of fact — Lack of inherent jurisdiction would normally render the judgment a nullity while in other cases it may render the judgment as irregular. (See para 16)

3) Territorial jurisdiction — Subject matter of jurisdiction — A Court or a Tribunal may have territorial or inherent jurisdiction but still it may not have jurisdiction to deal with the subject matter of the dispute raised before it.

(See para 20)

4) Territorial jurisdiction — Right available to the applicant in terms of Rule 6(1) is not a right absolute in terms but is subject to such exception as contained in the provisions of the Act or the Rules framed thereunder — Exception indicated in the proviso to Rule 6 and Section 25 are the instances which are not exhaustive and the Tribunal will exercise jurisdiction only where pre-requisites for exercise of such jurisdiction are satisfied — Application has to be in accordance with the rules and has to be filed at the place where it ought to be filed but at the same time it has to be kept in mind that the application and the subject matter of the application should be lawful and maintainable in law before that Tribunal or the Court. (See para 25)

Result : Petition allowed.

State of Punjab through Deputy Secretary, Department of Home Affairs and Justice, Government of Punjab Vs. Sarabdeep Singh Virk & ors. 2009 (12) LJSOFT 70

Arbitration Act, 1940 — Execution proceedings — Compound interest — Right to recover “interest on interest”.

Arbitration award — Execution of decree — Deposit of amount in the court as a condition for stay or otherwise does not suspend or keep in abeyance the liability to pay interest accruing on the amount awarded recoverable as a decree, until money so deposited is paid to the decree-holder — Order of executing court, in denying the compounding of interest is legal and proper, as it is based on settled law — However executing court failed to discuss about the point of interest payable on the decretal amount which has remained unpaid due to stay of execution and deposit of part of the amount in the High Court for that purpose — Impugned execution petition

can be reopened for this limited purpose. (See para 12, 13, 15)

K. Hassainar Vs. State of Goa 2009 (12) LJSOFT (GOA) 127

Arbitration and Conciliation Act, 1996 — Section 7, 9 — Companies Act, 1956 — Section 83, 108(3) — Depository Act, 1996 — Section 10, 11 — Joint Venture Agreement — Transfer of shares — Dispute regarding — Whether arbitrable — Interim relief.

1) Joint Venture Agreement — Respondent Nos.2 and 3 Companies involved themselves in a mutual transfer of shares without giving sufficient notice to other parties of the JV Agreement — Though there can be no restriction on the transfer of shares in dematerialised form or physical form but it need to be subject to Articles of association — Transfer of shares by Respondent No.3 to Respondent No.2 is in violation of Articles 17 and 19 itself — Self incorporated remedy need to be respected — Transfer of shares, if it is in contravention of Articles 22, 23 and 24 then the action from its inception is impermissible, null, void and invalid — Petitioner made out a case to grant ad-interim relief/protection pending the main Arbitral proceedings for trial. (See para 56, 59, 67)

2) Joint Venture Agreement — Dispute regarding mutual transfer of shares by Respondent No.3 to Respondent No.2 without giving sufficient notice to other parties of the JV Agreement — Disputes and conflict so raised arising out of the contracts between the parties in question, though it relates to the affairs of the company, but basically it is a dispute between the parties i.e. the partners affecting the company — Having once agreed to resolve their commercial disputes through the arbitration they are bound by the same — Dispute so raised cover and referable to the

Arbitral Tribunal. (See para 77, 78)

3) Articles of Association — Articles are binding on the parties — Any action in breach is challengeable by others — Whether in minority or in majority loses its importance — If the case is made out, based upon the material, the Court/Tribunal is entitled to declare such illegal action arising out of the same null and void — If the action is ultravires, it cannot bind even by the majority shareholders — There is no question of rectification to such ultravires/void action. (See para 68)

Result : Petition allowed.

Unity Realty and Developers Ltd. Vs. BW Highway Star Pvt. Ltd. & ors. 2009 (12) LJSOFT 27

Arbitration and Conciliation Act, 1996 — Section 9 — Presidency Small Causes Court Act, 1882 — Section 41 — Leave and Licence Agreement — Refund of security deposit — Interim relief — Jurisdiction of Civil Court.

Leave and Licence Agreement — Petitioner claiming refund of security deposit — Dispute arising out of the agreement falls within the ambit of Section 41 of Presidency Small Causes Court Act — Recourse to arbitration under the terms of the arbitration clause contained in the leave and licence agreement would be barred by virtue of the exclusive jurisdiction conferred upon the Court of Small Causes by Section 41(1) of Presidency Small Cause Courts Act — High Court has no jurisdiction to grant any relief u/s 9 of the Act of 1996 in a dispute of such nature. (See para 2, 3)

Result : Petition dismissed.

Genesis Colors Private Limited Vs. Anil Ramlabhaya Suri & Anr. 2009 (12) LJSOFT (URC) 20

Arbitration and Conciliation Act, 1996 — Section 9 — Leave and licence agreement — Refundable security deposit — Interim relief.

Leave and license Agreement — Petitioner deposited with the Respondent a refundable security deposit of Rs.4,34,59,200/- — Municipal Corporation rejected the proposal seeking approval on the fit out works — Deposit lying with the Respondent inspite of the termination of the Agreement — Unless Arbitral Tribunal decide and accept the case in either way, there is no question of considering the counter claim against the Petitioner — Claim of ascertained amount should prevail over unascertained amount as claimed — Balance of convenience, equity also lies in favour of the Petitioner — Admitted amount need to be secured to avoid further complications. (See para 12, 13, 18)

Result : Petition allowed.

Aditya Birla Retail Limited Vs. Ashapura Developers 2009 (12) LJSoft 174

Arbitration and Conciliation Act, 1996 — Section 9 — Specific Relief Act, 1963 — Section 14, 37, 42 — Contract Act, 1872 — Section 27 — Agreement in restraint of trade — Injunction to perform negative agreement — Doctrine of negative covenant — Interim relief.

1) Doctrine of Negative Covenant cannot be extended blindly in each and every case, where the parties knowing fully the principle behind the Doctrine incorporate those provisions/ clauses and when it comes to payment, the defaulted party invokes the Doctrine to use as a shelter/umbrella to avoid the obligations — Section 27 of Contract Act just cannot be extended blindly in each and every case merely because such clause is mentioned in

the Agreement — In commercial transaction where the parties entered into the contract and having once obtained the benefits, just cannot be allowed to turn around to say that in view of the said Doctrine no order should be passed against them. (See para 11)

2) Interims reliefs — Respondents have already acted by making some payment as recorded in the Deed itself — Such commercial contracts cannot be said to be one sided or excessive — Default on the part of the respondents cannot be permitted to utilise and to use against the petitioner to deny his right of getting interim protection/measure/ reliefs which, otherwise available in the present case, on the basis of the basic elements of equity, balance of convenience and injury — Conduct of respondent by not paying the amount though settled and agreed is also an additional facet — Petitioner made out a case as contemplated under Order 38 Rule 5 of CPC at this stage to protect his interest in the event the dispute is decreed or decided in his favour. (See para 15, 16)

Result : Petition allowed.

Y.T. Entertainment Limited Vs. One More Thought Entertainment Pvt. Ltd. & ors. 2009 (12) LJSoft 124

Arbitration and Conciliation Act, 1996 — Section 9, 37(1)(a) — Letters Patent — Clause 15 — Ad-interim relief — Encashment of bank guarantee — Power of Court to restrain.

Construction contract — Dispute between the parties — Appellant claimed interim reliefs against invocation of performance guarantee issued by respondent No.2-bank — When a bank guarantee is unconditional, irrevocable, conclusive and binding, notwithstanding any difference between the contractor and the

beneficiary and pendency of any dispute, it is invocable — Only exception is that there must be a fraud and the fraud must be of a egregious nature so as to vitiate the underlying transaction — For the applicability of exceptions the pleadings have to be clear and not vague and ambiguous so also general — Only the words “fraud”, “irretrievable injustice” and “special equities” have been set out in the pleadings and the words by themselves do not mean anything — View taken by Single Judge declining to grant ad-interim relief cannot be termed as erroneous or vitiated by perversity so as to call for interference in appellate jurisdiction. (See para 32, 35, 36)

Result : Appeal dismissed.

Maytas Infra Limited Vs. Utility Energytech & Engineers Pvt.Ltd. & Anr. 2009 (12) LJSoft 84

Arbitration and Conciliation Act, 1996 — Section 31(7), 34, 36, 42 — Execution proceedings — Grant of Interest — Jurisdiction of Court.

1) Arbitration award — Validity of the arbitral award was decided all the way upto the Supreme Court and the award attained finality — Arbitral award becomes enforceable as if it were a decree of the Court u/s 36 — Expression “the Court” cannot for the purposes of Section 36 be read at variance with the meaning of the expression u/s 34 — Where an application under Part-I has been made in a Court with respect to an arbitration agreement, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings — Judgment debtor sought a recourse to its remedies before High Court in order to

challenge the arbitral award — Once that was done, High Court alone would have jurisdiction to entertain all subsequent applications arising out of the arbitral proceedings including applications in the execution of the award as a decree of the Court to the exclusion of any other Court — Chamber Summons questioning the jurisdiction of High Court dismissed. (See para 10, 11)

2) Arbitration award — Grant of interest — Clause (b) of Section 31(7) contains an express provision that unless an award has otherwise directed, a sum directed to be paid by arbitral award shall carry interest @ 18% p.a. from the date of the award to the date of payment — Award is silent in regard to the payment of interest — Statutory prescription in Clause (b) of section 31(7) would apply. (See para 15)

Eskay Engineers Vs. Bharat Sanchar Nigam Limited 2009 (12) LJSoft 181

Arbitration and Conciliation Act, 1996 — Section 34 — Indian Telephone Rules, 1951 — Rule 440, 443 — Setting aside of award — Telephone arrears — Recovery of — Word “subscriber”.

Claim of MTNL towards recovery of arrears of four telephone bills — Respondent No.1 was not a telephone subscriber — Telephone was never transferred in his name at any point of time — Petitioner failed and neglected to initiate legal action for recovery of arrears against the original subscriber — Plain reading of the words “the rules” and the meaning and the definition of “subscriber” is nowhere provides and or cover a third person like the respondent, against whom the petitioner can raise bills and demand the charges, though he is not subscriber and or

defaulter as contemplated under the Rules — Respondent is an independent third person and has no relation whatsoever with the subscriber — He is not even economically dependent of the recorded subscriber — Award rejecting the claim against the Respondent is well within the framework of law and there is no perversity. (See para 6, 8, 9)

Result : Petition dismissed.

Mahanagar Telephone Nigam Ltd. Vs. Abdul Rahim Mohamed Yasin 2009 (12) LJSOFT (URC) 26

Arms Act, 1959 — Section 3, 17 — Arms Rules, 1962 — Arms licence — Issue of — Two licences issued to sports person — Purchase and subsequent sale of arms by the sports person — Cancellation of both licences.

Appellant was a renowned sports person engaged in the sport of shooting since 1988 and has been participating in the shooting events at national and international levels — Two licences were granted for revolver/pistol and gun/rifle — Transferred large number of weapons imported by him — Show cause notice was issued for misusing the licence taking undue advantage of his certificates — Appellant had contended that he had imported arms only once whereas he, in fact, had imported arms at least on 26 occasions — He is guilty of suppressio veri as also suggestio falsi — As he entered into a large number of transactions the licensing authority was entitled to infer that he had in effect and substance not been purchasing the same for his own use which was the sine qua non for grant of licence — Statutory authorities were justified in passing the impugned orders cancelling the licences — However appellate authority is requested to consider the question as to whether the appellant, being a sportsman,

can be granted any licence so as to enable him to carry out his sporting activities. (See para 17, 18, 21, 22, 23)

Result : Appeal dismissed.

Chandrakant Hargovindas Shah Vs. Deputy Commissioner of Police & Anr. 2009 (12) LJSOFT (SC) 198

Banking Regulation Act — Section 5(b) — Dishonour of cheques — Co-operative Credit Society — Nature of instrument.

See Rafique Raheman Shaha Vs. State of Maharashtra 2009 (12) LJSOFT (NAG) 76

Banking Regulation Act, 1949 — Section 6(1)(a), 21, 35A — Security scam — Criminal breach of trust — Criminal Conspiracy — “Securities” — Definition of — Jurisdiction of Special Court.

See Sudhir Shantilal Mehta Vs. C.B.I. 2009 (12) LJSOFT (SC) 123

Banking Regulation Act, 1949 — Section 46-A — Officers and directors of Private Bank — Public servants.

See Sridhar Subasri Vs. CBI (BS & FC Mumbai) 2009 (12) LJSOFT (URC) 166

Bombay High Court (Original Side) Rules, 1980 — Rule 238 — Management of Trust property — Trust Petition — Jurisdiction of the Court — Scope and limit of — Maintainability of petition.

See Sanjay Kilachand Vs. Suresh Tulsidas Kilachand 2009 (12) LJSOFT 187

Bombay High Court (Original Side) Rules, 1980 — Rule 370 — Execution of Will — Proof of — Revocation of probate — Testamentary jurisdiction.

See Bipin Natwarlal Ganatra Vs. Rohan P. Shah 2009 (12) LJSOFT 92

Bombay High Court (Original Side) Rules, 1980 — Rule 683, 684, 685 — Supply of paper book — Failure to take necessary steps.

Some matters pending for more than 30 years whereas in some more than 10 years have passed — Rule 683 required the person at whose instance reference has been made to take necessary steps to supply paper book — No steps taken by the assessee in either of the matters as required under rules 683 and 684 of Original Side Rules — References returned unanswered in exercise of powers under rule 685 of Original Side Rules. (See para 3, 4)

Mahendra Girdharlal A/p of late Shri Girdharlal Gandla Vs. Controller of Estate Duty, Bombay 2009 (12) LJSOFT (URC) 9

Bombay Industrial Relations Act, 1943 — Section 13, 20 — Registration of union — Cancellation of registration.

Appeal before the Industrial Court questioning about validity of the registration of Union-B — Order passed by the Registrar can only be confirmed, modified or rescinded by the Industrial Court and such consequential orders may be passed as may be deemed fit by the Industrial Court — Provision cannot be interpreted to mean that while the Industrial Court could have canceled the registration of the Union-B it could by the same order direct registration of another union-A — Union seeking registration must make its own application — Part of the impugned order whereby the respondent No.2 union has been granted registration is set aside. (See para 6, 7, 8)

Indo Count Choongnam, Employees Union & Anr. Vs. Registrar (Bombay Industrial Relation Act) & Anr. 2009 (12) LJSOFT (SC) 199

Bombay Money-Lenders Act, 1946 — Section 5, 10, 32B(b) — Dishonour of cheque — Carrying money lending business without licence — Legally enforceable debt/ liability — Maintainability of complaint.

See Anil Baburao Kataria Vs. Purshottam Prabhakar Kawane 2009 (12) LJSOFT (URC) (AUR) 10

Bombay Money Lenders Act, 1946 — Section 32-B, 33 — Code of Criminal Procedure, 1973 — Section 468, 482 — Quashing of F.I.R. — Limitation.

Applicant No.1 had purchased land from respondent No.2 which is alleged to be a transaction in the nature of the loan — Respondent No.2 mentioned that though he offered to repay the amount applicant did not re-convey the said land — No allegations set out against the applicants so as to say that the applicants have committed any overt act which would fall within the clauses set out in explanation to Section 33 — If respondent No.2 was entitled for reconveyance he could have instituted the suit for the said prayer — Also the lodgment of the FIR in 2006 in regard to the transaction of 1980, 1986 is beyond the period of limitation — F.I.R. filed in 2006 is patently beyond the period of limitation — Applicants have made out the case for quashing of F.I.R. (See para 5, 8, 10)

Result : Application allowed.

Mahadeo s/o Pundlik Taksande & anr. Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (NAG) 66

Bombay Money Lenders Act, 1946 — Section 32-B, 34, 35-A, 35-B — Code of Criminal Procedure, 1973 — Section 482 — Unauthorized money lending business — Quashing of F.I.R.

1) Complainant alleged that in pursuance to a

loan a sale deed was per force got from him by the accused in the name of his wife — However nothing to suggest from the complainant barring few slips and account of his brick kiln business to display that the sale deed was on account money lending transaction — No identical sale instances or transactions to reflect that the accused or his wife are indulging in illegal activities or lending money to gullible helpless persons on excessive interest — Seller was all throughout in slumber from 2000 till 2006 and the matter came to be reported to the Police on 9.6.2008 — Yawning gap between the transaction of sale and approaching the authorities speaks volumes of the complainant's attitude — It suggests that report to Police is used as a lever of oppression than to ventilate legitimate grievance by the complainant — FIR against the accused is a lever used to oppress, humiliate and press the accused to succumb to the illegal demands of the complainant — FIR, reading as a whole, will not attract infraction of Section 32-B of Bombay Money-Lenders Act — Controversy is of a purely civil nature, however, it has been given a cloak of criminal offense — FIR quashed. (See para 5, 13, 14)

2) Offence u/s 32-B — Carrying out money lending business without valid licence and entering into agreement — Section 35A nowhere contemplates Section 32-B to be non cognizable — In terms of Section 32-B course of taking cognizance under Cr.P.C. is available — Assistant Registrar has powers in terms of Section 32-B of the Bombay Money-Lenders Act to initiate proceedings like FIR and the Court has powers for taking cognizance. (See para 13, 14)

Result : Petition allowed.

Ramling s/o Arjun Raut & ors. Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (URC) (AUR) 88

Bombay Motor Vehicles Rules, 1959 — Rule 118 — Motor accident — Goods vehicle — Owner of goods — Liability of Insurance Company.

See Balasaheb Shamrao Salunkhe (Decd.) Thru' Lilavati B. Salunkhe Vs. Laxmibai Yashwant Jadhav 2009 (12) LJSOFT 72

Bombay Prohibition Act, 1949 — Section 85(i) — Disorderly behaviour — Appeal against acquittal.

Respondent employed as a Police Constable was dissatisfied with his deputation to the Head Quarters — Found in drunken condition in the premises of the DSP office — Witnesses vaguely stated that he was behaving in disorderly manner under influence of intoxicant and was not able to walk and his gait was unsteady — Expression “disorderly behaviour” does imply some indecent behaviour or abnormal behaviour, which has potency to disturb the public peace or to disturb the orderliness of the public tranquility — Mere vague statements to the effect that he was found behaving in disorderly manner will not suffice the purpose — Order of acquittal not liable to be interfered with. ((See para 6)

Result : Appeal dismissed.

State of Maharashtra Vs. Shaikh Vaidulla Ajmattula Haq 2009 (12) LJSOFT (AUR) 31

Bombay Prohibition Act, 1949 — Section 138, 139 — Renewal of licence — Challenge to — Locus standi — Revision — General powers of State Government.

1) MF-II license for sale of Mhowra Flowers — State Government renewed the licence which was cancelled long back and not renewed by the Collector — Provisions of

Section 139 are of general nature and are to be exercised by the State Government while deciding some policy matters — Those powers cannot be exercised for considering an individual cases — Circumstances not found to be such that the State Government could have exercised the powers u/s 138 and even u/s 139 — Impugned order was passed by the Respondent State Government without any authority, backed by provisions in law and the same is liable to be quashed and set aside. (See para 17, 20, 21)

2) Renewal of licence cancelled earlier — Locus standi — Petitioner challenging the order renewing the MF-II license of respondent no.2 and also transferring license from Khamgaon to Mehkar — Petitioner is the resident of Mehkar and was also dealing with Mhowra flowers — Petitioner has locus to challenge the impugned order. (See para 11)

Result : Petition allowed.

Govind s/o Rameshwar Agrawal Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (NAG) 130

Bombay Provincial Municipal Corporation Act, 1949 — Property tax — Rateable value — Fixation of — Annual letting value — Method of determining.

1) Factory premises — Property tax calculated by fixing the annual letting value of the properties within the municipal limits — Corporation desired to revise the annual letting value by assessing the property on the basis of 8% of the cost of construction of the property and as a consequence the rateable value was also to be increased — Once it is accepted that the method adopted for calculating the annual letting value can be approved then the question of determining the

percentage at which the annual letting value should be charged for determining the rateable value must be left to the Municipal Corporation — No material on record to indicate why the rate levy of 8% of the construction cost as the annual letting value was incorrect — Courts below have decided the issue on wrong premises and surmises. (See para 13)

2) Property tax is a tax and not a fee — It cannot be termed as a compensatory tax, akin to a fee — Property taxes need not be levied on the basis of quid pro quo — Contention that the property tax must be correlated to the availability of civic amenities, water, etc. cannot be accepted. (See para 14, 15)

Result : Petition allowed.

Pimpri Chinchwad Municipal Corporation Vs. Tata Engineering and Locomotive Co. Ltd. 2009 (12) LJSOFT 114

Bombay Provincial Municipal Corporation Act, 1949 — Section 63 — Municipal market — Allotment.

1) Vegetable market — Those who were allotted spaces have defaulted by not paying lease rent — Despite giving several opportunities to them they did not come forward to clear off the arrears — General Body permitted usage of the first floor for commercial purposes and directed the authority to issue tenders for allotment on lease basis — First floor portion allotted to the Sixth Respondent on lease for 25 years after her bid was found to be most competitive and highest — There is no modification of the D.P. Reservations and the zone and therefore user for commercial purposes is not illegal — Decision of the Corporation cannot be faulted as they are not vitiated by any unreasonableness or arbitrariness. (See para 20, 21, 27)

2) Vegetable market — For road widening 8 shops in the building of Respondent No.5 were demolished — Corporation decided to rehabilitate him by allotment of land in lieu of his willingness to surrender 8 shops in his possession for road widening — Shops have been demolished — Corporation would have had to pay cash compensation or allot alternate land — That is done as per prevalent policies and there is nothing illegal or arbitrary in the impugned action and it is not contrary to Public Interest either. (See para 25)
Result : Petition dismissed.

Rajan Sitaram Samant Vs. Kalyan Dombivli Municipal Corporation & ors. 2009 (12) LJSOFT 101

Bombay Provincial Municipal Corporation Act, 1949 — Section 128, 129 — Rejection of development plan — Refund of Development Charges and property tax.
See Abhikesh Omprakash Agrawal Vs. State of Maharashtra 2009 (12) LJSOFT (URC) (AUR) 77

Bombay Public Trust Act, 1950 — Section 50-A — Framing of scheme.

Approval of scheme — Two draft schemes produced — One of the scheme was found to be just and reasonable for proper management and administration of the trust — Joint Charity Commissioner added three more trustees to look after the interest of the beneficiaries and he has put a ceiling on the minimum and maximum board of trustees — Joint Charity Commissioner has considered to maintain the equilibrium of the persons who are interested in better management of the trust and to avoid any incident of rift and the process of election — Scheme as promulgated cannot be said to

be flowing contrary to the interest of the trust. (See para 3)

Result : Appeal dismissed.

Rajaram Sakharam Mule & ors. Vs. Rajendra Sakharam Dharmadhikari & ors. 2009 (12) LJSOFT (AUR) 210

Bombay Public Trusts Act, 1950 — Section 50(A)(1) — Abatement — Setting aside of — Condonation of delay.

See Santosh Shyamrao Mohokar Vs. Pandurang Sakharam Satav 2009 (12) LJSOFT (NAG) 58

Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 — Section 6(4) — Eviction proceedings — Leave and Licence Agreement — Interpretation of statutes.

See Chimanlal Shah Vs. Farhana Abdul Jabar Sayyad 2009 (12) LJSOFT 157

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1) — Transfer of Property Act, 1882 — Section 111(g) — Eviction proceedings — Arrears of rent — Denial of title of landlord.

1) Suit for eviction on the grounds default in payment of rent and that he had damaged the property — Ground of disclaimer was added by way of amendment to the plaint — Denial of title of landlord by tenant, when such denial of title is not bonafide, forfeits the right of tenancy — Plea taken in the written statement by itself should be enough as ground for plaintiff to the relief. (See para 19)

2) Suit for eviction — One of the conditions of tenancy or lease as per Section 111(g) of T.P. Act, is that the tenant shall not deny the title of the landlord or shall not renounce his character as tenant by setting up title in third person or in himself — Section 111(g) of T.P.

Act is not inconsistent with the scheme of the Bombay Rent Control Act. (See para 22)

Result : Application dismissed.

Yadav Mahadu Koli since deceased, through LRs. & ors. Vs. Smt. Sumitrabai Popatlal Shah 2009 (12) LJSOFT (AUR) 63

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13 — Eviction proceedings — Writ jurisdiction — Alternate remedy.

See Dhuliabai Mana Praga Vs. Manikbai Vithalrao Bhusarath (deceased) 2009 (12) LJSOFT 135

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G — Deemed purchaser — Minor — Postponement of enquiry — Issue of notice.

Deemed purchaser — Enquiry postponed for half of the land because the land owner was a minor when the enquiry u/s 32G in respect of the first half of the land was conducted in 1965 — Section 32G enquiry was conducted in respect of half of the land in 1987 but notice was not issued to all the heirs of original tenant — Before the enquiry u/s 32G can be conducted and the price of the land is determined, notice must be issued to all persons interested therein — It was incumbent on the authorities to issue notice to all the heirs of original tenant when enquiry u/s 32G was held in 1987 — Impugned orders set aside and matters remanded to the Agricultural Lands Tribunal. (See para 7, 8, 9)

Result : Petitions allowed.

Dhanwant Parashram Kadam Vs. Smt. Putlabai Gulab Kadam & Ors. 2009 (12) LJSOFT 177

Bombay Village Panchayats (Sarpanch and Upa-Sarpanch) Election Rules, 1964 — Rule 10(2) — Bombay Village Panchayat Act, 1958 — Section 33(5) — Procedure for election — Election by secret ballot — Markings on ballot papers — Validity of elections.

Elections of Gram Panchayat — Petitioner was elected as Sarpanch — Voting as per the demand of the members was by secret ballot — Election challenged on the ground that there were some distinguishing marks like “*”, “-” and “+” on 3 ballot papers voted in favour of petitioner and those ballot papers should have been rejected as invalid votes — Held that Rule 10(2) does not expressly provide for invalidation of such ballots — No objection was raised by respondents No. 5 at the time of counting or declaration of result regarding such marks and about the possibility of disclosure of the identity of those voters because of such marks — Merely because some marks were there on three ballot papers, that would not invalidate the said ballot papers — No allegation of any prearrangement between the voters and the candidate — When there are no specific rules for conduct of such election by secret ballot and manner thereof, any irregularity in the procedure of elections to be conducted by secret ballot would not invalidate the election, unless there is specific evidence to show the possibility of prearrangement or any prejudice caused to loser candidate — Impugned order of the Additional Commissioner set aside and the petitioner shall be deemed to be validly elected to the post of Sarpanch of Gram Panchayat. (See para 18, 23, 24, 25)

Result : Petition allowed.

Subhas Manikrao Lavhale Vs. Additional Commissioner, Amravati and others 2009 (12) LJSOFT (NAG) 206

Bombay Village Panchayats Act, 1958 — Section 35 — Bombay Village Panchayat Rules, 1959 — Rule 7 — No confidence motion — Service of notice.

No confidence motion against Sarpanch — Petitioner contended that notice not duly served upon him — Difficult to appreciate that when all other members have received notice of no confidence motion, it is only the petitioner who has not received the notice — Notice has been served by the Tahasildar and no allegations of malafide or bias have been made against the Tahasildar — No confidence motion has been passed by the requisite majority of more than 2/3 members — In a democratic State it is the will of majority that must prevail — When a person has lost confidence of majority he has no right to continue in the post of Sarpanch by raising some hyper technical ground — No interference warranted in exercise of extra ordinary jurisdiction of High Court under Article 227 of the Constitution of India. (See para 8, 9, 11)

Result : Petition dismissed.

Appa s/o Munjaji Pawar Vs. Divisional Commissioner, Aurangabad & ors. 2009 (12) LJSOFT (AUR) 180

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 6(1) — *Suspension order — Challenge to — Place of filing application — Expression “ordinarily” — Territorial jurisdiction — Doctrine of jurisdictional error.*

See State of Punjab Vs. Sarabdeep Singh Virk 2009 (12) LJSOFT 70

Central Educational Institutions (Reservation in Admission) Act, 2006 — Section 2(d) — University Grants Commission Act, 1956 — Section 3 —

Admission to MBBS Degree course — Reservation Quota — Entitlement to — Status of institution.

Petitioner a OBC candidate sought admission in the MBBS course — Armed Forces Medical College (AFMC) at Pune is not covered by Section 2(d)(iii) of the Act of 2006 because it is not an institution declared as a deemed University u/s 3 of University Grants Commission Act though it receives aid from the Central Government — AFMC (Pune) is also not covered by Section 2(d)(iv) because it is not affiliated to an institution referred to in Clause (i) or Clause (ii) nor is it a constituent unit of an institution referred to in Clause (iii) — AFMC is a training institution, which trains medical cadets for their recruitment as commissioned officers in the Armed Forces, reservation policy cannot be imposed on it by the court — Respondents cannot be directed to consider the candidature of the petitioner for admission to the MBBS Degree Course under the OBC quota for the ensuing Academic Year 2009 in AFMC (Pune). (See para 10, 12, 13, 14, 19)

Result : Petition dismissed.

V. Anto S/o. M. Vargheese Vs. Union of India & anr. 2009 (12) LJSOFT 81

Central Excise Act, 1944 — Section 32-F — Central Excise dues — Facility of payment by installments.

Petitioners not contesting the order of Settlement Commission but only pray that they may be allowed to pay by installments — Section 32F(10) as it earlier stood r/w section 32(7) provided for installments — No such specific provision has been made u/s 32F(8) as now substituted — Legislature has expressly done away with the power to make payment by installments — Settlement commission has thought it fit not to grant any

installment assuming that u/s 32F(8) there is an implied power to grant installments — High Court ordinarily ought not to interfere in the exercise of its extra ordinary jurisdiction with the order passed by the Settlement Commission. (See para 5, 6, 7)

Result : Petition dismissed.

Alluminium Profiles Ltd. & ors. Vs. Union of India & anr. 2009 (12) LJSOFT 173

City of Nagpur Corporation Act, 1948 — Section 407 — *Contract by local authority — Judicial review — Public Interest Litigation — Writ jurisdiction — Alternate remedy.*

See Sandeep Diwakar Joshi Vs. Corporation of the City of Nagpur 2009 (12) LJSOFT (NAG) 162

Code of Civil Procedure, 1908 — Practice and Procedure — Dismissal for default — Restoration of petition.

Application filed for restoration of writ petition which was dismissed in default — No reason to filed application if it came to the notice of the Advocate on the very same day — Where a matter is dismissed in default on account of slight negligence on the part of the party or Advocate in appearing before the Court, an oral application for restoration may be considered if made before the rising of the Court — Not necessary for the party to file an application for restoration in writing. (See para 5)

Result : Application allowed.

Sanjay Dagadappa Kapse Vs. State of Maharashtra and 5 others 2009 (12) LJSOFT (NAG) 178

Code of Civil Procedure, 1908 — Order II Rule 2(3) — Order VII Rule 11(d) — Subsequent suit filed without grant of leave — Rejection of plaint — Rules of

precedent.

1) Suit for injunction based on the basis of the agreement — Plaintiff came to know that the Respondent Nos.1 and 2 have vested rights in the third party — Plaintiff filed subsequent suit for specific performance without obtaining prior leave under Order II Rule 2(3) of CPC — Part of the cause of action in both the suits is substantially the same — In the previous suit prayer for specific performance could have been sought for — Without obtaining appropriate leave under Order II Rule 2 of CPC subsequent suit was not maintainable — As the second suit was filed without obtaining prior leave under Order II Rule 2(3) of CPC the learned trial Judge was justified in rejecting the plaint under Order VII Rule 11(d) of CPC. (See para 33, 34)

2) Application filed in the first suit seeking leave under Order II Rule 2(3) of CPC — Plaintiff mentioned suit for injunction has been filed simplicitor reserving their right to file a substantive suit for specific performance of the suit agreement — Plaintiff has decided to split the cause of action and thereby reserved their right to file the substantive suit for the declaration, specific performance and consequential relief against the defendants with the leave of the Court as per Order II Rule 2(3) of CPC and requested to grant leave in the interest of justice to file a substantive suit against the defendants — When substantive suit was filed the said application was pending — Jurisdiction of the Court cannot be said to be ousted simply because the second suit is dismissed on the technical ground that the prior leave was not obtained — Defect is technical in nature and after curing the defect naturally a substantive suit can be filed — After obtaining such leave a subsequent suit can be filed which can be said to be a third

suit in this case — Trial Court gravely erred in rejecting the application — Leave is required to be granted to the plaintiff to sue for specific performance. (See para 37, 38)

3) Rules of precedent — Subordinate Court is bound to carry out the directions and/or observations made by the High Court — Directions given by the High Court should not have been ignored totally by the learned trial Judge — Trial Court erred in rejecting the application seeking leave under Order II Rule 2(3) of CPC by relying upon the decision given in the subsequent suit, though the appeal against the same was pending and the order was stayed in Appeal. (See para 35)

Vimal Builders Vs. Ketan Kantilal Thakkar & ors. 2009 (12) LJSOFT 37

Code of Civil Procedure, 1908 — Order VI Rule 3 — Registration Act, 1908 — Section 32, 33 — Limitation Act, 1963 — Section 14 — Agreement of sale — Plea of coercion or fraud or undue influence — Proof of — Unregistered power of attorney — Validity of registration of sale deed — Limitation — Exclusion of time spend in wrong forum — Expression “Good faith” — Meaning of.

1) Agreement of sale and power of attorney — Plaintiff contended that the said documents were obtained from him under undue influence, coercion and fraud — Order 6 Rule 3 of CPC requires a party raising the above plea to give particulars — There are no particulars of coercion nor there is nothing suggesting that any threats were given to the plaintiff or any act forbidden by IPC was committed by the defendants — When the plaintiff comes out with a case that he executed the document in good faith then it must be deemed to have been executed by free

will and after knowing the consequences — Case of undue influence and fraud is negated. (See para 8, 9, 10)

2)) Agreement of sale — Document must be presented for registration by the agent duly authorised by power of attorney executed and authenticated in the manner as mentioned in Section 33 which section follows after section 32 of Registration Act — Person authorised must hold registered Power of attorney — As the power of attorney is not registered the registration of the sale-deed is void. (See para 19, 21)

3) Registration of sale-deed — Power of attorney itself is not registered — Contended that such a plea is not raised in trial court otherwise respondent would have shown that his case falls in the proviso to Section 33 of Registration Act — Rejecting the contention held that this is purely a question of law and can be raised at any time and the exemption is granted to a person executing power of attorney and not to the person in whose favour it is executed. (See para 20)

4) Limitation — Suit can be instituted where cause of action arises or part of cause of action arises or where the defendant resides — Power of attorney and agreement of sale was executed at Nagpur — Alleged fraud was played, undue influence was exercised by the plaintiff at Nagpur — Defendant resides at Nagpur — Knowing fully well all these things which constitute the cause of action, the suit was filed and prosecuted at Calcutta where no part of cause of action arose — Presentation of such suit and prosecution was not at all bonafide — Time cannot be excluded. (See para 28)

5) Tenanted property — Tenant had instituted a suit against plaintiff and defendant nos.1 and 2 to inter plead amongst themselves —

Question directly and substantially in issue was as to who was the landlord of the suit house — Question of title could not be the material issue but the material issue would be one of attornment of tenancy — Question of title was not directly and substantially in issue — Cannot be said that the decision in the interpleader suit operates as res judicata. (See para 30)

Result : Appeal dismissed.

Ashok Kumar s/o Dulichand Sharma Vs. Jethmal Motilal Jedia & ors. 2009 (12) LJSOFT (NAG) 96

Code of Civil Procedure, 1908 — Order VI Rule 17 Proviso — Constitution of India, 1950 — Article 226 — Amendment of writ petition.

Chamber Summons filed by the petitioner seeking amendment of the Writ Petition — C.P.C. does not apply to a Writ Petition however the principles laid down in C.P.C. are adhered to by the Courts — A stage cannot be envisaged where it can be said in a Writ Petition that the trial has started, because the cases are generally decided on the basis of affidavits of the parties — Cannot be said that the proviso to Order 6, Rule 17 of CPC creates a bar for High Court to allow the Chamber Summons seeking amendment. (See para 14)

Result : Chamber Summons allowed.

Dr. Anahita Pandole Vs. State of Maharashtra & Ors. 2009 (12) LJSOFT 121

Code of Civil Procedure, 1908 — Order VI Rule 17 — Amendment of pleadings.

Suit for partition and separate possession — Plaintiff prayed for amendment in the plaint to bring on record that respondent No.1 was previously married to Shakuntala and their

divorce took place in the year 1977 — Amendment not necessary to resolve the main issue in controversy — Shakuntala was divorced wife and she had performed second marriage and had no concern at all with the plaintiff and defendants — Cannot be said that the said fact was not within the knowledge of the petitioner while filing the suit — Amendment may change the nature of the suit and also it will prejudice the interest of respondent No.1 — Trial Court also held that the application is filed with an intention to prolong the proceeding — Trial court has taken possible view not liable to be interfered in the writ jurisdiction. (See para 5, 6, 7)

Result : Petition dismissed.

Vishnu s/o Pandurang Pawar Vs. Smt. Dropadabai w/o Subhash Pawar and others 2009 (12) LJSOFT (AUR) 90

Code of Civil Procedure, 1908 — Order VII Rule 11 — Maintainability of suit — Rejection of plaint — Unreasoned order.

Petitioner-defendant no.1 filed application under Rule 11 of Order VII of CPC raising objection as to maintainability of suit — Impugned order rejecting the application does not contain any reason whatsoever as to why the application was found to be misconceived — Only word “misconceived” appearing in the impugned Order is in the nature of adjective — It does not disclose any objective ground as to why the application was found to be without any basis and foundation — Impugned Order set aside on the ground that the Order does not disclose the reasons. (See para 9, 12)

Result : Application allowed.

Goa Industrial Development Corporation Vs. Rohit Sanghvi & ors. 2009 (12) LJSOFT (URC) (GOA) 22

Code of Civil Procedure, 1908 — Order VIII Rule 1, 9 — Filing of additional written statement.

Suit for specific performance — Petitioner was minor when the suit was instituted — Petitioner has every right to file his separate written statement upon attaining majority — Every minor has a right to repudiate any action of the guardian upon attaining the majority by way of additional written statement — Restriction put by trial Court that additional written statement should not contain statement superseding earlier statement should not be filed is not correct — Impugned order to the extent not allowing the petitioner to file written statement inconsistent with the earlier written statement is set aside.

Result : Petition allowed.

Abhishek s/o Suresh Umbarkar Vs. Prashant Vidyadharrao Deotale & ors. 2009 (12) LJSOFT (NAG) 168

Code of Civil Procedure, 1908 — Order VIII Rule 6A — *Agreement for sale — Part performance of contract — Counter-claim. See Runja Khandu Gaware, Decd. Thru his Legal Heirs Vs. Mhalsabai Dagadu Gadak 2009 (12) LJSOFT 59*

Code of Civil Procedure, 1908 — Order IX Rule 4, 8 — Dismissal for default — Restoration of — Mentioning of wrong provision.

Suit dismissed in default — Plaintiff filed application under Order IX Rule 4 of CPC for setting aside order of dismissal and restoring the suit to file — Trial Judge held that since the plaintiff and his counsel were absent and the defendant was present application was required to be filed under Order IX Rule 8 of CPC — Application filed under Order IX Rule 4 of CPC was dismissed being not tenable — Held that such a hyper-technical approach was

really not warranted — Because of such hyper-technical approach many a times lawyers fail to mention the provision under which an application is made which in fact causes graver hurt to the cause of justice then by mentioning a wrong provision which then could be corrected by the Court — Impugned order set aside subject to petitioner's depositing Rs.1000/- and after such deposit, the suit shall stand restored to the file. (See para 4, 5)

Result : Petition allowed.

Uddhav S/o. Mahadeo Thakre & ors. Vs. Rushi S/o. Tulshiram Dhore 2009 (12) LJSOFT (URC) (NAG) 73

Code of Civil Procedure, 1908 — Order IX Rule 6(1)(a), 7 — Order VIII Rule 1, 5(2), 10 — Non-filing of written statement.

1) Suit for declaration of co-parcenary right in the suit property acquired by Government — Summons was served on the defendant — Defendants did not appear and the matter was adjourned to 5.9.1997 — On that day also they did not appear and the order was passed to proceed exparte without written statement — Defendants filed an application on 17.10.1997 to set aside the exparte order and to permit them to file written statement — Till that time, the trial Court had not proceeded with the hearing of the matter — Trial Court could pass the order setting aside exparte order under Order IX Rule 7 of CPC and could permit the defendants to file written statement — Impugned judgment and decree passed by the first appellate Court set aside and the matter remanded back to the trial Court with liberty to the defendants to file written statement. (See para 6, 9)

2) Advocate appeared for appellants had stated before the first appellate Court that written statement was not necessary — Due to mistake committed by the lawyer the party cannot be

allowed to suffer particularly when there is heavy stake in the property situated in Navi Mumbai. (See para 11)

Result : Appeal allowed.

Narayan Padu Patil since deceased through his legal heirs & anr. Vs. Raman Janardan Patil & ors. 2009 (12) LJSOFT 145

Code of Civil Procedure, 1908 — Order XX Rule 10 — Limitation Act, 1963 — Section 5, 12 — Bombay Public Trusts Act, 1950 — Section 50(A)(1) — Abatement — Setting aside of — Condonation of delay.

Application was filed u/s 50(A)(1) for framing a scheme — Deceased was the sole trustee of the trust and mode of succession was hereditary in nature — Application for setting aside abatement was filed after 10 months by legal heirs — Appellant contended that due to misconception of law the application for condonation was not filed — Question involved was whether the appointment of trustees as fit persons was proper and same was necessary to be considered — Learned District Judge should have allowed the applicants to file an application for setting aside abatement. (See para 11, 12)

Result : Appeal allowed.

Santosh Shyamrao Mohokar & ors. Vs. Pandurang Sakharam Satav & ors. 2009 (12) LJSOFT (NAG) 58

Code of Civil Procedure, 1908 — Order XXXVII Rule 2 — Summary Suit — Leave to defend.

Suit not based on any of the ingredients as contemplated under Order 37 Rule (2)(a) of CPC or under Order 37 Rule (2)(b)(i) to (iii) — Suit not covered under the ambit of a summary suit as defined under Order 37 of CPC — No question arise to grant leave to the petitioners for unconditional leave to defend the suit — Once the suit to be treated

as a ordinary suit it is constitutional right of the defendants or the persons who are arrayed as a defendants in that suit to defend the suit by filing the written statement unconditionally — All the orders passed about refusal of leave to defend unconditionally are set aside. (See para 6, 7, 8)

Panchappa S/o.Gangappa Gungune & ors. Vs. Gyanoba S/o.Narayanrao Rukme & ors. 2009 (12) LJSOFT (AUR) 159

Code of Civil Procedure, 1908 — Order XXXIX Rule 1, 2 — Internet domain names — Deceptively similar names — Grant of injunction.

1) Plaintiffs registered their domain name 'indiaproperties.com' — Defendant no.1 applied for and got registered their domain name 'IndiaProperty.com' — Words "India" and "Property" are very common and no right can be claimed on these words — Such words cannot be said to be trademark names or brandable names — Words speak for itself and they are, therefore, not coined and/or invented words — They are not and can never be capable of protection as a trade mark — Plaintiff failed to establish a prima facie case of trademark infringement or of passing off. (See para 10, 11, 28)

2) Internet domain name — There is a recognised distinction between the domain name and trademark — Internet has no territorial limits/boundaries and there is nothing to control the physical boundaries/jurisdiction irrespective of the domestic laws or regulations — Submission based on prior use itself is also not sufficient to grant any interim-relief. (See para 26)

Result : Notice of Motion dismissed.

I Plus Inc. Vs. Consim Info Private Limited & anr. 2009 (12) LJSOFT (URC) 112

Code of Civil Procedure, 1908 — Order XXXIX Rule 1, 2 — Development Agreement — Interim relief.

See D.B.Enterprise Vs. Juhu Chandan Co-op Hsg. Ltd. 2009 (12) LJSOFT 204

Code of Civil Procedure, 1908 — Order XXXIX Rule 4 — Section 114 — Modification — Review.

Under the guise of the application seeking modification or review, party claiming to be aggrieved, cannot be permitted to invoke the jurisdiction of High Court as an Appellate Court against its own order — Such an application branded either as application for modification or review cannot be an appeal under the guise of such application. (See para 9)

Result : Application dismissed.

Ganesh Benzoplast Limited Vs. Board of Trustees of Mormugao Port Trust 2009 (12) LJSOFT (GOA) 61

Code of Civil Procedure, 1908 — Order XLI Rule 33 — Counter-claim — Non-filing of appeal — Power of Appellate Court.

1) Demolishing of existing house — Claim towards salvage value of the old house — Old house was demolished on contract by plaintiff's husband and one Salvacao Barreto — No question of the defendant having to pay to the plaintiff any amount due thereon — Plaintiff would not be entitled to any sum towards salvage value of the old house. (See para 7)

2) Delay in delivery of six shops and the flat agreed to be built by the defendant — Plaintiff filed the suit for compensation for the amount which she would have earned by giving the shops on rent in case the defendant had given to the plaintiff timely delivery of the shops —

She cannot be denied of the same on a spacious principle that time was not the essence of the contract which is a principle governing specific performance of agreements and not for claim for compensation on account of breach of an agreement. (See para 12)

3) Non-filing of appeal against the dismissal of counter-claim — Ordinarily, the appellate Court must not vary or reverse a decree/order in favour of a party who has not preferred any appeal and this rule holds good notwithstanding Order 41, Rule 33 of CPC — However, in exceptional cases, the Rule enables the appellate Court to pass such decree or order as ought to have been passed even if such decree would be in favour of parties who have not filed any appeal — Power though discretionary should not be declined to be exercised merely on the ground that the party has not filed any appeal — Nothing exceptional in the case of the defendant for the Court to exercise the powers under O.41, R.33 and pass a decree as regards the counterclaim raised by him in the absence of cross appeal or cross-objection. (See para 15, 16)

Result : Appeal partly allowed.

Smt. Maria Leonora Hilda Da Conceicao Da Silva Correia Vs. Escolastico Mazarello 2009 (12) LJSOFT (GOA) 172

Code of Civil Procedure, 1908 — Section 9 — Suspension order — Challenge to — Place of filing application — Expression “ordinarily” — Territorial jurisdiction — Doctrine of jurisdictional error — Distinction between lack of inherent jurisdiction and jurisdictional error.

See State of Punjab Vs. Sarabdeep Singh Virk 2009 (12) LJSOFT 70

Code of Civil Procedure, 1908 — Section 9 — Suit for declaration — Jurisdiction of Civil Court.

See Narendra s/o Motibhai Patel Vs. Janardhan Moreshwar (since decd. through L.Rs.) 2009 (12) LJSOFT (NAG) 134

Code of Civil Procedure, 1908 — Section 9-A — Public Premises — Fixation of standard rent — Maintainability of application — Jurisdiction of Small Causes Court.

See Life Insurance Corporation of India Vs. Banatwala & Company 2009 (12) LJSOFT (URC) 51

Code of Civil Procedure, 1908 — Section 11 — Doctrine of res judicata.

Property dispute — Issue regarding ownership finally and conclusively decided by a competent court in the former suit — It is the same suit property which was involved in former litigations and all the parties were litigating under the same title — Plaintiff cannot reopen the issue to claim full and exclusive ownership over the suit property — He cannot get more than what his predecessor in title could have got — Decisions in the former suit would operate as res judicata though the appellant was not party to those civil proceedings. (See para 5)

Result : Appeal dismissed.

Shiocharan s/o Ramcharan Gadhe (Dead) through LR.s. Vs. Pandurang s/o Bisan Kumbhar (Dead) through LR.s. & ors. 2009 (12) LJSOFT (NAG) 179

Code of Civil Procedure, 1908 — Section 100 — Evidence Act, 1872 — Section 115 — Mohomedan Law — Partition — Right of property by birth — Doctrine of estoppel — Second appeal.

1) Suit for declaration — Unlike Hindu Law there is no concept of co-parcenary property under the Mahomedan Law — As per Section 52 of the Mahomedan Law there is no recognition of right by birth in property held by father or forefather — In view of peculiar position under the Mahomedan Law where there is absence of right by birth in a property, the theory of partition cannot be accepted. (See para 11, 17)

2) Doctrine of estoppel — Plea of estoppel it is a mixed question of law and facts — There should have been pleadings and there should have been issue before the trial court on that aspect — In absence of such issue either before the trial court or the first appellate court, it would not be proper to raise the same now for the first time in the second appeal. (See para 21)

Result : Appeal dismissed.

Iliakhkhan s/o Younuskhani & anr. Vs. Talayarkhan s/o Sherkhani & ors. 2009 (12) LJSOFT (AUR) 87

Code of Civil Procedure, 1908 — Section 100 — Limitation Act, 1963 — Article 64, 65 — Second appeal — Suit for possession — Plea of adverse possession.

Private lay-out was prepared by defendant nos.1 and 2 — Plaintiffs purchased the plots on various dates from defendant nos.1 and 2 — Although it is alleged that plaintiffs are dispossessed and claimed possession, the suit necessarily would have to be treated as one under Article 65 of Limitation Act, the same having been based on title i.e. Sale-deeds — Time would begin to run against the plaintiff from the date the defendants claim that their possession became adverse — Defendant nos.1 and 2 do not plead that any dispute with regard to ownership and possession had taken

place between them and the plaintiff prior to 1990 — If there is no evidence and pleadings to that effect at all the possession does not become adverse — Possession, however, long cannot mature into adverse possession at all unless it is shown that the dispute with regard to possession and ownership had arisen and such a specific time of such dispute is pleaded and made out — First Appellate Court rightly held that plaintiffs have proved their title and defendants nos.1 and 2 had failed to prove the adverse possession. (See para 11)

Result : Appeals dismissed.

Balakisan s/o. Bansidhar Khandelwal & ors. Vs. Govinda s/o Shankar Udupure (Dead) by Lrs. & ors. 2009 (12) LJSOFT (NAG) 39

Code of Civil Procedure, 1908 — Section 100 — *Specific performance of contract — Appreciation of evidence — Inconsistencies/ variations — Second appeal — Reappreciation of evidence.*

See Tukaram Laxman Karale Vs. Baba Govind Sase 2009 (12) LJSOFT (AUR) 154

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

See Baswantappa Apparao Chinchore Vs. Mahadu Ramchandra Teli 2009 (12) LJSOFT (AUR) 158

Code of Civil Procedure, 1908 — Section 115 — *Eviction proceedings — Writ jurisdiction — Alternate remedy.*

See Dhuliabai Mana Praga Vs. Manikbai Vithalrao Bhusarath (deceased) 2009 (12) LJSOFT 135

Code of Criminal Procedure, 1973 — Multiple complaints — Interim reliefs.

Complaints filed by various persons at several places in Maharashtra and Karnataka — Applicant even after he was released on bail for the said offence was immediately arrested by the Police Station where fresh complaint was lodged against him — Contended that there is a possibility that he may also be arrested on complaints which are likely to be filed by 18 other persons for the alleged non-payment of amount for goods which were delivered to the applicant — Applicant has been released on bail by High Court in several such complaints and even anticipatory bail was granted in favour of the applicant — Would be appropriate if seven days' notice is given to the applicant so that he can take appropriate steps for the purpose of seeking appropriate remedy. (See para 5, 6)

Result : Application allowed.

Sarvasiddhi Krishna Mohan Vs. State of Maharashtra & Ors. 2009 (12) LJSOFT (URC) 2

Code of Criminal Procedure, 1973 — Section 125 — Maintenance for child.

1) Applicant-wife claiming maintenance on behalf of her minor son — Respondent was in the employment at the time of filing of the petition and was earning Rs.47,000/- p.m. — Though respondent has now claimed that he is earning Rs.15,000/- p.m. the earning capacity of the respondent is rightly taken by the Family Court at Rs.47,000/- p.m. — As both wife and husband are earning, they will have to share the expenditure incurred on the maintenance of the child — Prima facie the expenditure incurred on maintenance of the applicant appears to be around Rs.16,666/- p.m. — Interim maintenance fixed at

Rs.8,000/- p.m. (See para 7, 8)

2) Claim of maintenance — Remedy u/s 125 is a summary remedy — Summary procedure is to be adopted and a detailed scrutiny of the material and evidence on record is not contemplated. (See para 5)

Result : Application partly allowed.

Master Rahul s/o Niranjan Kulkarni through his Mother/guardian Mrs.Lucky Niranjan Kulkarni Vs. Niranjan Kamlakar Kulkarni and another 2009 (12) LJSOFT (URC) 141

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 — Quantum of — Ceiling of Rs.500/- was enhanced to Rs.1500/- p.m. by the Maharashtra Act No.21 of 1999 — Thereafter by the Central Act being Act No.50 of 2001 section 125 was amended and the upper ceiling of was altogether removed w.e.f. 30-9-2001 — Central Amendment will prevail and that there is no ceiling on the amount which could be granted in terms of sub-section 1 of section 125 of Cr.P.C. (See para 2, 3)

2) Claim of maintenance — Family Court granted maintenance of Rs.5000/- p.m. to the respondent-wife and Rs.10,000/- p.m. to 2nd and 3rd respondents - daughters — Findings which are based on documentary evidence have to be appreciated in the light of the fact that the applicant has not clearly come out with his exact income — He has not even disclosed the amount of income received by him from the land having strawberry plantations at Mahabaleshwar — Considering the factual

aspects reflected from the documentary evidence no fault can found with the order granting a total maintenance of Rs.25,000/- p.m. (See para 12)

Result : Application dismissed.

Parvez Saghir Ahmed Ansari Vs. Mrs.Sana Parvez Ansari & ors. 2009 (12) LJSOFT 161

Code of Criminal Procedure, 1973 — Section 133 — Removal of nuisance.

Impugned orders issued so as to regulate the traffic and imposed certain restrictions as regards entry and exit of heavy vehicles — Restriction on entry of heavy vehicle between 8.00 a.m. to 9.00 p.m. — Text and the measures sought to be adopted by the impugned order do not fall within the parameters of clauses (a) to (f) of Section 133 of Cr.P.C. — Impugned order purported to be passed in exercise of powers u/s 133 of Cr.P.C. set aside. (See para 6)

Result : Petition allowed.

Vyapari Association Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (NAG) 50

Code of Criminal Procedure, 1973 — Section 154 — Constitution of India, 1950 — Article 14, 226 — Allegations against police officers — First Information Report — Registration of F.I.R. — Equality before law.

1) Allegation of not initiating any action against the officers of the Anti Extortion Cell, Crime Branch — Powers of registering F.I.R. cannot be stretched to such an extent so as to finally exonerate the persons in such cases — Assuming that the provisions enable conducting preliminary investigation before an F.I.R., is registered, yet, in the facts of this

case Court is satisfied that respondents after registering the F.I.R. conducting Investigations in pursuance thereof failed to carry out their further duty in Law — Reasonable basis to assume that the ACB prima facie has not performed its duty in law and have rather gone about protecting the police officers in question — Merely because they are officers of police department, does not mean that when serious allegations of bribery and corruption are made against them, they must not be proceeded in accordance with law. They are all the more answerable and accountable in law — Inaction and reluctance of the prosecution in proceeding against police officers — Respondent - State directed to file a further report (Additional Charge-sheet) in the concerned criminal court against the Police Officers in question. (See para 37)

2) Guarantee of Equality before Law and equal protection of Laws — Guarantee has to be meaningful and purposeful — Concept is that Justice should “not only be done” but must be “seen to be done” — When material is produced demonstrating strong suspicion that protectors of law are themselves involved in crime, then, no different yardsticks or criteria can be applied to their cases — This is a stage where none is to be pronounced guilty or innocent but it is to be determined by a Court of Law — Police and investigating machinery must act within the limits of their Authority — Police force cannot take over this function of Court of law and they would be overstepping their limits if they are permitted to usurp the functions of a Court of Law. (See para 38)

Result : Accordingly.

Sandeep Rammilan Shukla Vs. State of Maharashtra & Ors. 2009 (12) LJSOFT 108

Code of Criminal Procedure, 1973 — Section 156(3), 200 — Private complaint — Calling of report — Issuance of process.

Private complaint — Procedure adopted by the Magistrate in passing the two orders which are mutually in conflict — Magistrate committed error in passing both the orders; one of issuance of process and another u/s 156(3) of Cr.P.C. simultaneously — Both these orders operate in different context in view of the provisions of Cr.P.C. — Magistrate was not empowered to pass both the orders simultaneously — Both the orders; one in respect of issuance of process and another calling report u/s 156(3) of Cr.P.C. quashed and set aside and matter remitted back. (See para 7, 11, 12)

Result : Petition allowed.

Chandrakant @ Raju s/o Ramakant Navghare & ors. Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (AUR) 46

Code of Criminal Procedure, 1973 — Section 200, 204, 401 — *Criminal breach of trust — Mediator — Revision against order issuing process.*

See Ashok Uddhao Patil (Dr.) Vs. State of Maharashtra 2009 (12) LJSOFT (NAG) 47

Code of Criminal Procedure, 1973 — Section 204 — Issue of process.

Process issued mechanically without due application of mind on the basis of a verification statement which is in a format already prepared — Impugned order set aside — Other accused have not approached the Court will also naturally be entitled to the benefits of this order. (See para 2, 3)

Result : Application allowed.

Suresh Shankarlalji Vs. State of Maharashtra & Anr. 2009 (12) LJSOFT 137

Code of Criminal Procedure, 1973 — Section 307 — Approver — Grant of pardon.

Charge for fraudulently claiming and obtaining customs duty drawback — Respondent No.1 made an application stating that he wants to make a full and true disclosure of the facts of the case and wishes to turn as an approver and pray for pardon — Section 307 of Cr.P.C. confers a discretion on the Court to tender a pardon to an accused with a view to obtaining his evidence where the person is directly or indirectly concerned in, or privy to, any such offence — Court is empowered with the discretion of obtaining the evidence of such a person at the trial — Often, such a person who applies for pardon is an accomplice to the crime and his application cannot be rejected on that ground — Also Section 307 of the Cr.P.C. does not contemplate that the application should itself contain full disclosure — It contemplates that the Court shall tender a pardon conditional upon a disclosure being made — Obviously such a pardon would not operate if the disclosure is not made — Impugned order tendering pardon cannot be said to suffer from any illegality. (See para 5, 6)

Result : Application dismissed.

Ravinder Kumar Vs. State of Maharashtra & Anr. 2009 (12) LJSOFT 68

Code of Criminal Procedure, 1973 — Section 311 — Issue of summons to witness.

Application filed by prosecution for issuance of summons to the Investigating Officer and hand writing expert — Application dismissed to curtail the delay holding that inspite of sufficient opportunity being given to the prosecution to examine the witnesses it was not availed — Trial judge would have been

justified if trial had been concluded after the rejection of application — However inspite of rejection of the said application the trial is waiting for more than 6 months to get the final verdict — Allowing the application the impugned order is quashed and set aside. (See para 4)

Result : Application allowed.

State of Maharashtra Vs. Pandit Shivaji Jadhav 2009 (12) LJSOFT (URC) (AUR) 6

Code of Criminal Procedure, 1973 — Section 321 — Indian Penal Code, 1860 — Section 406, 409, 420, 465, 468, 471, 120-B — Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2) — Withdrawal of prosecution — Cheating.

Withdrawal of prosecution — Case pertaining to the bank loan of Rs. 50 Lacs sanctioned in favour of accused no.8 — Though loan has been only partly repaid but there are properties available which have been mortgaged and which if sold will be sufficient to recover the dues of the Bank — Public Prosecutor has taken into consideration the fact that the evidence may not be sufficient for convicting the accused and the decision taken is an executive decision — Case was still at the stage of framing of charge and in case there is paucity of evidence and no conviction would be secured, as opined by the Learned Special Public Prosecutor no useful purpose would be served by continuing with the trial — Public Prosecutor had rightly applied for withdrawal of the case because of insufficiency of evidence and the Learned Special Judge has rightly considered the same and given his consent. (See para 20, 21, 22)

Result : Application dismissed.

Theodoro Antonio Agnelo Salvador D'Souza Vs. Somnath Zuwarkar & ors. 2009 (12) LJSOFT (GOA) 125

Code of Criminal Procedure, 1973 — Section 326, 482 — Negotiable Instruments Act, 1881 — Section 138 — Dishonour of cheque — Recording of fresh evidence of complainant — Absence of reasons.

Dishonour of cheque — Evidence of complainant was recorded by the predecessor of the Judicial Magistrate — As per Section 326(1) of Cr.P.C. succeeding Magistrate has to proceed further from that stage and does not have jurisdiction to order re-examination of such witness except as provided in the proviso to Section 326(1) which requires Magistrate to express the opinion by giving reasons as to why re-examination of such witness is necessary — Impugned order ordering recording of fresh evidence of the complainant without giving any reasons cannot be sustained in law. (See para 4, 6, 7)

Result : Application allowed.

Fulchand Shankarji Shende Vs. Sandip Sukhdeo Thaokar 2009 (12) LJSOFT (NAG) 62

Code of Criminal Procedure, 1973 — Section 390 — Indian Penal Code, 1860 — Section 302, 376 — Rape and murder — Circumstantial evidence — Appeal against acquittal — Accused in custody — Inability to provide surety — Compensation.

1) Rape and murder — Minor girl — Case of rape could not be proved, because only part of the body, i.e., the upper torso of the deceased was found — Circumstances of last seen together was rightly not believed as witness did not have any knowledge of his own and whatever he stated in the Court was merely a hearsay, and it was rightly not taken as admissible — Location of the body was known to the police even before the essential discovery was made by the accused — Even

otherwise it was a decomposed body in an open field and as would have created a smell and people would have generally found the body — Trial Court has taken possible view was that the accused was not involved in the crime — Appeal against acquittal not liable to be interfered with. (See para 7, 8, 12, 13)

2) Rape and murder — State filed an appeal against acquittal and the High Court issued a Warrant of Arrest u/s 390 of Cr.P.C. — After warrant was executed the learned Sessions Judge offered bail to the respondent but he could not provide surety — More than 10 years now, he is in jail, although he has been acquitted by a Court of law 5 years before — In case of a warrant u/s 390 of Cr.P.C. directions are issued as mentioned in para 5 of the Judgment — Any Sessions Judge is found not to follow the directions, besides taking departmental action against such learned Sessions Judge, he shall also be liable for contempt of High Court — As an innocent person has remained in custody for a period of 10 years the State should compensate him by paying a compensation of Rs.1,00,000/-. (See para 5, 6, 14)

Result : Appeal dismissed.

State of Maharashtra Vs. Bapu Pandu Mali 2009 (12) LJSOFT 67

Code of Criminal Procedure, 1973 — Section 401 — Indian Penal Code, 1860 — Section 324 r/w Section 34 — Voluntarily causing hurt — Quantum of sentence.

Accused individually as well as in furtherance of their common intention, voluntarily caused hurt to complainant and his brother by means of deadly weapons — If the Trial Court has come to the conclusion that offence stands proved then it has to record the reasons for awarding minimum punishment of less than

minimum punishment — Award of only sentenced to pay fine of Rs.300/- i/d suffer RI for 2 months not a proper punishment — Matter remanded to the Trial Court to hear the parties again on the point of quantum of punishment. (See para 6)

Result : Application partly allowed.

Bhagwat @ Uttam S/o. Shripati Khandagale Vs. Baliram S/o. Dhondiba Pawar & ors. 2009 (12) LJSOFT (URC) (AUR) 12

Code of Criminal Procedure, 1973 — Section 401 — Indian Penal Code, 1860 — Section 186, 189, 353 — Obstructing public servant in discharge of public functions — Assault — Revision — Quantum of sentence.

Complainant is a Police Sub Inspector — While he was interrogating and recording statements of witnesses accused came in his Office and asked him as to why he was interrogating the witnesses, why he had taken interest in the case and that he should not raise his voice while interrogating the witnesses etc. — Applicant had no occasion to touch the person of the complainant but he simply rushed at the complainant — Considering that the complainant is a Police Officer the gesture of rushing towards him could not have been menacing enough — Awarding of sentence of one month SI is rather too heavy — There is a little exaggeration in awarding of the sentence — Applicant facing this prosecution since 1992 and he must have attended numerous Court dates — Sentence till rising of the Court and fine of Rs.500/- would mitigate the offence. (See para 5)

Result : Application partly allowed.

Bhimrao S/o Nagorao Hattimbire Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 164

Code of Criminal Procedure, 1973 — Section 403 — Revision — Opportunity of being heard — Principles of natural justice.

Complaint of criminal breach of trust — Respondents preferred revision applications before the Sessions Court challenging the order of issue of process — Sessions Court has powers in deciding the matter without hearing the complainants — Section 403 also confers the discretion on the Court to hear any party either personally or by pleader — By issuing notice to the respondents the Sessions Court exercised its discretion to hear the respondents — Having exercised its discretion to hear the respondents Sessions Court ought not to have proceeded to decide the matters without hearing the respondents and quash the process — Impugned orders set aside and matters remanded back to the Sessions Court. (See para 5, 6, 7)

Result : Petitions allowed.

Shivshankar Jatashankar Joshi Vs. Jafar Imam & Anr. 2009 (12) LJSOFT 42

Code of Criminal Procedure, 1973 — Section 407 — Transfer of case.

Murder trial — Application filed by original complainant for transfer of case contending that there was no possibility of impartial inquiry, since the applicant has lost confidence also the court at Kandhar is not convenient for the witnesses and the accused persons — Learned Additional Sessions Judge who imposed the costs upon the applicant has been already transferred and the applicant has no grievance against the present Additional Sessions Judge — Regarding convenience for the witnesses, it is for the prosecution to consider the said aspect and to take suitable steps, if required, and not the original

complainant. (See para 7, 10, 11)

Result : Application dismissed.

Shivaji s/o Dnyanoba Sable Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (AUR) 140

Code of Criminal Procedure, 1973 — Section 432, 433 — Remission of sentence.

1) Petitioner had earlier sent a letter seeking his premature release from the jail and same was treated as Criminal Writ Petition — Based on the observations made in the said petition, petitioner claim be released forthwith from jail since he has completed 24 years imprisonment including remission and set off — However in the said petition Jail authorities had given incorrect calculation of remission earned by the petitioner — May be due to over sight it was informed that the petitioner has earned remissions of ‘8 years 7 months and 21 days’ instead of informing that the petitioner has earned remissions as ‘6 years 7 months and 21 days’ — Present petition becomes premature and is required to be dismissed. (See para 10, 11, 12)

2) Jail authorities furnishing incorrect information — While filing the replies, reports/communications before the court, it is incumbent upon the jail authorities and it’s staff to take utmost care and precaution and must place the correct and proper account of the prisoner/convict before the court — Jail authorities should approach the Government Pleader’s office instead of writing the letter to the Registrar of High Court — Such practice of sending the letter by the jail authorities directly to the Registrar of High Court is deprecated — Directions issued to conduct the departmental inquiry of the concerned personnel who furnished incorrect account of remissions/set off of the

petitioner. (See para 14, 15)

Result : Petition dismissed.

Pratapsingh Charansingh Nehang Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 41

Code of Criminal Procedure, 1973 — Section 436 — Grant of bail — Accused involved only in bailable offences.

Accused in custody who are involved in bailable offences — Where either Police Officer or the Court has directed the accused to be released on bail with surety, and if such undertrial is not in a position to furnish surety he is to be presumed as an indigent and he will be released on personal bond alone — Where accused are in custody for seven days or more after arrest and all offences are bailable directions are issued to produce all such persons before the Magistrates in the respective Courts where the cases are pending (See para 5, 7)

Shivaji Satuppa Gavade-Patil Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 214

Code of Criminal Procedure, 1973 — Section 437, 439 — Bail — Cancellation of — Sessions triable offence — Jurisdiction of Magistrate — Offence u/s 306 r/w 34 of the IPC.

1) Cancellation of bail — Magistrate had rejected the bail application — Contended that the said fact was not disclosed by the respondents before the Sessions Court — Proviso to section 437 of Cr.P.C. is an exception to the general rule that the Magistrate cannot pass an order on bail application except in case application is moved by senior citizen, female or by minor — Other than this contingency the Magistrate

is not empowered to grant or reject the application for bail on merit — This power exclusively vests with the Court of Sessions. (See para 6)

2) Cancellation of bail — Suicidal death — Variance in two dying declarations — At this stage it is not proper to consider as to which dying declaration is correct one — Cannot be said that the learned Sessions Judge has not properly exercised the discretion vested in him and passed the order without considering the material collected during the investigation — Order of granting bail need not be recalled. (See para 7)

Result : Application dismissed.

Ranjanabai w/o Rupchand Khajekar Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (URC) (AUR) 4

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory Bail — Grant of — — Offence u/s 409 of IPC — Misappropriation of amount.

Applicant working as a Headmaster — Allegedly included the names of the two teachers in the Salary Bills though the teachers ceased to work in the said institution — Applicant deposited the sum which is allegedly siphoned off by him — No concrete material to indicate that fictitious and bogus bills were submitted by applicant — Applicant’s custodial interrogation not required — Anticipatory bail granted. (See para 4, 5)

Result : Application allowed.

Dhondu Maharu Patil Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 11

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory Bail — Grant of — Offence u/s 465, 467, 468, 471 r/w Section

34 of IPC — Forgery.

Complainant alleged that he was removed from the post of Secretary on the basis of fabricated Resolution — Also alleged that accused filed forged and fabricated document as annexure to the change report application — No explanation for delay of 2 years in filing the complaint — Complainant suppressed the fact that he was arrested on a complaint filed by the President of the Trust — Custodial interrogation of applicants not necessary since the investigation officer will have to ascertain whether the alleged Resolution was passed on the basis of forged and fabricated documents after forging signatures of other trustees — Investigating officer apparently has not taken any steps for the past one year — Dispute essentially appears to be a civil dispute between the parties who are on the management of the Trust — Applicants entitled for anticipatory bail. (See para 6, 7)

Result : Application allowed.

Smt. Savitri Shiv Kumar Mishra & anr. Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 13

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory Bail — Grant of.

Complaint made against one Yusuf of misrepresentation regarding allotment of plots by MHADA — Applicant was found sitting in the office of Yusuf on 3 to 4 occasions and complainant was told by Yusuf that applicant was his partner — No overt act has been attributed to the applicant — While granting interim protection the was directed to remain present before the Santacruz Police Station but applicant did not remain present before the said Police Station — However fact remains that no specific role has been attributed to the

applicant — Applicant deserves to be released on bail in the event of his arrest. (See para 4, 5)

Result : Application allowed.

Sameer Dhadi @ Abdul Rashid Shah Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 16

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory bail — Grant of — Transit bail — Offences u/s 498A, 406, 323 of IPC.

Offence registered with Mahila Thana Jodhpur police station — Applicants praying for grant anticipatory bail for a period of three weeks — Contended that High Court is possessed of jurisdiction to grant anticipatory bail as the arrest is being apprehended in Mumbai — Fit case for grant of anticipatory bail as prayed for. (See para 1)

Result : Application allowed.

Mahendra Nayanmal Surana & ors. Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 19

Code of Criminal Procedure, 1973 — Section 438 — Anticipatory bail — Grant of — Offence u/s 347, 364-A, 385 r/w Section 34 of IPC — Kidnapping for ransom.

Applicant No.1 Manoj was the Additional Superintendent of Police — Applicant allegedly threatened victim to settle the matter regarding monetary dispute between himself and complainant — Public members and staff members of the office of the applicant were knowing that the victim was brought to that office — Would be difficult to say that there was “abduction with intention to force the victim to pay ransom” when he was taken to the office — Significant omission regarding the threat to the life of the victim on his failure

to pay the alleged ransom will be a material criteria to be considered — Material placed on record not indicate that victim was abducted or kidnapped with view to demand — Bail granted. (See para 15, 20, 21, 22)

Result : Applications allowed.

Manoj Prabhakar Lohar Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 54

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offence u/s 141, 142, 143, 144, 145, 146, 147, 148, 149, 307, 324 r/w Section 34 of IPC.

Dispute between complainant and assailant-Pravin — Applicant had accompanied the assailant Pravin who had assaulted the victim with the sword — Only allegation against the applicant is that he was carrying sodawater bottle — Difficult to suggest that applicant also shared the intention of the main accused Pravin — Applicant is in jail since 19/06/2009 — Charge-sheet is already filed — Applicant deserves to be released on bail. (See para 3, 4)

Result : Application allowed.

Ramesh Mansoor Chauhan Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 7

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offence u/s 302, 143, 147, 148, 149 of IPC.

Murder case — Names of applicants not mentioned in the FIR — Complainant has not stated in the supplementary statement from where he had learnt that applicants were persons who were present at the scene of offence — None of the other eye witnesses also have attributed any specific role to applicants — Though they are identified in the identification parade, the eye witnesses have not mentioned that which accused had

given fist blows and which of the applicants had thrown stones — Applicants were arrested immediately after the said incident — Charge-sheet has been filed — Applicants are entitled to be released on bail. (See para 6, 7)

Result : Application allowed.

Shivaji Jagannath Kamble & ors. Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 14

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offence u/s 376, 506 of IPC — Conduct of prosecutrix. Rape case — Resolution passed in Gram Sabha the prosecutrix is in the habit of filing false cases of rape and molestation and is in the habit of blackmailing people and action should be taken against her — Thereafter complaint has been filed by the prosecutrix against the applicant — In the past several complaints of outraging of modesty filed by the prosecutrix were dismissed since prosecutrix had turned hostile — Apart from bare statement of the prosecutrix there is no material on record to indicate that the applicant was responsible for commission of the said offence — Investigation is almost over and continued detention of the applicant not necessary — Applicant deserves to be released on bail. (See para 4, 5, 6)

Result : Application allowed.

Bhagwat @ Babu Murlidhar Walekar Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 15

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offence u/s 307 and 506 of IPC — Attempt to murder. Applicant forced victim girl to drink acid as a result of which she suffered certain internal injuries — Injury certificate does not mention as to whether the injury was grievous or simple

— Statement of doctor who has examined the victim girl not recorded — Applicant is in jail since last two years and trial is not likely to commence in near future — Injury does not appear to be grievous — Applicant entitled to be released on bail. (See para 3, 4)

Result : Application allowed.

Abdullah Suleman Ansari Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 17

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offence u/s 420, 465, 467, 468, 471, 474 r/w Section 34 of IPC.

Complainant is the second wife of applicant — Alleged that some rooms standing in her name were sold by her husband-applicant by preparing forged documents — Charge-sheet has been filed and the investigation is over — Continued detention of applicant not necessary — However Sessions Court rejected the application merely because telegram was sent by the complainant alleging that the applicant had threatened her — Certain conditions can be imposed on the applicant in order to ensure that the applicant does not threaten the prosecution witness — Bail granted. (See para 3, 4)

Result : Application allowed.

Rabbani Chandsaheb Sayyed Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 18

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offences u/s 307, 143, 147, 148, 149, 332, 427, 323, 504, 506 of IPC and u/s 3 and 4 of Damages to Public Property Act and u/s 135 of Bombay Police Act — Parity.

Death of child of 4 years of age due to electric shock — Enraged by the same mob of 30 to 35 persons manhandled the employees of the

Electricity Distribution Company and also assaulted the first informant by fist and kicks — Applicant is in custody since 12.4.2009 — Co-accused against whom a serious overt-act is averred in FIR has been granted bail — No overt-act attributed to the Applicant — Five other co-accused are already released on bail — Applicant is entitled to be released on bail. (See para 3, 4)

Result : Application allowed.

Yogesh Suresh Suryawanshi Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 21

Code of Criminal Procedure, 1973 — Section 439 — Bail — Grant of — Offences u/s 143, 147, 452, 120-B, 336, 337, 504, 506, 427, 384 and 395 of IPC.

Three persons allegedly were instrumental in the land grabbing — Applicants allegedly had gone to the residential premises of the Complainant and had demolished the portion of the construction and removed the demolished material — Applicants are not even named in the First Information Report — Applicant is entitled to be released on bail. (See para 3, 4, 5)

Result : Application allowed.

Sheru Lingava Parnakar @ Kamble Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 80

Code of Criminal Procedure, 1973 — Section 439 — Prevention of Money Laundering Act, 2002 — Section 2(u), 3, 8(3), 8(5), 8(6), 45 — Indian Penal Code, 1860 — Section 120-B — Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 37 — Grant of bail — Offence of money-laundering — Proceeds of crime — Scheduled offence.

Applicants charged for commission of offence

under the NDPS Act for illegal import of cocaine — Applicants allegedly derived or obtained certain property (money) as a result of the criminal activity relating to a scheduled offence under NDPS Act and are charged for commission of offence u/s 3 of Prevention of Money Laundering Act — Applicants were granted on bail for the offences under N.D.P.S. Act — Special Court has recorded the satisfaction u/s 37 of NDPS Act to the effect that the Court is satisfied that there are reasonable grounds for believing that the Applicants are not guilty of the offences and they are not likely to commit any offence while on bail — Provisions dealing with grant of bail relating to recording of satisfaction are identical in both the acts viz. Section 37 of N.D.P.S. Act and Section 45 of the Prevention of Money Laundering Act — Recording similar satisfaction as recorded by the Special Judge u/s 37 of NDPS Act order granting bail is passed. (See para 10, 11)

Result : Applications allowed.

Om Prakash Nogaja Umesh Badrinarayan Bangur Vs. K. Nageshwar Rao & anr. 2009 (12) LJSOFT (URC) 119

Code of Criminal Procedure, 1973 — Section 457, 397, 399, 400, 401 — Seizure of property — Release of — Revisional jurisdiction — Scope of.

1) Auto-rickshaw seized during the course of investigation — Release of vehicle — Interim custody — Non-applicant no.2 is the registered owner — Applicant-accused claimed that non-applicant no.2 had sold him the said auto-rickshaw and had executed receipt and TTO forms in his favour — Non-applicant no.2 disputed his signature on the Receipt and TTO forms — Merely because vehicle came to be seized from the accused-

applicant itself cannot be a reason or a circumstance entitling him to have possession of the same — Non-applicant no.2 being registered owner entitled to possess the auto-rickshaw in absence of any reliable material pointing out any title or the interest of the applicant-accused — Revisional Court had not committed illegality or impropriety committed in setting aside the order passed by the learned JMFC releasing and handing over auto-rickshaw to applicant-accused. (See para 18 to 22)

2) Revisional jurisdiction — Powers in criminal revision being required to be exercised within the parameters of Section 397 of Cr.P.C. by High Court as well as the Sessions Judge and/or Additional Sessions Judge i.e. to say for satisfying as to the correctness, legality or propriety of any finding to which challenge is thrown by preferring such an application — Question of exercising of further powers as conferred by Section 401(1) by High Court or by the Sessions Judge u/s 399(1) or Additional Sessions Judge u/s 399 r/w Section 400 would arise only in the event of either order or finding under the challenge is found to be incorrect, illegal or improper. (See para 13)

Result : Application dismissed.

Ramawadh s/o Kuhesh Chavhan Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (NAG) 30

Code of Criminal Procedure, 1973 — Section 468, 482 — *Quashing of F.I.R. — Limitation. See Mahadeo Pundlik Taksande Vs. State of Maharashtra 2009 (12) LJSOFT (NAG) 66*

Code of Criminal Procedure, 1973 — Section 482 — Indian Penal Code, 1860 — Section 363, 366-B r/w Section 34 — Kidnapping — Quashing of F.I.R.

Kidnapping — At the time of alleged incident daughter of the complainant was major and she left the house of her parents at her own by calling the applicant and then accompanied him and thereafter got married with the applicant — Act of the applicant as alleged in the complaint cannot be termed as abduction of girl under the pretext to marry her — No offence is made out — FIR quashed and set aside. (See para 7, 8)

Result : Application allowed.

Saiyed Najer s/o Saiyed Sandhu Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (URC) 5

Code of Criminal Procedure, 1973 — Section 482 — Indian Penal Code, 1860 — Section 406, 420, 511, 507 r/w Section 34 — Dispute regarding family property — Misappropriation of property — Quashing of criminal proceedings

Applicant did not wish to claim any share in the property left by her deceased father — She was not interested in any kind of litigation with the brothers — Other three sisters cannot legally compel her to join them in such property dispute against their two brothers — Whether she had connived with her brothers or not is of no significance — Criminal cases are instituted against the applicants without any reason or rhyme — There is absolutely no scintilla of evidence on record to infer complicity of the applicants in the context of either of the charges leveled against them — These are the classic examples as to how the process of criminal court is abused by the litigant — Criminal cases against the applicants are quashed. (See para 7, 8)

Result : Applications allowed.

Manisha Manohar Gokhale & anr. Vs. State of Maharashtra & ors. 2009 (12) LJSOFT 25

Code of Criminal Procedure, 1973 — Section 482 — *Unauthorized money lending business — Quashing of F.I.R.*

See Ramling Arjun Raut Vs. State of Maharashtra 2009 (12) LJSOFT (URC) (AUR) 88

Code of Criminal Procedure, 1973 — Section 482 — *Dishonour of cheque — Stop payment — Quashing of process.*

See Rukmini Vishwanath Shendge Vs. Shriniwas Tuljaram Burudkar 2009 (12) LJSOFT 49

Code of Criminal Procedure, 1973 — Section 482 — *Dishonour of cheque — Legally enforceable debt/ liability — Presumption — Quashing of process.*

See Pushkaraj Enterprises Vs. Kundan Mehata Associates 2009 (12) LJSOFT 40

Code of Criminal Procedure, 1973 — Section 482, 304 — Indian Penal Code, 1860 — Section 494 r/w Section 114 — Second marriage during the lifetime of wife — Abetment — Quashing of process — Death of complainant.

1) Private complaint filed against the petitioners Nos.1 and 2 u/s 494 of IPC and against other petitioners u/s 494 r/w Section 114 of IPC — Complainant expired during the pendency of complaint — Upon death of the complainant the said complaint has to be dismissed. (See para 3)

2) Private complaint u/s 494 of IPC — If at all complainant wanted to show that petitioner No.1 and petitioner No.2 married, she should have led adequate evidence at the stage of examination of witnesses as per Chapter 15 of Cr.P.C. — Word of complainant alone was not sufficient because she had gathered the

information from other persons — In the absence of appropriate evidence trial Court erred in accepting word of complainant — Observation of the trial Court that a prima-facie case is made out was contrary to the record and hence the order issuing process was wrong and is required to be set aside. (See para 5)

Result : Petition dismissed.

Vithoba Kachruji Kathole Vs. Pushpa Vithoba Kathole (Deceased) through LRs. 2009 (12) LJSOFT (NAG) 107

Companies Act, 1956 — Section 83, 108(3) — *Joint Venture Agreement — Transfer of shares — Dispute regarding — Whether arbitrable — Interim relief.*

See Unity Realty and Developers Ltd. Vs. BW Highway Star Pvt. Ltd. 2009 (12) LJSOFT 27

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1) — Preventive detention — Supply of illegible documents — Subjective satisfaction.

Allegation of imports of assorted electronic goods by grossly undervaluing them resulting in evasion of customs duty — Most of documents supplies were not legible — Said documents which are relevant and if detaining authority did not take such documents into consideration one fails to understand as to what material was before her to reach the conclusion that persons needed to be detained — Neither Sponsoring Authority nor the detaining authority had any occasion to read the documents on which finally detaining authority relied — Detaining authorities had to discharge their duties in accordance with Constitutional mandate — Orders of detention

cannot be passed at mere asking of a police officer or by a sponsoring authority — Neither Constitutional mandate is taken care of nor even care is taken to read the judgments of High Court — Detention order quashed and set aside. (See para 7, 9, 10)

Result : Petition allowed.

Smt Nilofar Siraj Darbar Vs. State of Maharashtra & ors. 2009 (12) LJSOFT 94

Constitution of India, 1950 — Article 14 — *Application before Settlement Commission — Time limits — Cut-off date — Abatement of proceeding — Assurance of Confidentiality — Arbitrary withdrawal of — Interpretation of statutes — Just, equitable and reasonable interpretation — Reading down of provisions.* **See Star Television News Limited Vs. Union of India & ors. 2009 (12) LJSOFT 120**

Constitution of India, 1950 — Article 14 — *Promotions to non-select ranks — Inter-se seniority — Policy decision*

See Ravindera Sadashio Kshirsagar Vs. Union of India 2009 (12) LJSOFT (SC) 208

Constitution of India, 1950 — Article 14, 21 — *Private Banking Company having own provident fund scheme — Applicability of Scheme of 1952 — Validity of amendment — Right to life.*

See United Western Bank Ltd. Vs. Secretary, Govt. of India 2009 (12) LJSOFT (URC) 111

Constitution of India, 1950 — Article 14, 226 — City of Nagpur Corporation Act, 1948 — Section 407 — Contract by local authority — Judicial review — Public Interest Litigation — Writ jurisdiction — Alternate remedy.

1) Tenders for grant of contract for

advertisements on existing cantilever signboards — Decision by respondents No.1 and 2 to negotiate and then to choose respondent No.3 was within the realm of law — Court cannot substitute its own opinion nor can it act as an appellate authority in respect of selection made by the Nagpur Municipal Corporation to enter into contract with respondent No.3 — Unless the Local Authority is shown to have acted arbitrarily, mala fide, not justified by public interest - the Court cannot interfere — Mere power to choose a contractor cannot be termed as arbitrary — Petitioner is unable to show that the respondent Corporation acted illegally or improperly while awarding contract — Impugned contract is valid and sustainable in law. (See para 9, 10)

2) Writ jurisdiction — Contract awarded by local authority — Petitioner also had alternate statutory remedy u/s 407 of City of Nagpur Corporation Act to appeal to the State Government if he was aggrieved by the contract — Alternate remedy, if available, has to be exhausted first before invoking extraordinary jurisdiction under Article 226 of the Constitution of India. (See para 9)

3) Contract awarded by local authority — Petitioner was sitting Corporator and had every opportunity to enquire and question the contract when it was at the stage of negotiation — He cannot feign ignorance in respect of entire tender process, negotiations and the fact that contract was concluded pursuant to negotiations as also after approval from the Standing Committee and the Municipal Commissioner — Fact that he filed this writ petition without explaining delay gives rise to inference that he had oblique motive to file the petition — Petition liable to be dismissed with exemplary costs being frivolous and filed

with oblique motive. (See para 9, 12, 13)

4) Public Interest Petition — Individual dispute can never be allowed to be converted in public interest litigation — Public interest litigation cannot be allowed to become tool in the hand of unscrupulous elements to release vendetta or wreck vengeance. (See para 11, 12)

Result : Petition dismissed.

Sandeep Diwakar Joshi Vs. Corporation of the City of Nagpur & ors. 2009 (12) LJSOFT (NAG) 162

Constitution of India, 1950 — Article 14, 226 — *Allegations against police officers — First Information Report — Registration of F.I.R. — Equality before law.*

See Sandeep Rammilan Shukla Vs. State of Maharashtra 2009 (12) LJSOFT 108

Constitution of India, 1950 — Article 14, 226 — *Admission in Junior college — Qualifications — Introduction of facility of ATKT (Allowed to Keep Terms) — Policy decision — Discrimination — Delegated legislation — Constitutionality of — Public Interest Petition.*

See Akhil Bharatiya Vidyarthi Parishad Vs. State of Maharashtra 2009 (12) LJSOFT 28

Constitution of India, 1950 — Article 15(3), 15(4), 243-T — *Reservation of offices of President — Electoral rights — Locus standi.*
See Iliyas Amir Maniyar Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 129

Constitution of India, 1950 — Article 19(1)(g), 226 — *Secondary Schools Code, 2002 — Starting of new Secondary School — Conditions of 5 km distance — Whether mandatory — Grant of permission — Setting aside of — Full Bench Reference.*

1) Recognition, Organisation and Management of Schools — Secondary School Code itself is not a statutory document but is in the nature of an executive directions or guidelines — Provisions of grant-in-aid in the S.S. Code are merely executive instructions and do not have force of law and are in the nature of administrative instructions without any statutory force of law — Condition No.4 (relating to restriction of grant of permission for opening a new school within 5 kms. of an existing school) is not mandatory in absolute terms as it has an inbuilt element of relaxation — Said condition in stricto sensu cannot be construed as an absolute mandate without any exception — Condition as of now exists as a guideline and does not have any statutory backing — A decision has to be taken by the Competent Authority with reference to the facts and circumstances of a given case. (See para 16, 30)

2) Full Bench Reference — No patent legal conflict between the two Division Bench Judgments in W.P. No.4172/01 and 2000 (11) LJSOFT 2 — Both the judgments can be explained with reference to the facts in their respective cases — There is no noticeable conflict in the two Division Bench judgments while applying ratio decidendi in its correct perspective — They do not in any terms lay down a binding precedent and can be read harmoniously with reference to the facts of each case. (See para 20, 30)

3) Rules of precedent — For a precedent to be binding, there has to be a reference to the facts, controversy in issue, discussion on statutory provisions, reasoning for coming to a conclusion and clear statement of law and principles settled or answered by the judgment — Said conditions would have the effect of declaring the binding precedents for the Courts to follow. (See para 14)

4) Rules of precedent — Judgment would be applicable as precedent to the subsequent case only where ratio decidendi is squarely applicable to the facts of a subsequent case — Courts or Tribunals are expected to follow the law of precedent subject to well accepted limitations — Basic object and purpose is to provide some reasoning and clear enunciations of law — Wherever there are divergent views of equi-Bench, the judgment of the later Bench would cover the field provided it is reasoned one, decides the controversies and applies to the facts of the case. (See para 16)

Shikshan Prasarak Mandal Vs. State of Maharashtra & ors. 2009 (12) LJSOFT 34

Constitution of India, 1950 — Article 141 — *Motor accident — Compensation — Rules of precedent.*

See Udhav Rangnathrao Pawar Vs. Sheshrao Ramji Jogdand 2009 (12) LJSOFT (AUR) 60

Constitution of India, 1950 — Article 215 — *Non-compliance of undertaking — Claim of damages.*

See Nitin Seth Vs. Vijay Lakhani 2009 (12) LJSOFT 142

Constitution of India, 1950 — Article 226 — *Admission in MMS Course — Reserved seats — Caste not recognised in Maharashtra — Absence of misrepresentation/ fraud.*

Petitioners got the admission in MMS Course — Petitioners not found eligible for the admission in reserved category as the caste mentioned in the Caste Certificate is not from the State of Maharashtra — Request of the Petitioners to convert their admissions in open category from the reserved category was declined — Held that in the absence of

misrepresentation and/or fraud on part of the Petitioners, it is inequitable to discontinue them as they have already completed a year of the course — At this stage hardly any prejudice would be caused to any student as no student even of higher merit would seek admission in the Institution at this late stage — Respondents directed to permit the Petitioners to continue their studies in the same Institute subject to their paying charges payable by a candidate of the Open/ General category and furnishing an undertaking that they would not take any benefit of the reserved category either in the academic course or in the employment in the State of Maharashtra. (See para 7, 8, 10)

Result : Petition allowed.

Archana Dalal & anr. Vs. State of Maharashtra & ors. 2009 (12) LJSOFT 32

Constitution of India, 1950 — Article 226 — *Allotment of more than one plot — Development permission.*

Petitioners are allottees of two plots in CIDCO area — Petitioners constructing four flats and submitted that his family members would be residing in those flats and those flats would not be transferred to any other person — When the plots were originally allotted to the petitioners there was no restriction that a person cannot hold more than one plot — Requirement of the petitioners is bona fide — Petitioners shall be at liberty to apply to the respondent no.2-CIDCO for grant of “no objection” certificate, for making an application for building permission to the Municipal Corporation. (See para 10, 11, 12)
Result : Petition allowed.

Rajinder Singh s/o. Diwan Singh Bagga & anr. Vs. City and Industrial Development Corporation Ltd. & ors. 2009 (12) LJSOFT (URC) (AUR) 74

Constitution of India, 1950 — Article 226
— Date of birth — Change of — Delay.

Change of date of birth — After publication of the seniority lists, for a considerable time the Petitioner has not made any representation between 1990 and 1999 — Petition filed in 2001 at the fag end of his service — Petitioner had not taken any concrete steps for many years and simply because he entered into correspondence with the Respondent No.1 cannot be a ground for not approaching the Court within time — In the matter of change of date of birth the employee is required to approach the Court within a reasonable time and not at the fag end of his service — Not a case where a highly disputed claim of the Petitioner can be adjudicated by High Court in its extra ordinary jurisdiction under Article 226 of the Constitution of India. (See para 10, 11)

Result : Petition dismissed.

P. Madhavan Nair Vs. Indian Oil Corporation Limited & anr. 2009 (12) LJSOFT 175**Constitution of India, 1950 — Article 226**
— Dismissal from service — Reappointment — Effect of — Maintainability of reference.

Petitioner working as conductor dismissed from service for misconduct of collecting fare from passengers but not issuing to them proper tickets — Appellate Authority confirmed the order of dismissal but offered re-employment — Petitioner could have challenged the order in its entirety — Petitioner accepted reappointment and taking the benefit of the order he was estopped from challenging the order - Petitioner having accepted reappointment was estopped from challenging his dismissal. (See para 9, 10)

Result : Petition dismissed.

Sahebrao s/o Pandu Patil Vs. Divisional Controller, Maharashtra Road Transport Corporation 2009 (12) LJSOFT (AUR) 144**Constitution of India, 1950 — Article 226**
— General Standing Order No.503 — Rule 57 — Promotion — Eligibility.

Promotion to the post of Divisional Controller — Examination is required to be conducted in accordance with Rule 57 of the General Standing Orders and the promotion is not on the basis of seniority but on the basis of efficiency and suitability — Petitioner has to enforce his right of promotion only after holding departmental examination — Contention of the petitioner that because of seniority he ought to have been promoted cannot be accepted — Merely because the respondent Nos.4 to 6 are given some illegal benefits High Court cannot direct the respondent Nos.1 and 2 to extend the same benefit to the petitioner. (See para 5, 6)

Result : Petition dismissed.

Bapu s/o Namdevrao Gaikwad Vs. Vice Chairman and the Managing Director, Maharashtra Road Transport Corporation & ors. 2009 (12) LJSOFT (NAG) 113**Constitution of India, 1950 — Article 226**
— Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 — Slum Rehabilitation Scheme — Allegation of fraud — Malpractices in Government offices — Public Interest Litigation — Maintainability of.

1) Slum Rehabilitation Scheme — Serious complaints having the element of criminality — Cases where frauds have been committed, signatures have been forged and even identities of genuine slum dwellers have been changed by impersonation or other methods,

which will squarely fall in the field of criminal jurisprudence are matters for proper investigation — Where a complaint has been filed the machinery of criminal justice into motion and it is for the investigating authorities to proceed with the matter in accordance with law — State Government, SRA and /or the investigating agency cannot on any ground whatsoever justify that they keep the complaint pending for years together without any result and/or action against the officers/ officials and the developers or any other persons who are involved in commission of such crimes or illegalities or improprieties — Officers and the officials who have been instrumental or have been aiding such acts by omission or commission, must be brought to book and must face the legal consequences — Neither permissible nor possible for High Court to examine 87 complaints on their merit and supervise their inquiry or day to day investigation — A kind of preliminary examination of complaints would be necessary before actual investigating machinery is put in motion — Directions are issued and left it open to the Authorities concerned to proceed in accordance with law while ensuring that all the matters are examined judiciously and persons responsible for committing illegalities and acting in an unfair manner are brought to book. (See para 12, 16)

2) Petitioner filed Public Interest Litigation averring that a major fraud is being perpetrated on the citizens, the slum dwellers and the State by hijacking a welfare scheme by Slum Rehabilitation Authority to benefit a few at the cost of the public at large — Petitioner prayed for a Court directive to start an enquiry into complaints against the scheme — Contended on behalf of the State that PIL in such cases would not be maintainable as the reference of such enquiry should be made

to an expert body and at it is the State alone which has the discretion to entrust such an inquiry — Also contended on behalf of SRA that the petitioner can lodge complaints with the respective Police Stations and the petitioner has no right to file PIL — Rejecting the contentions held that PIL is maintainable — All the Government departments concerned are dealing with matters of public importance and the schemes which are intended to benefit the slum dwellers — Fraud, forgery, cheating, misrepresentation, impersonation and hijacking of the SRA Schemes to the benefit of builders as alleged, are the facets which will squarely fall within the ambit of PIL. (See para 14, 15)

Shailesh Gandhi Vs. State of Maharashtra through its Chief Secretary & ors. 2009 (12) LJSOFT 33**Constitution of India, 1950 — Article 226**
— Parking of vehicles — No Parking Zone.

Vehicles being parked in the No Parking Zone — Problems of infrastructure and staff by itself cannot be a ground not to solve the problem and to mitigate the hardship faced by the citizens — Directions issued to respondent Nos.3 and 4 and the other concerned officers of Traffic branch for regular monitoring to see that no vehicles are allowed to be parked at the places which is not marked for parking — Strict action should be taken against the owners of the vehicles in this behalf as per law and the concerned higher authorities should monitor this aspect regularly by evolving appropriate procedure in this behalf. (See para 4)

Chandrakant G. Chury Vs. Commissioner, Municipal Corporation of Greater Bombay & ors. 2009 (12) LJSOFT 192

Constitution of India, 1950 — Article 226 — Prevention of Food Adulteration Act, 1954 — Sections 20-A, 21, 22-A — Prevention of Food Adulteration Rules, 1955 — Rule 37A — Proprietary Food — Classification — Writ jurisdiction — Alternate remedy.

Petitioners seeking relief to classify and categorize the energy drink as proprietary food and not as a non-alcoholic carbonated water — These are matters which are best left to the authorities under PFA Act and the Rules — Once there is a dispute and it is raised in reference to various reports and analysis then writ jurisdiction is not the appropriate remedy — Petitioners have an alternate and equally efficacious remedy available to them in law — Court go into disputed questions of facts in it limited jurisdiction. (See para 12 to 15) Result : Petition dismissed.

Red Bull (India) Pvt. Ltd. & ors. Vs. Office of the Chief Commissioner of Customs & ors. 2009 (12) LJSOFT 105

Constitution of India, 1950 — Article 226 — Service law — Disciplinary proceeding — Proportionality of punishment.

Respondent No.1 - Senior Foreman and Union leader entered the cabin of Mechanical Engineer and abused him and brought about strike on that day at the workshop — After enquiry punishment of reducing his pay to initial stage of pay scale was imposed — Giving filthy abuses to an officer is intimidatory tactic which eventually results in good sensitive person to either give up a job to avoid such insults or to surrender to the bullies — Industrial Court should not have treated the incident as trifle and should have seen that the punishment imposed was not at all harsh — Impugned order setting aside the order of punishment is quashed and set aside.

(See para 10)

Result : Petition allowed.

Maharashtra State Road Transport Corporation & ors. Vs. D.C.R. Mishra & anr. 2009 (12) LJSOFT (NAG) 149

Constitution of India, 1950 — Article 226 — Service — Promotion — Entitlement — Relaxation.

Petitioner was appointed as Cook in Central Industrial Security Force and thereafter as Constable by granting him relaxation in prescribed height — Petitioner denied promotion to post of Assistant Sub Inspector on the ground that since he already got relaxation once he cannot claim it as a matter of right again and again — Person recruited as constable with a height of 167 cms. will obviously not grow in height after a given point of time — Relaxation once given in physical standard must entitle the petitioner to receive further promotions if he was otherwise found fit — Respondents directed to hear the petitioner and pass appropriate orders. (See para 3, 4)

P. Balu Vs. Union of India, through the Secretary in the Ministry of Home Affairs & ors. 2009 (12) LJSOFT 151

Constitution of India, 1950 — Article 226 — Termination of service — Date of termination.

Termination of service — Reference of dispute — Statement of claim filed on 23-3-2000 — Petitioner filed application on 23-11-2005 for amendment in the statement of claim contending that the date of termination was not 1-1-1998 but it was 1-9-1998 — Labour Court directed the petitioner to approach the government — Application was rejected holding that it was not proved there is a typing

mistake — Said order has not been challenged by the petitioner — Reference was dismissed on the ground that it had become infructuous since petitioner was working with the respondent even after 1-1-1998 — Petitioner had preferred the application for amendment of the date of termination in his statement of claim only as an afterthought at an extremely belated stage — Cannot be said that on account of typographical mistake the date of termination is wrongly mentioned — No case made out for interference. (See para 10) Result : Petition dismissed.

B.V. Waghmare Vs. Lancer Travels and others 2009 (12) LJSOFT 75

Constitution of India, 1950 — Article 226 — Amendment of writ petition.

See Anahita Pandole (Dr.) Vs. State of Maharashtra 2009 (12) LJSOFT 121

Constitution of India, 1950 — Article 226 — Appeal — Pre-deposit — Delayed payment of gratuity — Interest — Disputed question of fact — Writ jurisdiction.

See Parbhani Zilla Dekhreh Sahakari Sanstha Ltd. Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 91

Constitution of India, 1950 — Article 226 — Delay in filing Appeal — Condonation of delay — Jurisdiction of Debts Recovery Tribunal (DRT).

See La-Kozy Vs. ING Vysya Bank Ltd. 2009 (12) LJSOFT 35

Constitution of India, 1950 — Article 226 — New Medical Institution — Grant of permission — Disapproval of Central Government — Unreasoned order — Writ jurisdiction.

See Diamond Education Society's Shri. Chhaganrao Bhujbal Aurvedic Medical College Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 93

Constitution of India, 1950 — Article 226, 227 — Appointment on compassionate grounds — Denial of — Compensation.

1) Appointment widow of deceased employee on compassionate ground — Such appointments are predominantly to be made for enabling the families of the deceased to tide over financial constraints occurred to the death of bread winner of the family — There should be proximity in between such death and appointment to be made — Appointment should not be allowed to assume colour of getting Government service as a matter of right or making the same as a source of recruitment for dependents of deceased employee — Difficult to accept prayer for appointment on compassionate ground made in petition filed about 32 years. (See para 8, 9)

2) Costs — Respondent no.2 failed to take and communicate prompt decision regarding the claim petitioners driving dependents of their deceased employee from door to door — Such a conduct cannot be expected from higher officer of Government institution — Respondent no.2 directed to pay a compensatory costs of Rs.10,000/- to petitioners. (See para 10)

Shankar s/o Ramakant Akkavar & anr. Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (NAG) 65

Constitution of India, 1950 — Article 226, 329(b) — Elections — Postponing of — Public interest petition.

Petition praying for direction to postpone the elections to the legislative Assembly on account of the Pandemic of Swine Flu —

Election Commission has already announced that the elections — Once the notification is issued by virtue of Article 329(b) of the Constitution of India, the Election can be called in question only by way of election petition and it is not open to the Court to pass order that may have the effect of interrupting, obstructing or protracting the election program in any manner — Not open to the Court to direct postponement of the Election — Grounds on which the Petitioner has invoked the jurisdiction of High Court are founded on mere apprehension and that cannot be countenanced. (See para 3, 5, 7)

Result : Petition dismissed.

Moreshwar V. Ghaisas Vs. State of Maharashtra & ors. 2009 (12) LJSOFT 52

Constitution of India, 1950 — Article 227 — Code of Civil Procedure, 1908 — Section 115 — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13 — Eviction proceedings — Writ jurisdiction — Alternate remedy.

Decree of eviction — Provisions of Rent Act do not exclude applicability of section 115 of CPC — When a decree under the Rent Act of 1947 passed or confirmed by a District Court in appeal is sought to be challenged, notwithstanding the 2002 amendment to CPC a remedy u/s 115 of CPC continues to be available — Though power of High Court under Article 227 of the Constitution of India is not affected by availability of remedy u/s 115 of CPC but ordinarily, writ jurisdiction will not be allowed to be invoked when a statutory remedy is available to the petitioner. (See para 5, 7)

Result : Petition dismissed.

Dhuliabai Mana Praga & Ors. Vs. Smt.Manikbai Vithalrao Bhusarath (deceased) & Ors. 2009 (12) LJSOFT 135

Constitution of India, 1950 — Article 227 — *Transfer order — Production of additional evidence.*

See Union of India Vs. R. Mohankumar 2009 (12) LJSOFT 155

Constitution of India, 1950 — Article 227 — *Age of victims — Enquiry — Powers of Committee — Writ jurisdiction.*

See Sameedul Nisha Mohammed Haroon Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 156

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

See Parvez Saghir Ahmed Ansari Vs. Sana Parvez Ansari 2009 (12) LJSOFT 161

Constitution of India, 1950 — Article 254(2) — *Public Premises — Fixation of standard rent — Maintainability of application — Jurisdiction of Small Causes Court.*

See Life Insurance Corporation of India Vs. Banatwala & Company 2009 (12) LJSOFT (URC) 51

Contempt of Courts Act, 1971 — Section 2, 12 — Constitution of India, 1950 — Article 215 — Non-compliance of undertaking — Claim of damages.

1) Consent terms — Undertaking given by the respondents — Delay in providing the flat within the specified period — Handing over of possession within the prescribed time also means subject to Rules and Regulations of the Mumbai Municipal Corporations — Not the case that respondents 1 and 2 not proceeded with the construction — They could not complete the same for want of various formalities — Delay was also caused because

of some alterations in the project — Considering the circumstances it is difficult to accept the case of the petitioners that there was intentional delay or deliberate attempt not to comply with the consent terms/orders. (See para 18, 19, 21, 22)

2) Contempt proceedings — Delay in providing the flat within the specified period — Claim of damages as referred in the consent terms/ undertaking — Contempt jurisdiction cannot be utilised to recover or to enforce the monetary part of the order/direction. (See para 25, 26)

Result : Petitions dismissed.

Nitin Seth & anr. Vs. Vijay Lakhani & 4 ors. 2009 (12) LJSOFT 142

Contract Act, 1872 — Section 27 — *Agreement in restraint of trade — Injunction to perform negative agreement — Doctrine of negative covenant — Interim relief.*

See Y.T. Entertainment Limited Vs. One More Thought Entertainment Pvt. Ltd. 2009 (12) LJSOFT 124

Contract Act, 1872 — Section 186, 187, 192, 226, 231, 232 — Transfer of Property Act, 1882 — Section 105, 106 — Eviction proceedings — Arrears of rent — Lease agreement — Lessor-lessee relationship — Contracts entered through agent — Enforceability by Principal.

Suit for possession — Original plaintiff was the owner — His brother was acting as his agent — Plaintiff as principal was taking information and accounts of the acts done by his brother as his agent — Once it is proved that plaintiff was the principal and his brother was acting as his agent, the plaintiff can enforce the contract — Defendant/appellant cannot say that he has contract only with the agent and not with the principal — Suit filed

by plaintiff is tenable and notice issued by him is legal and valid. (See para 17, 18, 19)

Result : Appeal dismissed.

Ramnath Ganpati Vs. Chetandas s/o. Zatmaldas Panjwani (since deceased) by LR. 2009 (12) LJSOFT (AUR) 163

Customs Act, 1962 — Section 45(1), 45(2), 45(3) — Pilferaged goods — Liability to pay duty.

1) Pilferage of goods while in possession of Port Trust — Person referred to in section 45(1) can only be the person approved by the Commissioner of Customs — It excludes a body of persons who by virtue of a law for the time being in force is entrusted with the custody of goods by incorporation of law under another enactment, i.e. the Port Trust Act — No purpose would be served by one arm of the Government imposing a duty on another arm of the Government which is discharging statutory duties — Impugned orders are without jurisdiction and liable to be struck down. (See para 12, 13, 15)

2) Pilferaged goods — Recovery of duty is only from the approved person — Notification dated 11th October 2000 would be without jurisdiction and ultra vires section 45(1) of the Customs Act and consequently declared as null and void. (See para 16)

Result : Petition allowed.

Board of Trustees of the Port of Bombay Vs. Union of India & Ors. 2009 (12) LJSOFT 139

Depository Act, 1996 — Section 10, 11 — *Joint Venture Agreement — Transfer of shares — Dispute regarding — Whether arbitrable — Interim relief.*

See Unity Realty and Developers Ltd. Vs. BW Highway Star P. Ltd. 2009 (12) LJSOFT 27

Development Control Regulations for Greater Bombay, 1991 — Regulation 33(7) — Building redevelopment — Refusal by minority — Consent of majority — Order of eviction.
See Nalini Ganpat Malpekar Vs. Municipal Corporation of Greater Mumbai 2009 (12) LJSOFT (URC) 24

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 33 — Powers of review — Limitation.

1) Petitioners are displaced persons who arrived in India after partition — Strips of land were sold to the petitioners as per the policy of the government — Conveyance deeds were issued in favour of each of the petitioners in 1990 — No material on record to indicate that power u/s 33 has been delegated to the State Government and/or its Secretary — Exercise of such power by the Secretary to the Government of Maharashtra is without jurisdiction — Even assuming that he had been vested with such powers by delegation he could not have reopened or reviewed the cases after the conveyance was executed in favour of the displaced persons — Once the property including the open land vests in the allottee it cannot be set aside u/s 33 — Impugned order set aside. (See para 8)
 2) Review of order — No period of limitation has been prescribed in section 33 — Where limitation is not prescribed in the statute the Government is expected to act within reasonable period and not after an inordinate delay — Secretary could not have in any event, assuming he had such jurisdiction, exercised his jurisdiction u/s 33 after an inordinate delay of 5 years. (See para 9)
 Result : Petition allowed.

Satramadas Ramdas & Ors. Vs. State of Maharashtra 2009 (12) LJSOFT 165

Dowry Prohibition Act, 1961 — Section 2 — Abetment to suicide — Dowry death — Presumption — Term “Dowry” — Meaning of— Appeal against conviction.
See Sunil Bhiku Yadav Vs. State of Maharashtra 2009 (12) LJSOFT 212

Electricity Act, 2003 — Section 56(2) — Arrears of electricity charges — Clerical mistake — Limitation — Term “Due”.

1) Revised bill — Though multiplication factor has changed from “500” to “1000” but due to oversight the department has issued bills for the period July, 2003 to July, 2007 with 500 as multiplication factor instead of 1000 — Consumer is under-billed on account of clerical mistake — Bar of limitation cannot be raised by the consumer. (See para 14)

2) Revised bill — Petitioner was under-billed on account of clerical mistake for the period July, 2003 to July, 2007 — Word “due” would mean due and payable after a valid bill has been sent to the consumer — Demand notice with revised bill dated 3/10/2007 was served on petitioners on 9/11/2007 — Revised bill amount first became due on 9/11/2007 — Section 56(2) of the Electricity Act would not come in the way of the respondents from recovering the said amount under the revised bills. (See para 18)

Result : Petition dismissed.

Rototex Polyester & Anr. Vs. Administrator, Administration of Dadra & Nagar Havli (U.T.) Electricity Department, Silvassa & Ors. 2009 (12) LJSOFT 86

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 5 r/w Section 7(1) — Employees Provident Fund Scheme, 1952 — Constitution of India, 1950 — Article 14, 21 — Private

Banking Company having own provident fund scheme — Applicability of Scheme of 1952 — Validity of amendment — Right to life.

Petitioner-Bank challenging the notification dated 25-2-2000 amending the Scheme of 1952 and in paragraph 1 Sub-para (3), Clause (b), Item(III), for the words “banks doing business in one State or Union Territory and having no departments or branches outside that State or Union Territory” the words “banks other than the nationalised banks established under any Central or State Act” came to be substituted — Petitioner Bank brought within the perview of the Act despite the fact that it had its own provident fund scheme — No material on record to show that the Government had taken into account the contents of the Pension Schemes which are admittedly prevailing or the views of the employees or the employers — Notification was arbitrary, discriminatory and not based on justifiable considerations — Impugned notification quashed and set aside being violative of the Article 21 of the Constitution. (See para 4, 5, 6)

Result : Petition allowed.

United Western Bank Ltd. & Anr. Vs. Secretary, Govt. of India & Ors. 2009 (12) LJSOFT (URC) 111

Evidence Act, 1872 — Section 9, 27, 45 — Murder — Medical evidence — Evidence of recovery.

See Shyam Kantayya Nalalla Vs. State of Maharashtra 2009 (12) LJSOFT (NAG) 29

Evidence Act, 1872 — Section 27 — Evidence of recovery.

See Mohammed Hussain Abdul Wahab Kathewadi Vs. State of Maharashtra 2009 (12) LJSOFT 38

Evidence Act, 1872 — Section 27 — Evidence of recovery.
See Nitin Laxman Pansare Vs. State of Maharashtra 2009 (12) LJSOFT 53

Evidence Act, 1872 — Section 32 — Inconsistent dying declarations.
See Amin Pyarali Bhimjibhai Charniya Vs. State of Maharashtra 2009 (12) LJSOFT 150

Evidence Act, 1872 — Section 45 — Cheating — Forgery — Forged sale-deed — Expert opinion.
See State of Maharashtra Vs. Pundlik Pandurang Biradar 2009 (12) LJSOFT (AUR) 109

Evidence Act, 1872 — Section 68 — Will — Genuineness of — Grant of probate.
See Max Cajeton Travasso Vs. Mrs. I. Fernandes 2009 (12) LJSOFT 152

Evidence Act, 1872 — Section 101 — Dishonour of cheques — Security — Legally enforceable debt/ liability — Burden of proof.
See Rafique Raheman Shaha Vs. State of Maharashtra 2009 (12) LJSOFT (NAG) 76

Evidence Act, 1872 — Section 103 — Property of minor — Part performance of contract — Burden of proof — Deed of cancellation — Doctrine of lis pendence.
See Baliram Sahebrao Tidke Vs. Saheba s/o Patilba Tidke 2009 (12) LJSOFT (AUR) 103

Evidence Act, 1872 — Section 113-A — Abetment to suicide — Cruelty — Presumption.
See Janardhan s/o. Asaram Pere Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 99

Evidence Act, 1872 — Section 113-B — Abetment to suicide — Dowry death — Presumption.

See Sunil Bhiku Yadav Vs. State of Maharashtra 2009 (12) LJSOFT 212

Evidence Act, 1872 — Section 115 — Mohomedan Law — Partition — Right of property by birth — Doctrine of estoppel.

See Iliakhkhan s/o Younuskhani Vs. Talayarkhan s/o Sherkhan 2009 (12) LJSOFT (AUR) 87

Family Courts Act, 1984 — Section 19 — Enhancement of maintenance.

See Mohini Suyog Dahiwadkar Vs. Suyog Vasudeo Dahiwadkar 2009 (12) LJSOFT 203

General Standing Order No.503 — Rule 57 — Promotion — Eligibility.

See Babu s/o Namdevrao Gaikwad Vs. Vice Chairman and the Managing Director, Maharashtra Road Transport Corporation 2009 (12) LJSOFT (NAG) 113

Hindu Adoption and Maintenance Act 1956 — Section 18 — Hindu Marriage Act, 1955 — Section 25 — Family Courts Act, 1984 — Section 19 — Enhancement of maintenance.

1) Claim of maintenance — Petition for divorce filed by husband on the ground of cruelty is dismissed — Wife declared her unqualified intentions to resume cohabitation with the husband — However the offer made by the wife is not acceptable to the husband and he insisted for annulling the marriage — Right of maintenance as guaranteed u/s 18 of Maintenance Act cannot be taken away. (See para 6)

2) Enhancement of maintenance — Husband

is a partner along with his brother in the family business of jewellery — He has no one else to support in the family as of now — Husband did not place any document on record to point out that he was earning less than Rs.25,000/- per month — Application u/s 18 of Maintenance Act and u/s 25 of the Hindu Marriage Act cannot be considered on the same footings — While considering the application u/s 18 of Maintenance Act, the requirement for residence, the standard of living, which could be available to the wife in the matrimonial home, are required to be taken into consideration — Maintenance amount of Rs.3000/- enhanced to Rs.10,000/- p.m. (See para 7)

Result : Appeal allowed.

Mohini Suyog Dahiwadkar Vs. Suyog Vasudeo Dahiwadkar 2009 (12) LJSOFT 203

Hindu Marriage Act, 1955 — Section 8(1) — Family pension — Entitlement to — Succession Certificate — Registered marriage — Validity of marriage — Proof of — Presumption.

Succession certificate — Application opposed by daughter of deceased on the ground that respondent was not the widow of deceased — There is a strong presumption in favour of validity of a marriage and the legitimacy of its offspring when from the time of the alleged marriage the parties are recognised by all persons concerned as man and wife and are so described in important documents and on important occasions — Besides the word of respondent and the certificate of registration of marriage there is the application made by deceased to the Accountant General for treating Respondent as his wife for the purpose of pension — Conduct of deceased in filing form No.4 with his own photograph with that

of respondent in triplicate, enclosing death certificate of his first wife and also certificate of his marriage with Respondent clearly prove his marriage with Respondent — Trial Court rightly held that the respondent was legally wedded wife of deceased and as such she was entitled to succession certificate. (See para 16, 17, 18)

Result : Application dismissed.

Sow.Sushma w/o Hemantrao Bodas Vs. Smt. Malti w/o Madhukar Machile 2009 (12) LJSOFT (AUR) 82

Hindu Marriage Act, 1955 — Section 11, 25 — Void marriage — Claim of maintenance — Proof of marriage.

Petition filed by appellant-wife for getting a decree of nullity of her marriage with the respondent and for maintenance — Respondent contended that he was never married to the appellant and their marriage had not taken place at all — Invitation card produced by the appellant creates doubt as no person who has received the invitation has been examined — Even the time of the marriage is not mentioned in the invitation card — Videographer who had video-recorded the marriage function has not been examined and no negatives of the photographs are produced on record — Not possible to believe that after the marriage the appellant and respondent had gone to Lonavala for honeymoon with other family members — Passport of wife obtained subsequent to alleged marriage not showing address of her husband as her permanent address — No explanation as to why passport was obtained from Lucknow even though the parties were residing at Mumbai — Simply because there are some photographs taken and that they knew each other very well itself cannot be a decisive factor for coming to the conclusion

that both of them have married — Evidence on record do not establish that the actual marriage had taken place between the parties — Trial Court rightly held that factum of marriage is not proved — As the marriage is not proved, naturally the appellant is not entitled to the relief of maintenance. (See para 11, 12, 23, 24)

Result : Appeal dismissed.

Ranjana Vinod Kejriwal Vs. Vinod Babulal Kejriwal since deceased through LRs. 2009 (12) LJSOFT 106

Hindu Marriage Act, 1955 — Section 13(1)(ia), 23 — Divorce — Cruelty.

Petition filed by appellant-husband for seeking divorce on the ground of cruelty — Respondent-wife filed a complaint u/s 498-A of IPC — Appellant approached the police station and his statement was recorded — No further steps were taken by the police on the said complaint — Same cannot be termed as case of cruelty — Admissions by husband indicate that he had condoned the alleged acts of cruelty till April 2001 but when the respondent filed the police complaint the husband decided to seek divorce — Wife does not accept that the marriage is irretrievably broken down because she is, at any time, willing to join the husband's company for cohabitation — Also there is no provision under the Hindu Marriage Act to grant a divorce on the ground that the marriage is irretrievably broken down — Family Court rightly held that the husband could not establish the ground of cruelty and the petition of the husband would be hit by Section 23 of the Act. (See para 9, 10, 11)

Result : Appeal dismissed.

Suyog Vasudeo Dahiwadkar Vs. Mohini Suyog Dahiwadkar 2009 (12) LJSOFT 202

Hindu Marriage Act, 1955 — Section 13(i)(i-1) — Divorce — Cruelty — Freedom of speech of wife.

1) Petition filed by appellant-husband for divorce on the ground of alleged cruelty on the part of the respondent-wife — Quarrels between spouses on trivial matters in the day to day married life may not amount to cruelty — In law the cruelty has to be of one spouse to the other — Normal wear and tear of marriage do not amount to cruelty — Simply because in a given case wife makes some grievance in a louder voice such act can never be treated as an act of cruelty — On marriage the right of freedom of speech of wife cannot be said to have been taken away in any manner, otherwise after marriage the wife will have no right to speak at all in any manner in the family. (See para 17, 18)

2) Divorce — Delay — Simply because the Family Court took more than fourteen years in deciding the case is no ground for dissolving the marriage — No party to the litigation can take benefit on the ground that the court proceedings are taken long time and on that ground Court should grant decree of divorce by holding that the marriage is irretrievably broken down — Decree of divorce cannot be granted only on the ground that now considerable time has passed since the appellant and respondent are separated and High Court should presume that the marriage has irretrievably broken down. (See para 22)

3) Divorce — Legislature has not provided irretrievable breakdown of marriage as one of the grounds u/s 13 — Powers of the Supreme Court under Article 142 of the Constitution of India are different — Decision of the Supreme Court under Article 142 of the Constitution of India cannot be straightaway

made applicable to the proceedings before the High Courts. (See para 24)

Result : Appeal dismissed.

Bajrang Gangadhar Revdekar Vs. Pooja Bajrang Revdekar 2009 (12) LJSOFT 89

Hindu Marriage Act, 1955 — Section 25 — Enhancement of maintenance.

See Mohini Suyog Dahiwadkar Vs. Suyog Vasudeo Dahiwadkar 2009 (12) LJSOFT 203

Hindu Marriage Act, 1956 — Section 26 — Maintenance of child — Both spouses earning — Contribution of parents.

Maintenance of child — Minor child is about three years of age and both his parents are employed — Though both spouses are obliged to contribute towards maintenance of the child but this need not be an equal contribution — Respondent father earning Rs.10000/- p.m. as against the income of Rs.3,500/- of Appellant mother — Respondent obliged to provide a sum of maintenance proportionate to his earning and bearing in mind the needs of the child — Maintenance payable by the Respondent for the expenses of minor child increased from Rs.800/- to Rs. 1500/- p.m. (See para 4, 5)

Result : Accordingly.

Rutuja Rajesh Surve Vs. Rajesh Yashwant Surve 2009 (12) LJSOFT (URC) 8

Hindu Minority and Guardianship Act, 1956 — Section 8(2), 8(3) — Property of minor — Part performance of contract — Burden of proof — Deed of cancellation — Doctrine of lis pendence.

See Baliram Sahebrao Tidke Vs. Saheba s/o Patilba Tidke 2009 (12) LJSOFT (AUR) 103

Hindu Minority and Guardianship Act, 1956 — Section 12 — Property of minor — Alienation by mother — Legal necessity.

Mother of minor child can sell property owned by her as a guardian of the child — However such alienation has to be justified and property could have been sold for legal necessity — Concurrent finding of fact recorded by both the Courts below that there was no legal necessity for Respondent No.2 herein to have sold her share in the suit property — Appellants have not proved that they were bonafide purchasers for value without notice — Suit has rightly been decreed holding that Respondent No.1 is entitled to 4/27th share of the suit property. (See para 11, 13, 14)

Result : Appeal dismissed.

Balwant Aloba Patil & Ors. Vs. Prakash @ Gulabrao Y. Ghatage & Ors. 2009 (12) LJSOFT 116

Hindu Succession Act, 1956 — Section 15(1)(a) — Will — Proof of — Burden of proof.

See Dr. Manoj Shantilal Nanavati Vs. Nandini M. Dasadia 2009 (12) LJSOFT 115

Hyderabad Abolition of Inams and Cash Grants Act, 1954 — Inam land — Plea of adverse possession — Limitation.

1) Suit for possession — Inam land — Plaintiffs claimed after Inam was abolished re-grant of the land was made — Respondent Nos.1 to 3 contended that predecessor in title of the plaintiffs had given entire suit land on the basis of agreement of Batai in 1953 and on 2-3-1955 sale-deed was executed by predecessor in title of the plaintiffs in favour of defendant Nos.2 and 3 and father of defendant No.1 and they continued to be in possession of the property — After the sale-

deed is executed the purchasers believed themselves to have purchased the property and got their names mutated to the revenue record and continued to act as owners of the property — Possession was adequate in publicity and was adverse in nature — It cannot be called permissive possession — Even assuming that due to re-grant and sale being without permission, the sale-deed was invalid still respondent Nos.1 to 3 have perfected their title by adverse possession. (See para 14, 15)

2) Suit for possession — Limitation starts on the date on which the plaintiff first knows or has reason to believe that as owner he should seek possession from the defendant who has denied his rights in the property and/or has set up title hostile to his rights as owner of the property — That would be the date on which cause of action for filing a suit for possession on title arises — Cause of action arose on the date of sale-deed itself or atleast on 30.09.1961 when name of occupier was entered in record as owner though Mutation Entry — Courts below rightly held that suit was filed on 26.02.1974 is barred by limitation. (See para 16)

Result : Appeal dismissed.

Gangadhar Pandurang Puranik Vs. Dnyanoba Nivrutti Mundhe & ors. 2009 (12) LJSOFT (AUR) 188

Immoral Trafficking (Prevention) Act, 1956 — Section 17 — Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 29, 31, 32, 33, 39(3) — Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 24, 25 — Constitution of India, 1950 — Article 227 — Age of victims — Enquiry — Powers of Committee — Writ jurisdiction.

1) Hotel premises raided by police on

allegation that certain persons were involved in prostitution — Victim girls picked-up by the Police — Obligation of a Magistrate to ascertain the age of the victims when the victims are produced before him as required by section 17(1) of PITA — Detailed inquiry is not contemplated — Magistrate may question the victim and may examine the record produced by the police officer or by any other authority and may seek medical opinion — He may also consider the documents produced on behalf of the victim — If the Magistrate is of the opinion that the victim appears to be under 18 years of age a direction has to be issued for producing the child before the Committee — In writ petition High Court cannot hold an inquiry on the basis of the documents annexed to the petition and record a finding of fact on the age of victim — Determination of age is a matter of inquiry — Such an inquiry cannot be held in a petition under Article 227 of the Constitution of India. (See para 16, 18)

2) Child Welfare Committee — Lack of infrastructure — Public Prosecutor will have to point out to the concerned ministry the displeasure expressed by High Court as regards the lack of infrastructure and facilities to the committees — He will have to take instructions and make necessary statement before High Court as regards the decision taken by the State for providing of the necessary infrastructure facilities to the Committees. (See para 20)

Result : Accordingly.

Sameedul Nisha Mohammed Haroon Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 156

Income Tax Act, 1961 — Section 245HA(1)(iv), 245HA(3) (As inserted by

Finance Act, 2007) — Constitutional validity of — Constitution of India, 1950 — Article 14 — Application before Settlement Commission — Time limits — Cut-off date — Abatement of proceeding — Assurance of Confidentiality — Arbitrary withdrawal of — Interpretation of statutes — Just, equitable and reasonable interpretation — Reading down of provisions.

1) Petitioners challenging the constitutional validity and legality of the provisions of Section 245HA(1)(iv) and 245HA(3) — Fixing of 31-3-2008 as the date for disposal of applications which were pending as on 1-6-2007 — Such applications which could not be disposed of on or before 31-3-2008 stand abated — Consequences apart from abatement of application for no fault of the applicant has also resulted in the confidential information being available to the A.O. and other authorities under the Act — Choice of 31-3-2008 as the cut-off date not supported by any rationale reasons — Applicant cannot be visited with such great hardship, disadvantage and prejudice for no fault of its own but solely by reason of the inability of the Settlement Commission to dispose of such application by the specified date — Amendment made by the Finance Act 2008 in no way remedy the unconstitutionality and the arbitrariness of the impugned provisions — Fixing of cut-off date u/s 245D(4A)(1), the abatement u/s 245HA(1)(iv), making available the confidential information u/s 245HA(3), as inserted by the 2007 Act, would be clearly ultra vires the Constitution and are liable to be struck down as null and void ab initio — However it is open to High Court instead of striking down the impugned provision in its entirety to read down such provision in such a manner so as to set at naught the

unconstitutional portion — Harmonious interpretation of Section 245D(4A) and 245HA(1)(iv) would remove the vice of arbitrariness and save the provisions from being struck down as unconstitutional — Time limit for disposal of an application u/s 245D(4A)(1) will have to be read as ‘may’ to the extent that it is not on account of the fault of the applicant — By reading the words “any other application made u/s 245C” in section 245HA(1)(iv) as “any other application made under section 245C, where due to reasons attributable to the assessee” High Court would avoid rendering any part of either section 245D(4A)(i) or section 245HA(1)(iv) otiose, meaningless or redundant — Said recourse has been taken in order to avoid holding the provisions as unconstitutional. (See para 25, 26, 32, 33, 36, 37, 40, 50, 53, 54)

2) Reading down the provisions to uphold their constitutionality — Open to High Court instead of striking down the provision in its entirety to read down such provision in such a manner so as to set at naught the unconstitutional portion — Where the plain literal interpretation produces an absurd or manifestly unjust result which could never have been intended by the legislature, the Court might fine tune the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction — Court may modify the language used by the Legislature or even “do some violence” to it, so as to achieve the obvious intention of the Legislature and produce a rational construction. (See para 39 to 48)

Result : Rule made absolute.

Star Television News Limited Vs. Union of India & ors. 2009 (12) LJSOFT 120

Income Tax Act, 1961 — Section 32(I)(ii) (As amended w.e.f. 1/4/1998) — Bombay Stock Exchange Membership Card (BSE card) — Depreciation on intangible assets — Restrictive applicability of.

BSE card acquired by an assessee on or after 1/4/1998 — Claim of depreciation — Depreciation u/s 32 is restricted to a class of tangible/ intangible assets specifically enumerated therein — Intangible assets on which depreciation is made allowable u/s 32(1)(ii) are, knowhow, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature acquired on or after 1/4/1998 — Expression ‘licences’ in Section 32(1)(ii) has to be construed restrictively so as to apply to licences relating to acquisition / user of intellectual property rights — Construing the expression ‘licences’ in Section 32(1)(ii) widely so as to apply to all types of licences relating to intangible assets would defeat the object of the Act — Since the BSE card is not a business or commercial right relating to intellectual property rights depreciation cannot be allowed on the BSE card — Tribunal was not justified in allowing depreciation on the BSE card acquired by the assessees. (See para 31 to 37)

Commissioner of Income Tax Vs. Techno Shares & Stocks Limited 2009 (12) LJSOFT 43

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

1) Murder trial — Evidence of witnesses consistent and believable regarding the overt act of accused no.1 that he inflicted blow of Katti on the neck of deceased and caused his

death — Medical evidence also corroborates with the said ocular evidence of two eye witnesses — Blow inflicted on the vital part of the body which resulted in to instantaneous death of the victim establishes the intention to kill victim — Trial Court rightly held accused No.1 guilty for the offence punishable u/s 302 of IPC. (See para 36, 50)

2) Murder trial — Unlawful assembly — Common object — Accused Nos.1 to 6 had called the victim and took him to house of accused No.3 to settle the dispute — It was an invitation for compromise and no ill will can be attributed in respect of said common object — By no stretch of imagination, it can be construed and inferred that accused Nos.1 to 6 were members of unlawful assembly in prosecution of common object to assault deceased and accused Nos.2 to 6 were knowing that accused no.1 would assault deceased and would commit his murder — Mere presence of accused Nos.2 to 6 in the unlawful assembly cannot render them liable, unless there is proof of common object to murder the victim which was shared by them and no such proof has been established by the prosecution against the said accused persons — Trial Court rightly acquitted accused Nos.2 to 6 for the charges levelled against them. (See para 48, 49)

Result : Appeals dismissed.

Kamalakar Keshav Gajbhare Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 98

Indian Penal Code, 1860 — Section 186, 189, 353 — *Obstructing public servant in discharge of public functions* — Assault — Revision — Quantum of sentence.

See Bhimrao S/o Nagorao Hattimbire Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 164

Indian Penal Code, 1860 — Section 302 r/w Section 34 — Evidence Act, 1872 — Section 27 — Murder — Circumstantial evidence — Appreciation of evidence — Evidence of recovery — Appeal against conviction.

1) Murder — Circumstantial evidence — Reasoning set out by the trial Court is erroneous and is not supported by the evidence on record brought by the prosecution — Chain of circumstances was broken, on more than one counts — Investigation suffered from serious lapses and was conducted in equally casual, tardy and negligent manner — Prosecution failed to bring on record clinching evidence to prove, beyond reasonable doubt, that the accused or any one of them had in fact caused the murder of the deceased — Benefit of doubt favour the accused so far as the charge of murder is concerned — Accused deserve to be acquitted from the charge punishable u/s 302 r/w 34 if IPC. (See para 17)

2) Causing grievous hurt — Empty bottle of sulphuric acid was recovered at the spot of incident and the deceased had also sustained acid injuries on his face and chest — Prosecution established that the accused had sustained injuries on their person and the injuries were caused by sulphuric acid — Cause of injuries was within the personal knowledge of the accused — Failure of accused to explain at what place and in which incident, they had sustained the injuries and the incident which assumes importance and would supply the missing link in the chain of circumstances — Prosecution established and proved that the accused have committed an offence punishable u/s 326 of IPC though such a charge was not framed by the trial Court. (See para 19, 20)

3) Recovery of weapons — Blood was found only on axe and there was no blood detected on the knife — Though it was the prosecution case that the accused No.1 had assaulted the deceased with wooden plank, their finger prints ought to have been taken and this was not done — In the absence of the finger prints report there is no acceptable evidence, which could go to show that these weapons or any other weapons were used by accused — Assault by an axe could not be linked to either of the accused. (See para 14)

4) Recovery of clothes on 15-8-1992 and presence of sulphuric acid on them — Clothes sent to the C.A as late as on 13-9-1992 — No justification given or any circumstances which could support this delay — May be unsafe to rely upon the C.A report regarding the presence of sulphuric acid on the clothes of the accused. (See para 16)

Result : Appeals partly allowed.

Mohammed Hussain Abdul Wahab Kathewadi Vs. State of Maharashtra 2009 (12) LJSOFT 38

Indian Penal Code, 1860 — Section 302 — Evidence Act, 1872 — Section 9, 27, 45 — Murder — Medical evidence — Evidence of recovery — Appreciation of evidence — Appeal against conviction.

1) Murder — Appellant allegedly came to the dhaba and without speaking a word he assaulted deceased by means of kukri — Incident was witnessed by one Police Constable — Test Identification Parade discarded by the trial Court since the procedure adopted by the Executive Magistrate while holding identification parade was not proper — Said eye-witness has also not specifically identified the appellant in the Court — Re-appreciation of evidence of said

witness creates serious doubt about genuineness of his evidence and in absence of identification of the appellant it is unsafe to place reliance on the testimony of this witness — Informant who lodged the FIR stated that he did not see who assaulted deceased — Testimony of this witness does not improve the case of prosecution — Evidence adduced by the prosecution found to be unreliable — Conviction awarded by the trial Court u/s 302 of IPC cannot be sustained. (See para 11, 12, 13)

2) Murder — Medical evidence is always a corroborative piece of evidence — Same on its own is inadequate to fasten criminal liability on the appellant for causing murder in the absence of any other trustworthy and reliable evidence. (See para 13)

3) Evidence of recovery — Panch witnesses turned hostile — If other trustworthy and cogent evidence is available then seizure of clothes, memorandum statement, etc. can be proved by the Investigating Officer — However when the prosecution evidence in totality is not convincing and reliable, in such situation, it will be unsafe to follow the said course. (See para 13)

Result : Appeal dismissed.

Shyam Nalalla s/o Kantayya Nalalla Vs. State of Maharashtra 2009 (12) LJSOFT (NAG) 29

Indian Penal Code, 1860 — Section 302 — Evidence Act, 1872 — Section 32 — Murder — Inconsistent dying declarations — Appeal against conviction.

Murder trial — Conviction of accused based on dying declaration — Six dying declarations — In three of them she stated that her catching fire was extinguished — In one dying declaration she blamed her husband, her

father-in-law and her sister-in-law — In other two she stated that her husband gave a kick to the lighted stove which fell on her — If there are number of dying declarations which are contrary to each other and are not compatible with each other, then convicting a person on the basis of the dying declarations would be hazardous — No corroborative evidence either to come to a conclusion that the dying declaration indicting the accused was true or the dying declarations which exonerated the accused were true — No other evidence on record which could warrant conviction of the accused — Order of conviction and sentence set aside. (See para 12, 14, 15)

Result : Appeals allowed.

Amin Pyarali Bhimjibhai Charniya Vs. State of Maharashtra 2009 (12) LJSOFT 150

Indian Penal Code, 1860 — Section 302, 307, 324 r/w Section 34 — Evidence Act, 1872 — Section 27 — Murder — Evidence of recovery — Appeal against conviction.

1) Murder trial — Evidence of recovery — Same panch witness used in various panchanamas and the panchanamas were drawn on different dates — That however does not mean that he was disqualified to act as pancha — Weapons were recovered at the instance of accused from the shrubs near the streamlet — Cannot be said that the weapons were recovered from the open place accessible to all. (See para 32)

2) Murder trial — Assault took place on 15-11-2001 and deceased died on 2-1-2002 — Contended that police did not record the dying declaration though doctor deposed that the medical papers indicated that deceased was conscious, well oriented and alert — Rejecting the contention held that evidence shows that

deceased was not in a position to speak and was operated thrice during that period — When doctor deposed that well oriented means the person is in a position to obey verbal commands and this does not necessarily mean that the patient is also in a position to speak — Positive evidence led by the prosecution shows that deceased was in a critical condition and was not able to speak. (See para 34)

Result : Appeals dismissed.

Nitin Laxman Pansare Vs. State of Maharashtra 2009 (12) LJSOFT 53

Indian Penal Code, 1860 — Section 302, 376 — Rape and murder — Circumstantial evidence — Appeal against acquittal — Accused in custody — Inability to provide surety — Compensation.

See State of Maharashtra Vs. Bapu Pandu Mali 2009 (12) LJSOFT 67

Indian Penal Code, 1860 — Section 304-B, 498-A _ Evidence Act, 1872 — Section 113-B — Dowry Prohibition Act, 1961 — Section 2 — Abetment to suicide — Dowry death — Presumption — Term “Dowry” — Meaning of — Appeal against conviction.

Deceased committed suicide by setting herself on fire — Brother and mother of deceased deposed that deceased has told her that she was harassed and beaten on the ground that she should bring money from her parents — Witnesses have spoken about four separate incidents but they could not even state the approximate time when deceased had come to their house — Only vague and general statements have been made by these witnesses — No material to show that “soon before” her death deceased was subjected to cruelty or harassment by any of the accused persons — Appellant no.1 and deceased were in love and

same was opposed by family of deceased as they did not belong to the same caste — They both ran away from home and got married — None of the relatives of deceased were present — None of the relatives of the victim girl had met either the appellant no.1 or any of his family members either before or during the marriage or even thereafter — No question of any agreement between the parties to give directly or indirectly any property in connection with the marriage — Second ingredient of Section 304-B i.e. being subjected to cruelty for or in connection with “dowry” is not satisfied, hence, Section 304-B cannot apply — Conviction of the accused u/s 304-B r/w 34 of IPC cannot be sustained. (See para 10, 12, 14)

Result : Appeal partly allowed.

Sunil Bhiku Yadav & ors. Vs. State of Maharashtra 2009 (12) LJSOFT 212

Indian Penal Code, 1860 — Section 306, 498-A r/w Section 34 — Evidence Act, 1872 — Section 113-A — Abetment to suicide — Cruelty — Presumption — Appeal against conviction.

1) Deceased committed suicide by consuming poison - insecticide — Appellants are the brother-in-law and mother-in-law of deceased — Deceased was carrying foetus of about three months pregnancy — Ordinarily such a young woman having pregnancy would not have taken such a drastic step of ending the life without there being substantial reason which could seriously create the mental turmoil — She was doing job as Anganwadi Sevika and was being ruthlessly treated by the appellants and the other family members Conduct of the appellants was such that deceased felt humiliated because she was being attributed unchaste behaviour due to her

meeting with the people or conversation with them — Evidence shows that only one month before her death she was reached to house of her elder sister with her hands and legs tied like an animal — Conduct of the appellants would certainly amount to “matrimonial cruelty” and their saying that she was no more required to her husband also is the additional factor in this behalf — Willful conduct of the appellants was of such a nature as was likely to drive her to commit the suicide — Conviction of the appellants u/s 498-A r/w Section 34 of IPC is legal and proper. (See para 11, 12, 16)

2) Abetment to suicide — Cannot be said that only because the married women committed suicide within the period of seven years of the marriage, presumption u/s 113-A of Evidence Act would be attracted — There must be proximate relationship between the matrimonial cruelty and the act of the suicide of a married woman — Necessary to prove that “soon before her death”, the married woman was subjected to matrimonial cruelty and that she died under suspicious circumstances — Deceased was separately residing in a room of the same house since about 15 days before her death — Difficult to say that in those 15 days, she was subjected to matrimonial cruelty by the appellants as they were separately residing in the same house — No tangible evidence to show that the appellants subjected deceased to cruelty “soon before her death” — Conviction and sentence to the extent of offence punishable u/s 306 of IPC set aside. (See para 17, 18)

Result : Appeal partly allowed.

Janardhan s/o. Asaram Pere & Anr. Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 99

Indian Penal Code, 1860 — Section 307, 308 — Attempt to murder — Attempt to commit culpable homicide — Intention — Appeal against conviction.

Wife of accused was suffering from piles and had asked the accused to bring tablets from medical shop — Accused replied that he had no money and also gave two slaps on her cheek — Later in the anger accused said that “now I will kill you” and thereafter he went inside the kitchen, brought can containing kerosene and poured kerosene on her person and set her on fire — She sustained 52% burn injuries which were life threatening — Offender in such case cannot be permitted to say that he had excuse for causing burn injuries to her likely to cause death, such act is imminently dangerous and in all probability it can result into death or such bodily injury as is likely to cause death — No such offender can be allowed to plead that he did not know that by pouring kerosene on the person of his wife, he was not likely to cause her death — Submission that such crime may be punishable under minor or for less aggravated offence u/s 308 of IPC on the ground that it is an attempt to commit culpable homicide cannot be accepted — Offences of wife burning or attempts to do so attract severe punishment — In such case the Court should deal with most severe and strict manner and award maximum penalty — Section 307 of IPC was correctly applied by the trial Court while convicting the accused. (See para 7, 8, 9)

Result : Appeal dismissed.

Chandu Kisanrao Chavhan Vs. State of Maharashtra 2009 (12) LJSOFT (NAG) 71

Indian Penal Code, 1860 — Section 324 r/w Section 34 — Voluntarily causing hurt — Quantum of sentence.

See Bhagwat @ Uttam S/o. Shripati

Khandagale Vs. Baliram S/o. Dhondiba Pawar 2009 (12) LJSOFT (URC) (AUR) 12

Indian Penal Code, 1860 — Section 363, 366-B r/w Section 34 — Kidnapping — Quashing of F.I.R.

See Saiyed Najer Vs. State of Maharashtra 2009 (12) LJSOFT (URC) (AUR) 5

Indian Penal Code, 1860 — Section 376(1), 506(II) — Rape — Minor girl — Consent — Criminal intimidation — Appeal against conviction — Quantum of sentence.

1) Rape case — Age of prosecutrix, at the relevant time, was 15 years, whereas accused was of 19 years of age — Prosecutrix herself stated in her deposition that accused has committed the act repeatedly — No evidence of resistance being put by the prosecutrix — Possibility of their having intimate relations cannot be ruled out — Even assuming that act committed by the accused is with consent, however, as age of prosecutrix, at the relevant time, was less than 16 years, in view of provisions of 375 (sixthly), the act done by the accused would amount to offence — However, considering the circumstances punishment of 10 years RI appears to be too harsh — Imposition of sentence of seven years would serve ends of justice. (See para 8)

2) Criminal intimidation — Prosecution has failed to establish that the prosecutrix was intimidated by the accused — As the act of accused with prosecutrix appears to be consensual, the charge u/s 506(II) of IPC cannot be said to have been established — Accused entitled to be acquitted in respect of charge u/s 506(II) of IPC. (See para 9)

Result : Appeal partly allowed.

Laxman s/o Vilas Gaikwad Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 196

Indian Penal Code, 1860 — Section 405, 406 — Code of Criminal Procedure, 1973 — Section 200, 204, 401 — Criminal breach of trust — Mediator — Revision against order issuing process.

Criminal breach of trust — Applicant no.1 had agreed to work as mediator — Non applicant no.2 entrusted two duly signed blank cheques to applicant no.1 with an understanding he would give the said cheques to applicant no.2 after the bills submitted by applicant no.2 are scrutinized by Architect — Without instructions applicant no.1 delivered the cheques to applicant no.2 thereby violating the terms of agreement — Applicant no.2 filled the said cheques and as the cheque got dishonoured non applicant no.2 had to face the trial — Facing of trial by non applicant no.2 will have to be treated as wrongful loss, which non applicant no.2 had to suffer keeping in view the definition of Section 405 of IPC — Anything done contrary to the understanding will have to be treated as having been done with necessary mens rea — Act of applicant No.1 would fall within the meaning of term of a criminal act and in violation of understanding — Though transaction appears to be only of civil nature but considering the agreement and events the transaction will definitely fall within four corners of an offence under IPC — Cannot be said that the process issued for charge u/s 406 of IPC was illegal. (See para 6, 7, 8, 9)

Result : Application dismissed.

Dr. Ashok Uddhao Patil & anr. Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (NAG) 47

Indian Penal Code, 1860 — Section 405, 409, 120-B — Security scam — Criminal breach of trust — Criminal Conspiracy —

“Securities” — Definition of — Jurisdiction of Special Court.

See Sudhir Shantilal Mehta Vs. C.B.I. 2009 (12) LJSOFT (SC) 123

Indian Penal Code, 1860 — Section 406 — Criminal breach of trust — Entrustment of property — Appeal against acquittal.

Complaint filed by mother against son and daughter-in-law for not returning the gold ornaments — However, process was issued against only her daughter-in-law — As Complainant was feeling insecure on account of thefts she had entrusted her gold ornaments to her son who handed over the said ornaments to his wife — Legal custody of the ornaments was with son though the actual custody was with the accused — It is the son who ought to have been prosecuted and in case no process was issued against him that order ought to have been challenged — Order of trial Court acquitting the accused u/s 406 IPC not liable to be interfered with. (See para 12)

Result : Appeal dismissed.

Smt. Khatizam Bi Sikandar Khan Vs. Smt. Rahimat Bi Khan & anr. 2009 (12) LJSOFT (URC) (GOA) 36

Indian Penal Code, 1860 — Section 406, 409, 420, 465, 468, 471, 120-B — Withdrawal of prosecution — Cheating.

See Theodoro Antonio Agnelo Salvador D’Souza Vs. Somnath Zuwarkar 2009 (12) LJSOFT (GOA) 125

Indian Penal Code, 1860 — Section 406, 420, 511, 507 r/w Section 34 — Dispute regarding family property — Misappropriation of property — Quashing of criminal proceedings **See Manisha Manohar Gokhale Vs. State of Maharashtra 2009 (12) LJSOFT 25**

Indian Penal Code, 1860 — Section 419, 420, 468 r/w Section 34 — Evidence Act, 1872 — Section 45 — Cheating — Forgery — Forged sale-deed — Expert opinion — Delay in lodging F.I.R. — Appeal against acquittal.

1) Forged sale-deed — Respondent No.4 allegedly impersonated as complainant and executed sale deed in his own favour — Sale deed was brought about by Respondent Nos.1 to 4 in connivance with each other with a view to cause wrongful loss to the complainant — Attesting witnesses were relations living in the same village — Report of State handwriting expert shows that signature on the sale deed as executant was not that of complainant — Respondent Nos.1 to 4 committed forgery in respect of the said sale-deed for the purpose of cheating the complainant in order to dishonestly deprive him of the agricultural land in question — Impugned judgment of acquittal is unsustainable — Respondent Nos.1 to 4 are guilty of the charges for offences punishable u/s 419 and 468 r/w Section 34 of IPC. (See para 14, 15)

2) Forged sale-deed — Thumb impression — Process of enlargement of photographs is carried out in the discharge of official duty by the concerned staff members of Finger Print Bureau — Unless there is some reliable material on record to infer manipulation committed by such staff member the opinion of the handwriting expert cannot be discarded for a trivial reason that the enlargement of the photographs of the thumb impression were not made — Learned Judicial Magistrate committed patent error while rejecting the opinion of the handwriting expert.. (See para 10 to 14)

3) Forged sale-deed — Delay in lodging the F.I.R. — Not an usual case in which the question of delay is of significance —

Complainant received information from the village Talathi on 10.2.1988 and thereafter immediately obtained a copy of the sale-deed — He immediately acted upon such information, got verified the fact that a bogus sale-deed was brought about and thereafter lodged the FIR 10.12.1988. (See para 14)
Result : Appeal allowed.

State of Maharashtra Vs. Pundlik Pandurang Biradar & ors. 2009 (12) LJSOFT (AUR) 109

Indian Penal Code, 1860 — Section 420 r/w Section 34 — Sick Industrial Companies (Special Provisions) Act, 1985 — Section 17(1), 17(3), 22(1) — Cheating — Non-payment of amount — Sick company — Inability to pay.

Non-payment of amount towards the goods supplied by Respondent No.1 — Applicant no.2 informed respondent No.1 that applicant no.1 has been declared as a sick unit and therefore the applicants were unable to pay the bills — No allegation made that there was any intention to deceive on the part of the applicants from the inception of the transaction or that there was any dishonest inducement — None of the ingredients of sections 415 and 420 of IPC were made out — Order issuing the process set aside (See para 4, 5)

Result : Application allowed.

Metal Box (India) Ltd. and anr. Vs. Rashmikant Keshavlal Daftary and anr. 2009 (12) LJSOFT (URC) 167

Indian Penal Code, 1860 — Section 494 r/w Section 114 — *Second marriage during the lifetime of wife* — Abetment — Quashing of process — Death of complainant.

See Vithoba s/o Kachruji Kathole Vs. Pushpa Vithoba Kathole (Deceased) through LRs. 2009 (12) LJSOFT (NAG) 107

Indian Penal Code, 1860 — Section 498-A — Suicide — Ill-treatment — Cruelty — Appeal against conviction — Quantum of sentence.

1) Deceased committed suicide by setting herself on fire — In dying declarations she stated that on account of frequent quarrels with her mother-in-law, she was fed up and, therefore, she set herself on fire — Letters written by deceased and the evidence of her brother shows that there was continuous ill-treatment at the hands of the appellant which left her with no alternative but to end her own life — Trial Court rightly convicted the appellant u/s 498-A of IPC. (See para 9 to 12)
2) Quantum of sentence — Appellant is a lady and her age is 70 years — Incident had taken place in the year 1991 — Considering the age of the appellant the sentence of imprisonment reduced to the period undergone by the appellant. (See para 13)

Result : Appeal partly allowed.

Smt.Kausalyabai Ramnath Dayama Vs. State of Maharashtra 2009 (12) LJSOFT 213

Indian Telephone Rules, 1951 — Rule 440, 443 — *Setting aside of award* — Telephone arrears — *Recovery of* — Word “subscriber”.
See Mahanagar Telephone Nigam Ltd. Vs. Abdul Rahim Mohamed Yasin 2009 (12) LJSOFT (URC) 26

Indian Trust Act, 1882 — Section 34, 59, 60, 61 — Bombay High Court (Original Side) Rules, 1980 — Rule 238 — Management of Trust property — Trust Petition — Jurisdiction of the Court — Scope and limit of — Maintainability of petition.

1) Trust Petition — Person who has a cause can certainly file a suit but cannot merely file an application/petition in respect of matters

not covered by section 34 of Indian Trust Act — Dispute cannot be resolved in a summary enquiry but would require in full fledged trial in a suit — Ordinarily an originating summons is decided in a summary manner and is expected to deal with matters which are not seriously contested and where there is no dispute of facts — Permission to treat the present Trust Petition as an originating summons under Rule 238 of Original Side Rules refused. (See para 12)

2) Application/ petition u/s 34 of Trust Act can be filed only by a Trustee and not by a beneficiary or any other person — (ii) Jurisdiction of a court u/s.34 is in the nature of an advisory jurisdiction — Court gives an opinion, advise or a direction in respect of the management or administration of the trust property other than questions of detail, difficulty or importance, not proper in the opinion of the Court of summary disposal — In a petition u/s.34 the Court cannot pass an order at the instance of a beneficiary against trustees preventing a breach of trust — For such a cause appropriate remedy would be a regular suit. (See para 7)

3) Trust Petition — Power to make an application u/s 34 is clearly circumscribed only in respect of the matters specified in section 34 — Section 34 enables the court to give an opinion, advice or direction by holding summary enquiry — Complicated issues involving rights of the parties especially when a dispute is raised by a beneficiary alleging breach of trust are incapable of summary decision and cannot be decided by an application u/s.34 of Indian Trust Act. (See para 10)

Result : Accordingly.

Sanjay Kilachand Vs. Suresh Tulsidas Kilachand 2009 (12) LJSOFT 187

Industrial Disputes Act, 1947 — Section 25-F — Daily rated worker — Termination of services — Mode of appointment.

Respondent-workman working as Sepoy with petitioner-Bank from 1986 — He was terminated in 1998 — Though the workman had worked 240 days each year but his appointment was not from the regular stream of appointment — Workman admitted that no appointment order was issued nor he had signed any muster roll and that he was not recommended by the Employment Exchange — Such recruitment would be exfacie illegal, as no prior advertisement was issued nor the Employment Exchange was notified in regard to the vacancy — Being a daily-rated casual employee the concerned workman would not get any right to continue in service and at best, would be entitled to one month's pay in lieu of one month's notice and wages of 15 days of each completed year, as envisaged in Section 25-F of I.D. Act — Order of Tribunal partly allowing the Reference in favour of the concerned workman cannot be sustained being manifestly wrong and in the teeth of settled legal position. (See para 7, 9)

Dena Bank Vs. Ashraf Yunus Shaikh 2009 (12) LJSOFT 171

Industrial Disputes Act, 1947 — Section 25-F — Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30 — Termination of services — Backwages.

1) Services orally terminated — Right of the employer to adduce evidence before the Labour Court by making application in case no enquiry is held or if enquiry held is defective — Allowing the petitions matters remanded to the Labour Court to consider the evidence placed on record by both the sides

and decide the ULP complaints afresh according to law. (See para 8)

2) Termination of services — Reinstatement with back wages with continuity of service is not always mandatory in case of unlawful termination. (See para 6)

Result : Petitions allowed.

A'One Paper Industries Vs. Subhash s/o Ganpatrao Jadhav 2009 (12) LJSOFT (AUR) 97

Industrial Disputes Act, 1947 — Section 25-F — Temporary appointment — Claim of permanency.

See State of Maharashtra Vs. Kishor Shivdas Chaudhari 2009 (12) LJSOFT (AUR) 136

Industrial Disputes Act, 1947 — Section 33-C(2) — Recovery of arrears — Settlement — Validity of — Jurisdiction of Labour Court — Scope of.

Petitioner filed application u/s 33-C(2) for the recovery of dues according to the Manisha Wage Board award after deducting the amount paid under settlement dated 25-1-2002 — Award was passed by the Wage Board in May 2000 whereas the union entered into a settlement on 25.1.2002 — Labour Court exercising its jurisdiction u/s 33-C(2) cannot be called upon to adjudicate the question whether the union was forced by the company to enter into a settlement on 25.1.2002 — If it is only the existing rights or rights which are incidental to the existing rights, the Labour Court can then in such circumstances, decide the such issues which are incidental to the existing rights of the workmen — Petitioners are bound to obtain appropriate declaration from the appropriate forum and thereafter approach the Labour Court u/s 33-C(2) — Labour Court rightly held that the applicant

could not claim benefits beyond the terms of settlement u/s 33-C(2) of I.D. Act.

Result : Petition dismissed.

Vishram Chandrakant Dalvi Vs. Daily Publications & Anr. 2009 (12) LJSOFT 183

Industrial Disputes Act, 1947 — Section 33-C(2) — Recovery of dues — Non-payment of back-wages — Dismissal of contempt proceeding — Effect of.

Respondent No.1 was granted reinstatement with back-wages — Respondent No.1 filed contempt petition due to non-payment of backwages — High Court held that in the contempt petition, the lis is between the Court and the litigant — It was held that the contempt proceedings could not be utilised as a lever to execute the order of the Labour Court regarding payment of backwages — Observations of High Court in contempt proceedings cannot be regarded as res judicata — In view of continuity of the cause of action the claim could not be treated as barred by limitation — Labour Court or the Industrial Court are the Courts of equity and in an appropriate case, the interest can be granted — Impugned order not liable to be interfered with. (See para 5, 6, 7)

Result : Petition dismissed.

Managing Director, Kannad Sahakari Sakhar Karkhana Ltd. Vs. Vishwnath Jagannath Kshirsagar & ors. 2009 (12) LJSOFT (AUR) 201

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 7-A, 6, 68 — Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002) Rule 6(5), 12(3)(a)(iii) — Claim of juvenility — Determination of age — Jurisdiction of High Court.

1) Claim of juvenility — Powers conferred

on the Board under Juvenile Justice Act could also be exercised by the High Court and the Court of Sessions — Whenever claim of juvenility is raised before any Court, the Court shall make an enquiry, by taking such evidence as may be necessary (but not by an affidavit) to determine the date of birth — High Court is empowered to exercise the jurisdiction in view of the provisions of the Act and the Rules. (See para 22)

2) Murder case — Claim of juvenility — One of the criteria in the mode of establishment of age of a person as provided in Rule 12 is production of birth certificate or an entry of school record demonstrating date of birth of a convict — School leaving certificate produced by petitioner mentions date of birth of the petitioner as 14.8.1980 — Petitioner's age would be 13 years 5 months and 8 days at the time of incident — Even as per ossification report the age of petitioner on the date of commission of offence would be above 14 years 5 months but below 18 years — Petitioner is "juvenile in conflict with law" on the date of commission of offence — Conviction imposed upon the petitioner confirmed — Sentence of life imprisonment quashed and set aside. (See para 21, 24, 26)

Result : Petition allowed.

Radhabai Lahanu Parekar Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (AUR) 45

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 29, 31, 32, 33, 39(3) — Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 24, 25 — Age of victims — Enquiry — Powers of Committee — Writ jurisdiction.

See Sameedul Nisha Mohammed Haroon Vs. State of Maharashtra 2009 (12) LJSOFT (URC) 156

Land Acquisition Act, 1894 — Section 4, 5-A, 6 — Land acquisition proceedings — Publication of notification.

Acquisition of land for the purpose of construction of water storage tank — Publication of substance of notification not done in accordance with law — Same panchanama is executed for four villages which are having different village panchayats — Difficult to appreciate as to how by one panchanama there can be proclamation for four villages — Even the proclamation was of 30-8-2005 and on the same date the objectors were directed to submit their objections — Procedure deprived the petitioners of their valuable rights to raise objection u/s 5A — Entire acquisition proceeding held to be vitiated in so far as the present petitioners are concerned. (See para 5, 6, 8)

Result : Petition allowed.

Laxman s/o Govind Hawale & ors. Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (URC) (AUR) 69

Land Acquisition Act, 1894 — Section 4, 5-A, 6, 17 — Invoking of urgency clause — Dispensing with inquiry — Quashing of acquisition proceedings.

1) Acquisition of land for Nuclear Power plant — Petitioners contended that the urgency clause is wrongly invoked dispensing with inquiry u/s 5-A — Held that power crisis is assuming alarming proportions in India and the project is of great public importance — Urgency is writ large on the facts of the case — Pre and post notification delay would not render the invocation of urgency provision invalid — Nature of the project is such that delay has accelerated the urgency — Lethargy, if any, of the officers cannot vitiate a project

of this nature which is going to benefit a large number of people. (See para 36, 37)

2) Acquisition of land for Nuclear Power plant — Urgency is a matter of discretion and decision of the concerned authorities — Subjective satisfaction of the Government of Maharashtra is based on materials placed before it — Since it is not vitiated by mala fides, colourable exercise of power or by non-application of mind, it's judicial scrutiny on an objective appraisal of facts is not permissible in law — It is entitled to great weight and cannot be tinkered with. (See para 43, 44)

3) Acquisition of land for public purpose — Exercise of urgency power u/s 17(1) or emergency power u/s 17(2) — Possession of land needed urgently or immediately — What is mandatory is publication of the notification u/s 4(1) in the Gazette and thereafter within a gap of a day publication of the declaration u/s 6(1) is mandatory — Notification u/s 4 was published in Government Gazette on 22/2/2007 and declaration u/s 6 was published in Government Gazette on 31/1/2008 — No illegality in the issuance of declaration u/s 6 of L.A. Act. (See para 47, 48)

Result : Petition dismissed.

Dr. Bhikaji Jagannath Waghdhare & ors. Vs. Union of India & ors. 2009 (12) LJSOFT 102

Land Acquisition Act, 1894 — Section 11, 31 — Claim of interest — Apportionment of compensation.

Acquisition of land — Award u/s 11 was passed on 22-8-1985 — Interest would be payable @ 9% p.a. for one year from that date — Amount awarded has not been deposited by the respondent or paid to the petitioners — Dispute regarding apportionment of

compensation should not have deterred the Collector from depositing the amount as required u/s 31 — Not having done so, the interest payable to the petitioners, one year after the amount of compensation was expected to be deposited, would be payable @ 15% p.a. (See para 7)

Result : Petition allowed.

Thaki Hashya Bhoir Decd. Thru Lrs. Vs. Special Land Acquisition Officer 2009 (12) LJSOFT 176

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

Land Acquisition Reference filed at District Court at Osmanabad — It was transferred to the Court at Omerga i.e. new establishment and was renumbered — Petitioner was not aware about the said transfer and also his Advocate also did not intimate to him accordingly — Petitioner could not remain present due to said communication gap — Land Acquisition Reference was rejected without affording any opportunity to the petitioner to adduce evidence therein — Notice were required to be issued to the parties after the said transfer and renumbering of the said Land Acquisition Reference — No notices was issued by the Court to the respective parties — Impugned order quashed and set aside and the said Land Acquisition Reference stands restored to the file. (See para 8, 9)

Result : Application allowed.

Kallappa s/o Hirgappa Nagoba, died, through L.Rs. Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 186

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

Acquisition of land for extension of Gaothan — Sale deed is in respect of 2 Ares land which was sold at Rs. 4000/- — Deducting 50% towards smallness of land the rate works out to Rs. 1,00,000/- per Hector — Further 30% is deducted for three years post dated sale deed — Rate works out in the year 1983 approximately Rs. 70,000/- per Hector — However the appellant restricted his claim to the tune of Rs. 29,555/- only — Claimant entitled to additional compensation to the tune of Rs. 29,555/- along with statutory benefits as per amended provisions of Land Acquisition Act. (See para 9, 11)

Result : Appeal allowed.

Bhaskar s/o Rustumrao Mohite Vs. State of Maharashtra 2009 (12) LJSOFT (AUR) 189

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

Acquisition of land for New Bombay Project — In the other judgments in the applications filed by land owners from the said project High Court considered the location of the lands and fixed the average market rate to Rs.15/- per square meter — Land of the claimant also is located almost abutting old Mumbai-Pune highway — Market rate awarded by the Reference Court enhanced from Rs.10/- per square meter to Rs.15/- per square meter. (See para 5, 6, 7)

Result : Appeal dismissed and Cross Objection partly allowed.

State of Maharashtra Vs. Shankar Narayan Naik 2009 (12) LJSOFT 193

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

1) Acquisition of land — Market value —

Evidence of valuer — At the time of giving deposition he has not produced the material on the basis of which he prepared the valuation report as well as note prepared by him at the time of carry out survey — He specifically admitted that he has not undergone any special training as a valuer — If the expert fails to produce the material on the basis of which he has prepared valuation report, then the said valuation report cannot be considered in evidence — Reference Court rightly disbelieved the evidence as well as valuation report prepared by the valuer. (See para 11, 12)

2) Acquisition of land — Fixing the market value — Court has to do some guess work on the basis of material produced before it — Not possible that at the time of fixing market value the Court has to do mathematical calculations only — It is the duty of the Court to see plus and minus factors in respect of acquired property. (See para 12)

Result : Appeal dismissed.

Munjaji s/o Umaji Ubale & ors. Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (AUR) 205

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

1) Acquisition of land — Determination of market price — Sale instances regarding small lands same can be considered after giving some reasonable deduction at the time of fixing market value — Reference Court rightly deducted 15% towards development charges. (See para 17, 18)

2) Acquisition of land — Acquiring Body as well as State of Maharashtra not preferred any Appeal challenging the award passed by Reference Court in respect of other land

owners whose land was acquired for same project — In all these References those claimants relied on same sale instances — If the Government has accepted the award in regard to the similar lands all of which were sought to be acquired under the same notification in that case Acquiring Body should accept the same position in other matters. (See para 20, 21)

Result : Appeal dismissed.

Municipal Council, Ausa Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (AUR) 209

Land Acquisition Act, 1894 — Section 18, 12 — Reference — Limitation — Exclusion of time in legal proceedings — Enhancement of compensation — Determination of market value — Sales instances.

1) Reference — Limitation — Supreme Court had granted leave to the Claimants to file a reference within four weeks from the date of the order — Contended that the order of the Supreme Court is of no consequence and without jurisdiction — Rejecting the contention held that it cannot be presumed that the power under Article 142 of the Constitution of India available to the Supreme Court was not exercised — There has been no application to review or modify the order of the Supreme Court — Not open to the High Court to sit in appeal over the judgment of the Supreme Court. (See para 20, 21, 22)

2) Acquisition of land — Determination of market value — Having come to the conclusion that the fair value would not be less than Rs.200/- per sq. meter it was not open to the Reference Court to refuse to value the property on that basis on the ground that in the opinion of the Reference Court, the claimants ought to “ contribute for building of the Nation” — There is nothing

in law that entitles a Reference Court to place the burden of nation building upon the claimants alone — These are the factors which are totally extraneous, irrelevant and contrary to the provisions of law. (See para 53)

3) Acquisition of land — Determination of market value — Government Circular dated 30.10.1994 wherein the Land Acquisition Officer is directed to grant to the land owners the most favourable rate as determined by the income capitalisation method, comparable sale instances and the ready reckoner — Difference between the sale instances relied upon by the Claimants and the ready reckoner is only marginal — Claimants would have been entitled to a rate of Rs.364/- per sq. meter — Deduct the development costs to the extent of 33% the value is fixed at Rs.243 per sq. meter. (See para 54, 57, 58, 63)

Akkalkot Municipal Council, through its Chief Executive Officer Vs. Vasantrao Tulsiram Kharade & ors. 2009 (12) LJSOFT 55

Land Acquisition Act, 1894 — Section 48(1) — Withdrawal from acquisition.

Acquisition of property for defence initially taken on lease by defence department — Notification u/s 4 was issued for acquiring three plots — Joint award also was passed for three plots — Facts of plot No.53A and the plots of petitioners are identical — When acquiring body has already paid the amount to plot holders of plot No.53A it was not open for the respondents to take a different stand — Acquiring body, which is the Union of India, cannot give different treatments to a citizen whose case is identical and try to take shelter under technicalities by taking a stand that in earlier case no specific order was passed u/s 48 while in the case on hand an order was passed u/s 48 — Respondents

should give similar treatment to the petitioners — It was expected of the Respondents to act reasonably and without discrimination — Order passed u/s 48(1) quashed and set aside and respondents are directed to make the necessary payment to the petitioners as per the award. (See para 13, 20)

Result : Petition allowed.

Smt. Leela Bhagwansingh Advani & ors. Vs. State of Maharashtra & ors. 2009 (12) LJSOFT 191

Letters Patent (Bombay) — Clause 12 — Nature of suit — Territorial jurisdiction — Maintainability of suit.

Suit for declaration that development agreements are void and inoperative — In order to find out the territorial jurisdiction of High Court, essentially the Court is required to consider the averments and prayers made in the plaint — Plaintiffs by entering into the said transaction never lost its title over land in question and has also not sought for any declaration of title — Suit cannot be said to be a suit in connection with the title — Possession is a consequential prayer based on the prayer for declaration in connection with the MoU and agreements — Prayer for possession not a substantive prayer but it is only an incidental prayer — Considering the prayers in the plaint and the nature of the suit which is based on the basis of MoU and agreement between the parties such suit is maintainable on the Original Side of the High Court and it cannot be said that it is a suit for land — Order of the learned single Judge set aside. (See para 21, 22, 23)

Result : Appeal dismissed.

Wimco Limited Vs. Matoshree Shelters Private Limited & anr. 2009 (12) LJSOFT 200

Letters Patent — Clause 15 — Ad-interim relief — Encashment of bank guarantee — Power of Court to restrain.

See Maytas Infra Limited Vs. Utility Energytech & Engineers Pvt.Ltd. 2009 (12) LJSOFT 84

Limitation Act, 1963 — Article 64, 65 — Suit for possession — Plea of adverse possession. See Balakisan Bansidhar Khandelwal Vs. Govinda Shankar Udupure (Dead) by Lrs. 2009 (12) LJSOFT (NAG) 39

Limitation Act, 1963 — Section 5 — Delay in filing Appeal — Condonation of delay — Jurisdiction of Debts Recovery Tribunal (DRT).

See La-Kozy Vs. ING Vysya Bank Ltd. 2009 (12) LJSOFT 35

Limitation Act, 1963 — Section 5, 12 — Abatement — Setting aside of — Condonation of delay.

See Santosh Shyamrao Mohokar Vs. Pandurang Sakharam Satav 2009 (12) LJSOFT (NAG) 58

Limitation Act, 1963 — Section 14 — Agreement of sale — Exclusion of time spend in wrong forum.

See Ashok Kumar Dulichand Sharma Vs. Jethmal Motilal Jedia 2009 (12) LJSOFT (NAG) 96

Maharashtra Co-operative Societies Act, 1960 — Section 2(10) — Dishonour of cheques — Co-operative Credit Society — Nature of instrument.

See Rafique Raheman Shaha Vs. State of Maharashtra 2009 (12) LJSOFT (NAG) 76

Maharashtra Co-operative Societies Act, 1960 — Section 47, 48 — Code of Civil Procedure, 1908 — Section 100 — Suit for partition — Second appeal — Scope of.

1) Suit for partition and separate possession — Courts below concurrently held that the defendants failed to prove that the property is self acquired property of original defendant No.2 — However, both courts held that the transaction was void u/s 47 and 48 of MCS Act — Defendant No.2 obtained loan from co-operative society and it was outstanding and executed mortgage — Though the transactions which violate sections 47 and 48 have been declared void those being void, will have to be construed to be void qua the society — It shall never be allowed to lie in the mouth of the person (or his heir) entering into the said transaction and committing an open act of violating it and transferring the interest in the property adverse to the interest of the society, to say that transaction is void on account of mandatory prohibition contained in section 48 — If allowed, this would amount to be abuse of law by granting incentive and bonus on commission of illegality — Decree passed by the trial court and the first appellate court set aside. (See para 14, 15, 16)

2) Second appeal — Court can deal with only substantial question of law and it is not expected to enter into questions of facts, particularly when there are concurrent findings of fact, unless it is shown that the findings were perverse — Scope of appeal cannot be extended beyond the scope of substantial questions of law on which the appeal was initially admitted. (See para 13)
Result : Appeal allowed.

Baswantappa s/o Apparao Chinchore Vs. Mahadu s/o Ramchandra Teli & ors. 2009 (12) LJSOFT (AUR) 158

Maharashtra Co-operative Societies Act, 1960 — Section 48, 48(d) — Specific Reliefs Act, 1963 — Section 20 — Code of Civil Procedure, 1908 — Section 100 — Specific performance of contract — Appreciation of evidence — Inconsistencies/ variations — Second appeal — Reappreciation of evidence.

1) Respondent No.1-Plaintiff filed the suit for specific performance of contract and for declaration that the sale deed executed by Respondent No.2 in favour of appellant is void and illegal — Appellant has proved that his sale was prior in point of time and even before Respondent No.1 had entered into agreement of sale with Respondent No.2 — Even permission of the cooperative society for sale was obtained one month prior to the agreement of sale between Respondent Nos.1 and 2 — Cannot be said that the appellant is not bonafide purchaser for value without notice — Trial court and the first appellate court committed error of law in ignoring the relevant evidence on record — Decree passed by the trial court as confirmed by the District Court is set aside — Respondent No.2 is directed to pay earnest money of Rs.1,000/= with interest @ 12 % p.a. from 23.11.1978 till actual payment to Respondent No.1. (See para 23, 27)

2) Suit for specific performance — Agreement of sale — There was no pleading or issue regarding Section 48 of MCS Act — Sale in favour of the appellant was with permission of the cooperative society — Said permission was given as appellant had agreed to repay the entire loan of the society — Evidence of Secretary of the society was totally ignored by the first appellate court — Courts erroneously held that the sale transaction was in contravention of Section 41(d) of MCS Act.

(See para 8, 9)

3) Appreciation of evidence — Credibility of testimony, oral or circumstantial, depends on a judicial examination of the totality, not isolated scrutiny — There is always difference in capacity of each individual in observation, understanding, memorising and then recalling events after years when depositions are recorded in court — There are bound to be some inconsistencies or variations in evidence of witnesses of same incident — One should consider if inconsistencies or discrepancies go to the root of the matter — It is for the judge to separate truth from falsehood as far as possible and that is art of judging — Human conduct, probabilities of the case should also be taken into consideration. (See para 14)

4) Second appeal — Concurrent finding of facts — If the trial court and the first appellate court have ignored some piece of evidence available on record and which is admissible in evidence, then the same can be considered in second appeal — Even in case, where there is a perverse finding, the High Court can interfere in the second appeal. (See para 20)
Result : Appeal allowed.

Tukaram Laxman Karale Vs. Baba Govind Sase & anr. 2009 (12) LJSOFT (AUR) 154

Maharashtra Co-operative Societies Act, 1960 — Section 73-FF(1), 152 — Disqualification — Defaulter.

Co-operative Bank — Petitioner was elected as Member of Board of Director from the open constituency — Disqualification on the ground of defaulter — Petitioner had availed cash credit facility — Nowhere it is stated in terms and conditions of the cash credit facility that the Petitioner has to repay the said amount in particular installments on particular date or in particular month — Petitioner cannot be

declared as 'defaulter' within the meaning of Section 73 FF — Show cause notice was issued on the basis of amount due and payable as on 1st April, 2008 whereas the relevant date is 26th October, 2005 i.e. last date for filing nomination — Action taken by the Authority on the basis of the show cause notice dated 29-5-2008 is itself bad in law and same is liable to be set aside. (See para 11, 14)

Result : Petition allowed.

Rameshchand Jethmalji Tawarawala Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (AUR) 78

Maharashtra Co-operative Societies Act, 1960 — Section 78 — Rules of Business of Government of Maharashtra — Rule 6 — Co-operative Bank — Purchase of Government securities — Breach of guidelines — Dismissal of Directors — Appeal — Jurisdiction of Minister of State — Delegation of powers.

1) Purchase of Government securities through individual brokers in violation of guidelines — Petitioner dismissed from post of directorship — It was necessary for the authority to consider whether actual loss had been caused to the Bank on account of purchase of securities by the petitioners — Authority should have clear material to show that there was in fact actual loss and secondly, that such loss was attributable to the activities of the petitioners — If the loss was caused to the Bank on account of the market as a whole falling and if all the investors, who had invested in similar securities, had similarly suffered, it would not be appropriate to hold the petitioners responsible for such loss — Impugned order removing the petitioners from the post of Directors quashed and set aside — Matter remanded back with a direction to the

Divisional Joint Registrar to decide the proceedings again only in respect of loss attributable to petitioners in purchase of securities. (See para 30, 31, 32, 33)

2) Non-joinder of parties — When the petition was filed respondent No.3 was to co-opt some persons as Directors on its Board — Shri R.S. Jaiswal had been co-opted as Director by a majority of 20 Directors out of 27 — Three other persons were elected as Chairman, Vice-Chairman and Secretary by a majority of 15 votes against 10 votes — Two votes of petitioners would not have altered the result — Non-joinder of said persons would be inconsequential — Objection to the maintainability of the petition on the ground of non-joinder has to be rejected. (See para 13, 14, 15)

3) Co-operative Bank — Dismissal of Directors — Appeal — Rule 6 of the Rules of Business provided that while the Chief Minister can allot to a Minister of State any business appertaining to a Department or a part of the Department, a Minister could do so only after consulting the Chief Minister — When a Cabinet Minister is unable to discharge the function, it is not open to him to allot any business to a Minister of State or other Minister — It is the Chief Minister, who can direct another Minister to discharge such functions during the absence of the Minister — Power of the Chief Minister to allot the business is not fettered by the requirement to consult the Cabinet Minister concerned — Objection to the jurisdiction of Minister of State raised by the petitioners has to be rejected. (See para 22)

4) Principles of natural justice — Petitioners not only had the show cause notices served on them but went through two rounds of hearings before the Divisional Joint Registrar

as well as the Minister — Nothing wrong in seeking written notes of arguments, particularly by authorities like the Minister, since it would ensure that no point, which is argued, is missed — Advocate for the petitioners had stated that the contents of memo of appeal should be treated as written arguments — After saying so before the Minister, it is not open to the counsel for the petitioners to contend that the petitioners did not have an opportunity of being heard — Objection on the ground of violation of the principles of natural justice would have to be rejected. (See para 23)

Result : Petition allowed.

Babasaheb s/o Sonbaji Wasade & anr. Vs. State of Maharashtra through its Secretary, Co-operation Department & ors. 2009 (12) LJSOFT (NAG) 44

Maharashtra Co-operative Societies Act, 1960 — Section 78 — Show cause notice.

Show cause notice u/s 78 issued based on the complaint — Complainant has not given any particulars, namely the date of advance, amount of advance and when it was repayable — Respondent No.1 decided to issue show cause notice without even a preliminary enquiry — Impugned show cause notice which has been issued by the Respondent No.1 is actuated with malafides and has been issued so as to harass the Petitioners — Impugned show cause notice quashed and the Respondent No.1 is directed not to proceed with the enquiry commenced pursuant to the said show cause notice. (See para 8, 9, 10)

Result : Petition allowed.

Bharat Tukaram Bhalke, Chairman, Shree Vitthal Sahakari Sakhar Karkhana Limited & ors. Vs. Regional Joint Director of Sugar & ors. 2009 (12) LJSOFT 138

Maharashtra Co-operative Societies Act, 1960 — Section 152(3), 153, 154(4) — Appeal — Limitation — Condonation of delay — Non filing of application — Revisional powers — Delegation of.

1) Delay of almost by seven years in filing appeal — Appellate authority was not empowered to entertain the appeal which was hopelessly time barred in absence of application for condonation of delay or any prayer to that effect as contemplated u/s 153 — Authority who has conferred the valuable powers of appeal cannot be said to be ignorant about the substantial provision of statute and cannot bypass the express provisions and decide the matter on merits unless satisfied itself that appeal is within time limit prescribed by the statute — In absence of the application, the court had no jurisdiction to take up the matter and consequently the court has no power to condone the delay — Order passed by the Revisional authority not liable to be interfered in the writ jurisdiction. (See para 9, 13)

2) Revisional jurisdiction — U/s 154(4) the State Government can delegate the revisional powers to the Secretary — Contention that the Secretary who had entertained revision had no jurisdiction to entertain the same is liable to be rejected. (See para 12)

Result : Petition dismissed.

Deviprabha Nanasaheb Deshmukh Vs. Laxminagar Co-operative Housing Society Ltd. & ors. 2009 (12) LJSOFT (AUR) 128

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 4(6) — Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 29 — Order of reversion — Reduction in rank — Challenge to.

Respondent No.2-teacher reverted by the Management from Upper Division Teacher to Lower Division Teacher — Factions in the Management cannot be allowed to determine the fortunes of employees appointed under the orders of the Head of the School — Once the Management agrees to suffer the appointment of respondent No.2 in their School if they wanted to effect any change in her status to her disadvantage, it could be done only by the procedure prescribed under the MEPS Act and Rules — Management had absolutely no business to revert respondent No.2 merely because, in their view, her initial appointment was without any authority — School Tribunal was justified in quashing the order. (See para 16, 17)

Result : Petition dismissed.

Motibagh Education Society & anr. Vs. Presiding Officer, School Tribunal & ors. 2009 (12) LJSOFT (NAG) 148

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

Service law — Withdrawal of approval by Education Officer can be no ground for revocation of an appointment — This can be no ground to terminate the service which otherwise cannot be terminated. (See para 14)
Result : Petition dismissed.

Friends Social Circle & anr. Vs. Presiding Officer, School Tribunal, Amravati & ors. 2009 (12) LJSOFT (NAG) 160

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5(2), 9 — Maharashtra Employees of Private School Rules, 1981 — Rule 6 — Deemed permanency — Legality

of appointment — Jurisdiction of School Tribunal — Maintainability of appeal.

1) Claim of deemed permanency — On conjoint reading of Section 5(2) with Rule 6 and Schedule B it necessarily follows that only qualified person can be appointed on permanent basis against a permanent vacancy — When Appellant was appointed against a permanent vacancy he did not possess necessary qualification — Moreover, when the Appellant acquired prescribed qualification in August, 1995, by that time, the permanent vacancy was unavailable — School Tribunal has misapplied and misconstrued the provisions of the Act and the Rules overlooking the settled legal position — Learned Single Judge rightly held that Appellant was not entitled to claim benefit of deemed permanency u/s 5(2). (See para 5, 6)
2) Maintainability of appeal — Fact that the plea of jurisdiction was not raised before the Tribunal cannot invest jurisdiction in it which it did not possess. (See para 7)
Result : Appeal dismissed.

Shaikh Jamalchand Vs. Maharashtra Seva Sangh & ors. 2009 (12) LJSOFT 85

Maharashtra Municipal Councils, Nagar Panchayat (President Election) Rules, 1981 — Rule 2(A)(a)(iv) — Constitution of India, 1950 — Article 15(3), 15(4), 243-T — Reservation of offices of President — Electoral rights — Locus standi.

1) Reservation of offices of President for women for continuous period of 10 years — Petitioner contended that this would deprive the male citizen of such municipal councils from holding the office of President of the Municipal Council for substantial period — Held that electoral rights are neither fundamental rights nor the common Law

rights, and the said rights are purely statutory in nature — Unless the statute provides for any right a citizen, he cannot as a matter of right claim the same — Right of any citizen would be subject to statute, which prescribes the manner of right to hold a electoral post. (See para 8)

2) Reservation provided for the Scheduled Caste, Schedule Tribe and O.B.C. would be a vertical reservation — However the reservation for women would be horizontal reservation — Horizontal reservation may overlap with the vertical reservation on certain point and it is permissible under the Constitutional Scheme. (See para 6, 7)

3) Locus standi — Petitioner has not contested the election as councillor and as such there is no question of, he being elected and desirous of holding the post of Chairperson — Petitioner lacks the locus to approach High Court. (See para 9)

Result : Petition dismissed.

Iliyas S/o Amir Maniyar Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (AUR) 129

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 — Section 9-A — Election of Councillor — Reserved seat — Non-production of caste validity certificate within stipulated time.

Petitioner contested the election of Councillor for the reserved seat — She submitted caste certificate for verification to the Caste Scrutiny Committee prior to filing of her nomination paper — Validity certificate not submitted within a period of three months from the date of election since the same was pending for verification — Contended that petitioner should not be punished for the

inaction of the Scrutiny Committee to decide the caste claim within a period of three months — Rejecting the contention held that provision was self-contained code which had provided not only the procedure to be followed by the elected Councillor but also provided consequences in case of omission to follow the said procedure — Proviso to Section 9-A gave consequences of failure to submit validity certificate within a period of three months from the date of election — Consequences were automatic cessation/termination of election of petitioner with retrospective effect and petitioner shall also be disqualified for being a Councillor. (See para 7, 8)

Result : Petition dismissed.

Sau. Gita Rupchand Dekate Vs. State of Maharashtra & Ors. 2009 (12) LJSOFT (NAG) 195

Maharashtra Project Affected Persons Rehabilitation Act, 1999 — Section 2 — PAP Certificate — Eligibility.

Issuance of certificate of Project Affected Persons — By GR dated 14th September, 1998 the grandson or daughter-in-law are entitled to get PAP certificate, if they are living in joint family and project affected person is dependent on grandson or daughter in law — Only one member falling in the category of the relatives mentioned in the GR can get the certificate — Said GR is to be interpreted by adopting beneficent rule of construction — If the Original award holder was dependent during his life time on the grandson, then even after the death of the original award holder, that past dependency is to be considered and makes the grand son entitled to PAP certificate — Dependency may exist before making application for the said certificate and grandson is to be considered as entitled

under the GR to get the PAP Certificate.
(See para 6)

Result : Petition allowed.

Yashwant Savlaram Naik & anr. Vs. Special Land Acquisition Officer, Thane & ors. 2009 (12) LJSOFT 132

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Schedule II Item 1(a), 4(b), 4(t) — Schedule IV Item 5, 9, 10 — Maharashtra Universities Act, 1994 — Section 2(1), 2(23), 2(17) — Standard Code — Rule 52(2)(d) — Abolition of post — Retirement.

Respondent-WRIC was established as an institution by the University — Petitioner was working as a Technician (Photography) — Respondent no.1-WRIC decided to close the photography unit and the post held by petitioner was abolished — In view of clause 52 of sub-clause 2(d) of Standard Code the petitioner was retired from service on account of abolition of post — Governing Council of respondent no.1 having adopted the Standard Code and the respondent no.1 being informed about it — Cannot be said that the Standard Code is not applicable to the employees of respondent no.1 — Provisions of the Industrial Disputes Act would not be applicable to respondent no.1 — Question of non-compliance of Sections 25F, 25N and 25H does not arise and consequently the Employment Standing Orders Act also will not apply to the respondent No.1 institution — No case is made out for interfering with the order passed by the Industrial Court. (See para 9, 11, 14)

Result : Petition dismissed.

R.P. Dorasthwar Vs. Director, Western Regional Instrumentation Centre, Mumbai & Anr. 2009 (12) LJSOFT 182

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Schedule IV Item 1 — Misappropriation — Resignation — Undue influence — Back-wages — Gainful employment — Burden of proof.

1) Employee allegedly misappropriated Rs. 32,000/while working as a Junior Clerk on establishment of Municipal school — He deposited the said amount — Material on record shows that the employee was influenced to tender his resignation or to face criminal prosecution for alleged misappropriation of the municipal funds — Resignation was not voluntarily given but was procured under threat of prosecution — Concurrent findings of Courts below not demonstrably shown to be perverse — Order of reinstatement not liable to be interfered with in the exercise of the supervisory jurisdiction under Articles 226 and 227 of the Constitution. (See para 8, 9)

2) Back-wages — Labour Court denied backwages — In revision Industrial Court held that the employee was entitled to get payment of 50% backwages — No burden of proof regarding gainful employment could be casted on the Municipal Council unless the employee had pleaded absence of gainful employment and had discharged the initial burden to prove such a fact — Employee did not plead at all that he was not gainfully employed during the relevant period — Industrial Court erred in putting a part of the blame on the Municipal Council — Impugned judgment of the Industrial Court to the extent of grant of the 50% of the backwages to the employee is quashed. (See para 12 to 16)

Result : Petition partly allowed.

Municipal Council, Bhusawal Vs. Tukaram Kisan Patil 2009 (12) LJSOFT (AUR) 170

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Schedule IV Item 1 — Dismissal from service — Disorderly behaviour — Acquittal in criminal case — Effect of.

Petitioner entered the cabin of his superior in drunken condition and abused him — After departmental enquiry he was dismissed from service — In criminal complaint petitioner was acquitted of offence u/s 85 of Bombay Prohibition Act — Charge in the criminal case was disorderly behaviour at the public place — Acquittal because the incident was not proved to have occurred at a public place is insignificant and has absolutely no bearing on the departmental enquiry — Petitioner would not be entitled to exoneration in the departmental enquiry because of acquittal in the criminal case. (See para 5, 6)

Result : Petition dismissed.

Nilkanth s/o Fakiraji Bhadake Vs. Maharashtra State Road Transport Corporation 2009 (12) LJSOFT (NAG) 194

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30 — Termination of services — Backwages.

See A'One Paper Industries Vs. Subhash s/o Ganpatrao Jadhav 2009 (12) LJSOFT (AUR) 97

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(1)(b) — Industrial Disputes Act, 1947 — Section 25-F — Temporary appointment — Claim of permanency.

1) Respondent appointed as driver from 1987 for 29 days each time after giving break of

one or two days — Service terminated on 4-7-1989 — Appointment was of temporary nature without following due process or procedure of selection by Regional Selection Board — Civil Surgeon or the District Malaria Officer had no authority or power to appoint the complainant on permanent basis — Merely because the respondent worked for two years and completed 240 days service in the year preceding termination by itself is not sufficient to hold that he is entitled to be reinstated with full back wages — Impugned order passed by the Labour Court granting reinstatement with backwages is set aside — Ends of justice would be served by awarding Rs.25,000/- as compensation u/s 30(1)(b) of MRTU & PULP Act. (See para 12, 15, 16, 17)

2) Service law — Employer engaged into unfair labour in respect of dismissal or otherwise — It is not that every time there should be reinstatement with back wages — There could be even payment of reasonable compensation as laid down in Section 30(1)(b) of MRTU & PULP Act. (See para 13)

Result : Petition allowed.

State of Maharashtra & anr. Vs. Kishor Shivdas Chaudhari 2009 (12) LJSOFT (AUR) 136

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 50 — Grant of permanency — Recovery of arrears — Dispute regarding quantum — Jurisdiction of Industrial Court.

Petitioner working as watchman — In a complaint of unfair labour practice Court had granted him permanency status and other incidental benefits — Petitioner filed an application u/s 50 to recover minimum wages from 1-1-1996 — Industrial Court dismissed

the application on the ground that in the absence of determined amount the application u/s 50 was not maintainable — Held that jurisdiction of the Industrial Court is not ousted only because of dispute is raised by the employer in relation to the amount sought to be recovered — Though indepth enquiry may not be necessary yet computation of the money due can be done by the Industrial Court in view of the rates of minimum wages payable to the employee — Industrial Court abdicated the jurisdiction only because a dispute was raised by the employer regarding the quantum of minimum wages payable — Impugned Judgment quashed and the matter is remanded to the Industrial Court. (See para 9)

Held : “The jurisdiction of the Industrial Court is not ousted only because of dispute is raised by the employer in relation to the amount sought to be recovered. Though indepth enquiry may not be necessary, yet computation of the money due can be done by the Industrial Court in view of the rates of minimum wages payable to the employee. The Industrial Court may also enquire about the market rate of the rent payable to the premises which are in possession of the petitioner so as to cause appropriate deduction of the amount of such rent for the period from which the petitioner is not in service till final adjudication of the sum. Considering these aspects, the impugned Judgment of the Industrial Court is unsustainable. For, the learned Member of the Industrial Court abdicated the jurisdiction only because a dispute was raised by the employer regarding the quantum of minimum wages payable.” (Para 9).

Result : Petition allowed.

Rohidas S/o Waraji Nisargandh Vs. Precision Pattern Works 2009 (12) LJSOFT (AUR) 197

Maharashtra Regional and Town Planning Act, 1966 — Section 52, 53(2), 2(19) — Traffic congestion — Complaint by Police Department — Maintainability of.

Applicant runs business of hotel — Police officer felt concerned about the traffic congestion near about the hotel premises and lodged the F.I.R. for offence punishable u/s 52 of MRTP Act — In order to launch the prosecution it was necessary for the Planning Authority to give notice and if the applicant would have failed to comply with the said notice then it was open for the Planning Authority to initiate the prosecution — Preconditions set out in Section 53 have not been complied with — Also if any prosecution is to be launched, it could be launched by the Planning Authority — Police sub inspector who was then attached to traffic department cannot fall within the ambit of term “Planning Authority” as defined in Section 2(19) — F.I.R. quashed. (See para 4, 7, 8)

Result : Petition allowed.

Smt. Chhayadevi w/o Suresh Jaiswal Vs. Commissioner of Police & ors. 2009 (12) LJSOFT (URC) (NAG) 23

Maharashtra Regional and Town Planning Act, 1966 — Section 89, 90, 165 — Summary eviction — Power of Planning Authority — Co-owners/ Co-occupants — Service of notice — Principles of natural justice.

1) Petitioners challenging the notice issued in terms of Section 89 r/w Section 165 of MRTP Act directing the Petitioners to vacate the structure and hand over the plot to the Corporation forthwith failing which demolition action u/s 90 would be initiated — Power u/s 89 can be exercised by the Planning Authority to evict any person

summarily who continues to “occupy any land” not otherwise entitled to occupy — Action can be proceeded only after Appropriate Authority recorded clear opinion after giving due opportunity to the person concerned — Respondent No.2 failed to record any such opinion muchless any tangible reason to justify the action of summary eviction of the Petitioners — Also the notice was issued by name only to the Petitioners and not to the other co-owners/ co-occupiers — Impugned Order and notice quashed and set aside with liberty to the Respondent No.2 to continue with the action in accordance with law. (See para 17, 18, 19, 22, 23)

2) Non-confirming user — Authority has a duty to exercise its discretion justly and reasonably — Merely because the user becomes objectionable that would not mean that the occupation also becomes unauthorised, making the person in possession as not entitled to occupy the Final Plot within the meaning of Section 89 of the MRTP Act — Dispute between the owner and occupier of the Final Plot will have to be resolved between them inter se — Power u/s 89 cannot be used to evict the occupant on the allegation of non-confirming user. (See para 19)

Result : Petition partly allowed.

Prabhavanti Mulji Shah & anr. Vs. Municipal Commissioner of Municipal Corporation of Greater Mumbai & ors. 2009 (12) LJSOFT 83

Maharashtra Regional and Town Planning Act, 1966 — Section 124E(2), 44 — Bombay Provincial Municipal Corporation Act, 1949 — Section 128, 129 — Rejection of development plan — Refund of Development Charges and property tax.

1) Rejection of development plan — Refund of Development Charges — Proviso (a) of Section 124E(2) of M.R.T.P. Act reveals that where the permission under this Act has not been granted for carrying out the said development, the authority may postpone the assessment of development charge — Respondent-Corporation unable to point out any determination which is done as per the provisions of Section 124E(2) — Neither any development permission has been granted nor any determination has been done as required u/s Section 124E(2) — Respondent not entitled to retain the said amount of Development Charges which is recovered dehors the provisions of Section 124E of M.R.T.P. Act. (See para 6)

2) Rejection of development plan — Refund of property tax — Nothing on record to point out that before the recovery of such taxes, assessment was done as required under the provision of Section 129 of BMC Act or as to whether any Bill or notice of demand as required u/s 128 of B.P.M.C. Act was served on the petitioner — Levy of said taxes was unsustainable in law. (See para 6)

Result : Petition allowed.

Abhikesh s/o. Omprakash Agrawal & ors. Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (URC) (AUR) 77

Maharashtra Rent Control Act, 1999 — Section 3 — Public Premises — Fixation of standard rent — Maintainability of application — Jurisdiction of Small Causes Court.

See Life Insurance Corporation of India Vs. Banatwala & Company 2009 (12) LJSOFT (URC) 51

Maharashtra Rent Control Act, 1999 — Section 16, 22, 55 — Eviction proceedings — Service tenancy — Illegal occupation — Non registration of lease agreement — Jurisdiction of Civil Court.

1) Plaintiff is a Public Trust running a school — Tenancy created during service period — Premises not vacated on retirement — Section 22 would apply to those tenancies which were created by the employer after coming into force of Maharashtra Rent Act — Section 22 cannot apply to tenancy which is created prior to coming into force of the Act of 1999 — Further for applicability of Section 22 there has to be an agreement between the employer and the employee, without that the Competent Authority does not get jurisdiction — As the tenancy was created in 1948 and there is no agreement the Competent Authority had no jurisdiction to entertain an application for eviction of the Defendants — Contention that civil court had no jurisdiction to entertain suit cannot be accepted. (See para 9, 10)

2) Non registration of lease agreement — Agreement is required to be compulsorily registered by virtue of provisions of section 55 — However non registration may at the most invite penalty and lease cannot become void. (See para 11)

Result : Petitions dismissed.

Smt.Janabai Govindrao Korche & anr. Vs. Women's Education Society & ors. 2009 (12) LJSOFT (NAG) 153

Maharashtra Rent Control Act, 1999 — Section 24 — Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 — Section 6(4) — Eviction proceedings — Leave and Licence Agreement — Interpretation of statutes. Application for eviction filed by invoking

Section 24 — Contended that proceedings were not maintainable since Maharashtra Rent Control Act was brought into effect on 31st March 2000 whereas leave and license agreement expired on 10-2-2000 — Held that Sections 24, 39 and 42 of the New Act contain non-obstante clauses and harmonious construction will have to be placed on these provisions — Provisions of the new Act must receive an interpretation which would advance the object and purpose in making a unifying and consolidating statute — Person who was inducted as a licensee under the old Act but continued to occupy and use the premises despite the license coming to an end, as ex-licensee, can be evicted under the new Act by filing an application before the Competent Authority — Landlord/licensor cannot be driven to file a Suit in the Civil Court merely because the old Act is repealed but remedy provided is similar — New Act must be held to be applicable. (See para 29, 35)

Result : Petition dismissed.

Chimanlal Shah Vs. Mrs. Farhana Abdul Jabar Sayyad 2009 (12) LJSOFT 157

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3 — Maharashtra Restoration of Lands to Scheduled Tribes Rules, 1975 — Rule 3 — Restoration of land — Principles of natural justice

1) Land belonged to the tribal transferred to non-tribal — Restoration of land — Enquiry conducted as per procedure prescribed in Rules of 1975 — Petitioner had sought as many as 48 dates and was also absent on the date given as a last chance — Principles of natural justice cannot be stretched to such an extent that a party should be permitted to prolong the proceedings and even if he is

absent, the proceedings should still continue further at the convenience of the party seeking to delay the proceedings. (See para 8, 9)

2) Restoration of land — In year 1969 there was no requirement of caste claim or tribal claim to be validated by the Caste/Tribe Certificate Scrutiny Committee — Said requirement, for the first time, was made applicable by a Government Resolution issued in the year 1985 — No force in the submission that subsequent validity of the caste claim of one of the legal representatives of one of the original vendors cannot bestow the original vendors with the status of Scheduled Tribe — Even it would be an absurdity to hold that though the respondent no.13 has been held to be belonging to Scheduled Tribe, his father and his father's brothers are not belonging to Scheduled Tribe. (See para 11, 12)

Result : Petitions dismissed.

Ashok Laxman Attarde & ors. Vs. Atmaram Bhanu Saindane & anr. 2009 (12) LJSOFT (AUR) 185

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 6 — Caste claim — Caste scrutiny committee — One member leaving charge.

Verification of caste claim — Hearing was conducted by three members, out of which one member left the charge — A person after leaving the charge becomes functus officio and he cannot be a party to the decision — When the matter was heard by three members and if one of the member had already retired or left the charge, subsequently no order could have been passed unless the matter is heard

by validly constituted committee of three members — A person who has left the charge cannot pass the orders after three months as these are quasi-judicial proceedings — Impugned order set aside on the ground that one of the members has already left the charge and the order was passed subsequently — Matter remanded back. (See para 3, 4)

Result : Petition allowed.

Smt.Kavita Nagnath Mudrale Vs. State of Maharashtra & ors. 2009 (12) LJSOFT 190

Maharashtra Secondary and Higher Secondary Boards Regulation, 1977 — Regulation 79(IA) — Constitution of India, 1950 — Article 14, 226 — Admission in Junior college — Qualifications — Introduction of facility of ATKT (Allowed to Keep Terms) — Policy decision — Discrimination — Delegated legislation — Constitutionality of — Public Interest Petition.

1) Eligibility criteria for admission to junior college — Petitioner challenging the decision to introduce and implement the facility of ATKT — Amended provision is intended to give one time benefit only to students who have appeared in the SSC examination “in March 2009” with all subjects but failed in not more than two subjects — No nexus for such classification and carving out class of students having regard to the object sought to be achieved by the amendment — Classification not founded on any intelligible differentia and has no rational relation to the object sought to be achieved by the legislation in question — First part of the amended provision results in discrimination and is arbitrary and hit by Article 14 of the Constitution of India — First part of the amended provision will have to be struck down as unconstitutional — As the remaining

provision is only consequential even the same would become redundant — However instead of striking down the entire first part of the amended provision as a whole the provision can be preserved by severing the unreasonable part thereof — Striking down the expression “in March 2009” would efface the discrimination — Amended Regulation 79(1A) held to be valid except the offending part thereof — Expression “in March, 2009” appearing in the first part of the said provision is struck down being discriminatory and unreasonable — Rest of the provision is valid and intra vires the Constitution and the relevant Act and Regulation. (See para 25, 26, 31)

2) Delegated legislation — Court should not concern itself with the wisdom or efficaciousness of such rules or regulations — It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the legislation — It is not for the Courts to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned Regulation falls within the scope of the regulation making power conferred on the delegate by the Statute — There is always a presumption in favour of the constitutionality of the enactment — Burden is upon the Petitioners to show that there has been a clear transgression of the constitutional principles — There is always presumption that the legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience and its discriminations are

based on adequate grounds. (See para 19)

3) Permissible classification — Test of — Two conditions will have to be fulfilled — Firstly the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out from the group — Secondly that differentia must have a rational relation to the object sought to be achieved by the statute in question. (See para 25)
Result : Petition partly allowed.

Akhil Bharatiya Vidyarthi Parishad & ors. Vs. State of Maharashtra & anr. 2009 (12) LJSOFT 28

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 — Slum Rehabilitation Scheme — Allegation of fraud — Malpractices in Government offices — Public Interest Litigation — Maintainability of.

See Shailesh Gandhi Vs. State of Maharashtra 2009 (12) LJSOFT 33

Maharashtra State Road Transport Corporation Contributory Provident Fund and Employees Pension Scheme, 1995 — Para 7(1) — Family pension — Entitlement — Claim of benefits.

Claim of benefits of Employees’ Pension Scheme — Husband of petitioner had opted to continue under M.S.R.T.C. Contributory Provident Fund — He was not the member of Family Pension Scheme — Petitioner not entitled for the benefit of Employees’ Pension Scheme. (See para 8)
Result : Petition dismissed.

Smt.Surekha Mohiniraj Joshi Vs. Maharashtra State Road Transport Corporation & ors. 2009 (12) LJSOFT (AUR) 169

Maharashtra Universities Act, 1994 — Section 2(1), 2(23), 2(17) — Abolition of post — Retirement.

See R.P. Dorasthawar Vs. Director, Western Regional Instrumentation Centre 2009 (12) LJSOFT 182

Medicine Central Council Act, 1970 — Section 13-A — Constitution of India, 1950 — Article 226 — New Medical Institution — Grant of permission — Disapproval of Central Government — Unreasoned order — Writ jurisdiction.

1) Permission to start new Ayurvedic College — Role of the Central Government as contemplated by sub-section (5) of the section 13A assumes a character of quasi-judicial authority — Order passed necessarily need to be supported by the reasons, which must find place in the order itself, as a part of fair play, reasonableness and natural justice — Right to reason is an indispensable part of a sound judicial system — Reasons indicate an application of mind to the matter before the authority and the affected party can know why the decision has gone against him — Reasons provide live links between the minds of decision maker to the controversy in question or the decision or the conclusion arrived at — Reasons substitute the subjectivity by objectivity — Apart from mere reproduction of so called defects the respondent has not given any independent reasons showing its application of mind to the compliance of defects or deficiencies pointed out by the petitioner — Impugned order becomes unreasonable, arbitrary and is liable to be quashed and set aside. (See para 12, 13, 15)

2) Permission to start new Ayurvedic College — Order passed by the Central Government rejecting the claim of the petitioner — Order

passed u/s 13-A(5) is not subject to appeal by any statutory authority under the Act — Same is amendable to the writ jurisdiction of High Court under Article 226 of the Constitution of India. (See para 13)

Result : Petition allowed.

Diamond Education Society’s Shri. Chhaganrao Bhujbal Aurvedic Medical College Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (AUR) 93

Minimum Wages Act, 1948 — Section 20(2) — Minimum Wages (Central) Rules 1956 — Rule 29(4) — Payment of short wages — Difference of wages — Compensation.

Petitioner challenging the order of Authority directing petitioner to deposit the difference of wages and compensation equal to fifty percent of difference of wages — Concerned employees have not raised any grievance — Dispute raised by the Assistant Labour Commissioner before the concerned authority — Four employees who were traceable appeared before the authority and told that they have received the difference of wages — No sufficient ground to invite an inference of the non-payments to the remaining employees — Order cannot be passed inviting liability of payment of some large amount merely on suspicion — Impugned order quashed and set aside. (See para 6)

Result : Petition allowed.

Scantec (India) Private Ltd. Vs. Regional Labour Commissioner (C) Nagpur Authority under Minimum Wages Act, 1948 & ors. 2009 (12) LJSOFT (NAG) 146

Motor Vehicles Act, 1939 — Section 96(2)(b), 110 — Bombay Motor Vehicles Rules, 1959 — Rule 118 — Motor accident — Goods vehicle — Owner of goods —

Liability of Insurance Company.

1) Motor accident — Deceased was travelling in the tempo while the goods owned by him were being transported — Material on record indicate that the deceased had purchased wood and other material for constructing a shed and was transporting these goods to his village — Onus shifted on the Insurance Company to prove that the deceased was travelling as a gratuitous passenger and not as the owner of the goods being transported in the tempo — Insurance Company having failed to do so could not have been absolved of its responsibility for payment of compensation — Insurance Company was equally liable to pay compensation. (See para 11)

2) Rules of pleadings — Insurance Company has not led any evidence to substantiate its contentions that deceased was a gratuitous passenger sitting in the rear of the tempo — Facts must be proved by leading documentary and/or oral evidence — When pleadings are not substantiated with evidence before the court, it is trite that the court cannot look into such pleadings, nor rely on them as proof of the facts mentioned therein. (See para 11)

Result : Appeal allowed.

Balasaheb Shamrao Salunkhe (Decd.) Thru' Lilavati B. Salunkhe & Ors. Vs. Laxmibai Yashwant Jadhav & Ors. 2009 (12) LJSOFT 72

Motor Vehicles Act, 1988 — Section 147, 2(21), 2(14), 14(2) — Motor accident — Compensation — Goods carriage — Tractor-trolley — Rash and negligent driving — Liability of Insurance Company.

1) Tractor-trolley was being driven rashly and negligently and the trolley was disconnected from the tractor and tilted on its side — Trolley

was fully loaded with manure and was being driven in high a speed on slope — In absence of any evidence, it cannot be said that the accident had taken place due to mechanical defect — Driver was not authorized to drive the tractor-trolley used to transport manure though he was authorized to drive only tractor — There is also breach of condition as persons were carried on the heap of manure in the trolley which was goods carriage vehicle — There was breach of policy and the appellant is not liable to pay compensation — Appeal allowed to the extent of the appellant. (See para 29, 30)

2) Motor accident — Driving licence — If a licence is issued or renewed in respect of transport vehicle, it can be done only for a period of three years — In case of any other vehicle such issuance or renewal can be for twenty years provided the person in whose favour licence was issued or renewed had not attained the age of 50 years — As the licence of respondent No.6 was renewed for 20 years it can be said that respondent No.6 was not authorized to drive transport vehicle.. (See para 20)

3) Motor accident — Tractor-trolley — Tractor alone would a light motor vehicle but the tractor-trolley would be a goods carriage vehicle within the meaning of Section 2(14) of the Motor Vehicles Act — As the trolley attached to the tractor was actually used for transport of manure and thus the vehicle was adopted and used for carriage of goods. (See para 22)

Result : Appeal allowed.

National Insurance Company Limited Vs. Sushila w/o. Niwarti Bande & ors. 2009 (12) LJSOFT (AUR) 147

Motor Vehicles Act, 1988 — Section 166 — Motor accident — Negligence — Quantum of compensation.

1) Deceased while boarding the bus fell off the bus and came under the rear wheel — It was the duty of the conductor to ensure that all persons who had boarded the bus had entered in safely — Tribunal rightly observed that both the driver as well as the conductor of the bus were negligent. (See para 6)

2) Motor accident — Applicants proved the monthly income of the deceased was about Rs.800/- — Tribunal deducted 1/3rd from that amount which the deceased could have used towards personal expenses — Deceased 48 years at time of accident and the multiplier to be used would be 15 — Tribunal awarded Rs.95,500/- by considering the loss of consortium as well — Tribunal has not committed any error by awarding the aforesaid amount to the claimants. (See para 7)

Result : Appeal dismissed.

Baban Martand Jadhav & Anr. Vs. Shalan Mohanrao Mohite & Ors. 2009 (12) LJSOFT 110

Motor Vehicles Act, 1988 — Section 166 — Motor accident — Enhancement of compensation — Permanent disability — Housewife — Household duty — Monetary value.

Motor accident — Claimant sustained permanent disability to the extent of 30 % — Claimant is a housewife — Valuation of services allegedly rendered to the house may differ from case to case — Housewife need to perform and render services in many ways — Rs.3,000/- p.m. can be considered to be value of the services rendered by the claimant to her house as housewife, irrespective of

pleading and evidence regarding members in her family — Deducting 1/3rd amount towards uncertainties gives the balance amount of Rs.24,000/- p.a. — Applying the multiplier of 16 and considering 30% disability the Appellant is entitled for Rs.1,15,200/- towards the compensation — Further Rs.33,350/- added towards medical bills, Rs.15,000/- towards pains and sufferings the total compensation thus comes to Rs.1,63,550/- — Also Appellant housewife would requires domestic help as she had sustained 30% disability. — Domestic help considered @ Rs.70/- per day — Rs.80,640/- added to earlier figure i.e. Rs.1,63,550/- appellant entitled for Rs.2,44,190/- as the total amount of compensation. (See para 10)

Result : Appeal partly allowed.

Mejabeen Rafiq Chamdiya Vs. Lata Ashok Hiwale & anr. 2009 (12) LJSOFT (AUR) 211

Motor Vehicles Act, 1988 — Section 168 — Motor accident — Compensation — Determination of — Method of.

1) Compensation — Multiplier method is the logically sound method which should be followed for determining the compensation payable — Procedure adopted by the Tribunal for calculating of compensation disapproved — However as the difference between the method used by the Tribunal and the multiplier method is not substantial it would not be necessary to remand the matter for fresh calculations — Also as the accident has occurred about 23 years ago it would be a travesty of justice to remand the matter. (See para 8, 10)

2) Motor accident — Compensation — Deceased was between 30 and 35 years of age

when he met with the accident — As per Schedule II of the Motor Vehicles Act the multiplier would be “17”. (See para 9)

Result : Appeal dismissed.

Solapur Municipal Corporation & anr. Vs. Renuka Abhimanyu Medidar & ors. 2009 (12) LJSOFT 131

Mumbai Municipal Corporation Act, 1888 — Section 105-B(1) — Development Control Regulations for Greater Bombay, 1991 — Regulation 33(7) — Building redevelopment — Refusal by minority — Consent of majority — Order of eviction.

Redevelopment of municipal property known as “Parsi Chawl” — More than 80% tenants/occupants formed a society and their proposal for redevelopment has been sanctioned by the Improvement Committee — Scheme is binding on all the tenants of the chawl/building whether they like it or not — Under the guidelines, no choice is given to the tenants/occupants, who are in minority, to take different stand/decision, though it may be possible for them to give up their right and quit from the scheme — Petitioners directed to vacate the tenements in their possession on or before 15.11.2009. If they fail to do so, the Corporation may forcibly remove them with the police aid, if necessary. (See para 14, 17)
Result : Petitions dismissed.

Nalini Ganpat Malpekar Vs. Municipal Corporation of Greater Mumbai and ors. 2009 (12) LJSOFT (URC) 24

Navy Act, 1957 — Section 14 — Navy Regulations, 1964 — Regulation 151 — Constitution of India, 1950 — Article 14 — Promotions to non-select ranks — Inter-se seniority — Policy decision
Scheme providing promotions to non-select

ranks — Communication dated 14.3.2005 makes it clear that the fundamental tenet for implementation of the scheme is to protect inter-se seniority among officers as per Navy list — It provides that in order to maintain existing inter-se seniority Commanders (Time Scale) and Lieutenant Commanders who have been finally superseded will become eligible for promotion to Captain (Time Scale) only after all erstwhile acting Commanders (Select List) had been promoted to Captain (Select List)/Captain (Time Scale)/retired — Commander (Select List) is always by selection and the Commander (Time Scale) is automatic on completion of 26 years of service subject to other requirements — Cannot be said that Communications dated 14.3.2005 and 2.11.2005 have the effect of denying the chance of promotion to the Commander (Time Scale) — They are violative of Article 14 of the Constitution of India. (See para 11, 14, 16)
Result : Appeal dismissed.

Ravindera Sadashio Kshirsagar Vs. Union of India & Ors. 2009 (12) LJSOFT (SC) 208

Negotiable Instruments Act, 1881 — Section 138 — Bombay Money-Lenders Act, 1946 — Section 5, 10, 32B(b) — Dishonour of cheque — Carrying money lending business without licence — Legally enforceable debt/liability — Maintainability of complaint — Leave to file appeal against acquittal.
Dishonour of cheque — Complainant admitted in his cross examination that he is doing money lending business — Complainant not having any money lending licence — Carrying on money lending business without licence debars a person from doing money lending and recovering the amount through court — Loan advanced by

such money lender is not a debt or other liability — Provisions of Section 138 of N.I. will not apply to such transaction — Cannot be said that cheque issued by the Respondent was for the liability enforceable in law — Not a case wherein application for leave to file appeal against acquittal can be granted. (See para 9, 10)

Result : Application dismissed.

Anil s/o Baburao Kataria Vs. Purshottam s/o Prabhakar Kawane 2009 (12) LJSOFT (URC) (AUR) 10

Negotiable Instruments Act, 1881 — Section 138 — Dishonour of cheque — Territorial jurisdiction — Filing of fresh proceedings — Quashing of process.

Earlier process issued was challenged by the applicant on the point of want of territorial jurisdiction — High Court allowed the application and liberty was granted to file the proceedings on same set of allegations/averments before the appropriate Court — Same does not mean that complaint filed in the Court at Beed to be withdrawn and the same to be filed alongwith the application for condonation of delay — No order is passed for return of complaint for presentation of same in the proper Court of Law — Leave was granted to file the fresh complaint if so desire and not to withdraw the same complaint which is quashed and to file alongwith the application for condonation of delay — Order of issuance of process liable to be quashed and set aside. (See para 7, 8)

Result : Application allowed.

Sarla W/o.Kedarnath Lahoti Vs. Premchand S/o.Chandmal Lodha 2009 (12) LJSOFT (URC) (AUR) 1

Negotiable Instruments Act, 1881 — Section 138 — Dishonour of cheque — Correction in the name of accused.

Dishonour of cheque — After verification, process was issued and respondent had filed his appearance and thereafter his plea was recorded — Evidence of complainant also commenced — At the time of cross examination it is realized that the middle name of the original accused is wrongly typed — Application was filed for correction in the middle name of the respondent in the complaint — Not a case of amendment in the body of complaint — Correction in the name and description of the accused will not prejudice the accused when the accused has already appeared before the trial court and has participated in the trial — Impugned order rejecting the application quashed and set aside. (See para 6)

Result : Application allowed.

Kalika Nagri Sahakri Panstha Maryadit Vs. Kishor Dharmaji @ Dharamchand Shingvi 2009 (12) LJSOFT (URC) (AUR) 3

Negotiable Instruments Act, 1881 — Section 138 — Dishonour of cheques — Demand notice mentioning shorter period than 15 days — Legality of..

Dishonour of cheques — In the notice of demand complainant demanded payment within 8 days of the notice — Law does not require the payee of the cheque to specify the period within which the drawer of the cheque should make payment in the notice of demand — However prosecution instituted before a period of 15 days by law to the drawer of the cheque to make payment would not be tenable — Mentioning a period lesser than 15 days in the notice of demand would not affect the

complainant's right to launch prosecution if the complainant has waited for 15 days before filing a complaint before the Court — Impugned orders quashing the process quashed and set aside and orders issuing process shall be revived. (See para 6, 7, 11)
Result : Petition allowed.

Sou. Shilpa A. Suratwala (Through Power of Attorney Holder Shri Anil Chandrakant Suratwala) Vs. Monika Developers Pvt. Ltd. & Anr. 2009 (12) LJSOFT (URC) 100

Negotiable Instruments Act, 1881 — Section 138 — Dishonour of cheque — Legally enforceable debt/ liability — Appeal against acquittal.

Dishonour of cheques — Complainant came up with a case that the entire loan of Rs.55,500/- was given at one stretch but in cross examination it was brought out that amount was paid in two installments of Rs.45,000/- and Rs.10,500/- — Complainant has not explained as to why there was a need for the accused to have given five cheques — Complainant did not adhere to his case set out in the complaint and on the contrary has diverted from the case set out — Complainant is silent even on the aspect as to when the cheques in question were given to him — Defence of accused found to be consistent — Accused by his own evidence had discharged the initial burden which was on him to show that the existence of consideration was improbable or doubtful — It was for the complainant to have proved consideration as a matter of fact which the complainant has failed to do — Order of acquittal not liable to be interfered with. (See para 10, 11)

Result : Appeal dismissed.

Narendra Kenaudekar Vs. Sebastiao P. Pires & anr. 2009 (12) LJSOFT (GOA) 118

Negotiable Instruments Act, 1881 — Section 138 — Partnership Act, 1932 — Section 69(2-A) — Dishonour of cheques — Legally enforceable debt/ liability — Partnership firm — Effect of non-registration — Appeal against acquittal.

1) Dishonour of cheque — Complainant and accused entered into the partnership business — However business did not even continue for a period of seven months — Complainant contended that accused had given the cheques to make full and final settlement — It is not mentioned when the subject cheques were given to him by the accused — Complainant admitted that blank cheques used to be signed and kept in the office and therefore it is quite possible that the accused had also kept blank cheques signed by him — Complainant also admitted that he has filled in all the details of the cheque except for the signature of the accused — Once the relations between them were of distrust it is difficult to accept that accused would have given blank cheques to settle the account — Accused proved that the case of the complainant was improbable or doubtful and the complainant has failed to prove that there was any debt or liability which the accused was required to meet — Order of acquittal not liable to be interfered with. (See para 20)

2) Dishonour of cheque — Complainant and accused entered into the partnership business — However business did not even continue for a period of seven months — Complainant contended that accused had given the cheques to make full and final settlement — Complainant could have always sought for dissolution of the firm and for accounts with a view to get his share in the partnership business — Case of the complainant was covered by sub section (a) of sub section

(3) of Section 69 of Partnership Act. (See para 12)

Result : Appeal dismissed.

Nilesh H. Shetye Vs. Sharadchandra C. Salkar 2009 (12) LJSOFT (GOA) 184

Negotiable Instruments Act, 1881 — Section 138 — *Dishonour of cheque — Recording of fresh evidence of complainant — Absence of reasons.*

See Fulchand Shankarji Shende Vs. Sandip Sukhdeo Thaokar 2009 (12) LJSOFT (NAG) 62

Negotiable Instruments Act, 1881 — Section 138, 139 — Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheque — Legally enforceable debt/ liability — Presumption — Quashing of process.

Dishonour of cheques — Complainant had given Rs.10,00,000/- to the petitioner to obtain a permission from the society — Assignment was completed of getting the permission — Thereafter complainant told the petitioner that they are not interested in developing the property and asked for return of Rs.10,00,000/- — Petitioner contended that two cheques were issued for returning the said amount because they were threatened by respondents — Held that issuance of cheques raises a presumption u/s 139 — Though it is open for the accused to establish to the contrary that there was no debt or liability for the discharge of which the cheques were issued — Till contrary is proved however there is presumption that the holder of the cheques received the cheques for the due discharge of any debt or other liability — Contentions raised by the petitioner cannot be accepted at this stage for taking the view that the process was wrongly issued against the petitioner. (See

para 3, 4)

Result : Petition dismissed.

Pushkaraj Enterprises Vs. Kundan Mehata Associates & Anr. 2009 (12) LJSOFT 40

Negotiable Instruments Act, 1881 — Section 138, 139 — Code of Criminal Procedure, 1973 — Section 482 — Dishonour of cheque — Stop payment — Quashing of process.

1) Dishonour of cheque — Once a cheque is issued by a drawer a presumption u/s 139 must follow — Merely because the drawer issued notice to the drawee or to the bank for stoppage of payment it will not preclude an action u/s 138 — Section 138 gets attracted even if a cheque is dishonoured because of stop payment instructions to the Bank. (See para 4, 5)

2) Dishonour of cheque — Non-payment of the amount demanded within 15 days of the receipt of the notice is a vital ingredient of the offence u/s 138 — However mere non-mention of 15 days in the complaint would not render the complaint liable to be dismissed if the complaint otherwise discloses that payment was not made within 15 days — Complainant stated that the petitioner did not pay the amount mentioned in the notice to the complainant — Said statement must be understood in the context of the date of filing of the complaint — Complaint ex facie discloses that upon service of notice, a period longer than 15 days has passed without any payment — Such averments are sufficient compliance of the requirements of section 138 of N.I. Act. (See para 6)

Result : Petition dismissed.

Smt.Rukmini Vishwanath Shendge Vs. Shriniwas Tuljaram Burudkar & Anr. 2009 (12) LJSOFT 49

Negotiable Instruments Act, 1881 — Section 138, 139 — Banking Regulation Act — Section 5(b) — Maharashtra Co-operative Societies Act, 1960 — Section 2(10) — Evidence Act, 1872 — Section 101 — Dishonour of cheques — Security — Legally enforceable debt/ liability — Burden of proof — Nature of instrument — Revision against the order of conviction.

1) Dishonour of cheques — Cheques drawn on Buldhana Urban Co-operative Credit Society — Society will be governed by the provisions of Section 5(b) of Banking Regulation Act and will have to be treated as an institution doing banking business) Said society will be a co-operative bank as per Section 2(10) of M.C.S. Act — Fact that two dishonour memos merely mention that the instruments are dishonoured clearly goes to show that six instruments will have to be treated as cheques — Contention that those six instruments cannot be termed as cheques rejected — No fault can be found with non applicant No.2 in depositing those instruments with his banker for realization — Complaint filed on account of dishonour of those instruments i.e. cheques will have to be treated as properly filed. (See para 7)

2) Dishonour of cheques — Applicant contended that six cheques were given to non applicant no.2 by way of security for hand loan which was repaid — No documentary evidence to show that the applicant had repaid Rs.20,000/- — Nothing on record to show that the applicant had demanded the said cheques in writing — Applicant has failed to show that six instruments were given by way of security. (See para 12)

3) Dishonour of cheques — Legal liability — Burden of proof — It is for accused to discharge the burden qua issuance of six

cheques — If the applicant would have been in a position to discharge the burden qua six instruments then burden would have shifted on non applicant no.2 to show as to how he had advanced sum of Rs.1,60,000/- to the applicant. (See para 13)

Result : Revision dismissed.

Rafique Raheman Shaha Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (NAG) 76

Negotiable Instruments Act, 1881 — Section 138, 139 — Dishonour of cheque — Legally enforceable debt/ liability — Repayment — Proof of — Appeal against acquittal.

Dishonour of cheque — Accused admitted that he had borrowed a sum of Rs.50,000/- and he had kept the blank cheque as security but thereafter he had paid the entire amount — Accused having admitted that amount was received by him the entire onus was on the accused to prove the repayment — Accused admitted that he had a book but did not produce the same to show the repayment to the complainant — Adverse inference has got to be drawn against the accused — Bare self serving statement of the accused was not sufficient to prove that the accused had paid the amount — Accused having admitted that he had received the amount and having failed to prove that he had repaid the same there was no other option but to convict the accused u/s 138 of N.I. Act. (See para 13, 14)

Result : Appeal allowed.

Nishith M.P. Verlekar Vs. Ashpaque Marfani 2009 (12) LJSOFT (GOA) 117

Negotiable Instruments Act, 1881 — Section 138, 139 — Dishonour of cheque — Stop payment — Legally enforceable debt/

liability — Nature of liability — Appeal against acquittal.

Dishonour of two cheques of Rs.5000/- each — Complainant stated that he sold 40 second hand sewing machines to the accused and two post dated cheques were given by accused towards part-payment — Accused contended that said cheques were given as rent — He further stated that since complainant he not paid the amount towards fabrication work he stopped the payment of cheques — Complainant had produced the delivery challan cum invoice and the same carries the signature of the accused — No prudent person would have given two cheques for Rs. 10,000/- to a person who in turn owes Rs.17480/- — Liability is admitted by accused but only the nature of liability was disputed — Whether cheques were given by way of part price of sale of machines or rent the accused under no circumstances could have given instructions to the bank to stop payment of the money due thereon — Impugned judgment set aside and the accused convicted u/s 138 of N.I. Act. (See para 12, 14 15)

Result : Appeal allowed.

Bhakti Garments Vs. Subhash B. Vishwakarma 2009 (12) LJSOFT (GOA) 122

Negotiable Instruments Act, 1881 — Section 138, 142(b) — Dishonour of cheques — Limitation — Delay in filing complaint — Appeal against acquittal.

Dishonour of cheques — Notice of demand hand delivered to the accused on 23-4-1995 — Failure to pay in accordance with the notice gave a cause of action to the complainant to file the complaint which started on 9th April, 1995 — Last date of filing the complaint was 8th May, 1995 but the complaint was

presented or filed on 9th May, 1995 — Complaint having been filed with one day of delay, the same ought to have been dismissed as time barred, not complying with the provision of Section 142(b) of N.I. Act. (See para 2)

Result : Appeal dismissed.

Ramdas P. Naik Vs. P. Kumaran 2009 (12) LJSOFT (GOA) 104

Partnership Act, 1932 — Section 69(2-A) — Dishonour of cheques — Legally enforceable debt/ liability — Partnership firm — Effect of non-registration.

See Nilesh H. Shetye Vs. Sharadchandra C. Salkar 2009 (12) LJSOFT (GOA) 184

Payment of Gratuity Act, 1972 — Section 7(7) — Constitution of India, 1950 — Article 226 — Appeal — Pre-deposit — Delayed payment — Interest — Disputed question of fact — Writ jurisdiction.

1) Appeal against the order passed by the controlling authority/ Assistant Labour Commissioner — Mandatory provision to deposit the gratuity amount as directed by the authority before filing Appeal not fulfilled by the petitioner — Appellate authority refused to entertain the appeal by dismissing the same for non compliance of Section 7(7) — Hence there is no order on merits by the appellate authority — No interference is called for under Writ jurisdiction. (See para 9)

2) Entitlement of Respondent No.4 regarding gratuity not disputed — On controversy is raised about arithmetic calculations of the amount — Such controversy raising disputed question of facts cannot be gone into in writ jurisdiction. (See para 9A)

3) Delayed payment of gratuity — Interest — Payment of gratuity with or without interest,

as the case may be does not lie in the domain of discretion but it is a statutory compulsion — Any culpable delay in payment of gratuity must be visited with the penalty of payment of interest. (See para 9A)

Result : Petition dismissed.

Parbhani Zilla Dekhreh Sahakari Sanstha Ltd. Vs. State of Maharashtra & ors. 2009 (12) LJSOFT (AUR) 91

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 — Section 30 — Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996 — Rule 12 — Seizure of machinery — Powers of Authorities — Return of machinery. Petitioner holding valid license to run the Genetic Centre and is using Ultra Sonography Machine — Allegations of illegally running the centre without maintaining the requisite record — Provisions u/s. 30 as well as the provisions under Rule 12 made it clear that the Appropriate Authority is empowered to seize the documents, record, register, book, pamphlet, advertisement or any other material object — Act as well as the Rules nowhere provides that the authority is empowered to seize the machinery/the machine used in the Genetic Clinic — Order of the seizure of the Ultra Sonography Machine set aside and the seized Ultra Sonography Machine directed to be returned to the petitioner. (See para 12)

Result : Petition allowed.

Dr.Dadasaheb S/o.Popatrao Tarte Vs. State of Maharashtra & anr. 2009 (12) LJSOFT (AUR) 95

Presidency Small Causes Court Act, 1882 — Section 41 — Leave and Licence Agreement — Refund of security deposit — Interim relief — Jurisdiction of Civil Court.

See Genesis Colors Private Ltd. Vs. Anil Ramlabhaya Suri 2009 (12) LJSOFT (URC) 20

Prevention of Corruption Act, 1988 — Section 2(c), 13(2), 13(1)(d) — Banking Regulation Act, 1949 — Section 46-A — Officers and directors of Private Bank — Public servants.

Corruption case — Accused nos.1 and 2 were the officers of Global Trust Bank Limited — Private banking company with all its freedom has to act in a manner which does not conflict with the fiscal policy of the State — Private company which is a scheduled bank cannot be termed as an institution or a company carrying on any public duty — Not possible to apply clause (viii) of section 2(c) of the Act of 1988 to the officers of the such bank by holding that by virtue of their office they are authorised or required to perform any public duty — Officers named in section 46-A of Banking Regulation Act become public servants for the purposes of offences under Chapter-IX of IPC — Scope of section 46-A of said Act of 1949 cannot be widened to mean that the officers named therein become public servants within the meaning of Act of 1988 — Learned Special Judge rightly declined to take cognizance of the offences under the Act of 1988 as against accused nos.1 and 2. (See para 14, 15, 16)

Result : Accordingly.

Sridhar Subasri Vs. CBI (BS & FC Mumbai) 2009 (12) LJSOFT (URC) 166

Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2) — Withdrawal of prosecution — Cheating. **See Theodoro Antonio Agnelo Salvador D'Souza Vs. Somnath Zuwarkar 2009 (12) LJSOFT (GOA) 125**

Prevention of Food Adulteration Act, 1954 — Sections 20-A, 21, 22-A — Prevention of Food Adulteration Rules, 1955 — Rule 37A — Proprietary Food — Classification — Writ jurisdiction — Alternate remedy. **See Red Bull (India) Pvt. Ltd. Vs. Office of the Chief Commissioner of Customs 2009 (12) LJSOFT 105**

Provincial Small Cause Courts Act, 1887 — Section 26 — Eviction proceedings — Jurisdiction of Civil Court.

Suit for eviction of a monthly tenant filed by the local authority in a Civil Court — Suit is governed by the provisions of Section 26 — Maharashtra Act 24 of 1984, as amended, gives exclusive jurisdiction to the Small Causes Court to decide suits or proceedings between the licensors and licensees or landlords and tenants for recovery of possession of the immovable property or for recovery of rent — Suit should be filed before the Small Causes Court — Courts below erred in deciding the suit — Plaint returned to the respondents for filing it before the appropriate court. (See para 11, 12)

Result : Appeal allowed.

Raj Bahadur Motilal Mills Ltd., Pune Vs. Pune Zilla Parishad, Pune 2009 (12) LJSOFT 57

Provincial Small Cause Courts Act, 1887 — Section 26 — Code of Civil Procedure, 1908 — Section 9 — Suit for declaration — Jurisdiction of Civil Court.

Suit for declaration, permanent and mandatory injunction — Issues framed by the trial Court would show that the issue - as to whether the firm is a partnership firm or not and the retirement of defendant no.1 from the firm is also in dispute — Issue as to whether

defendant no.1 was the proprietor of the said company is also one of the issues and another issue was whether defendant no.1 is a partnership firm — Said issues are triable only by civil court and not by Rent Court — With some remote inference it may be said that the some of the points involved are relating to the subject of lease between defendant no.1 and defendant no.2. but that fact by itself will not oust the jurisdiction of the civil court to decide all other relevant matters — Impugned judgment and decree passed by the appellate Court set aside and matter remanded back. (See para 8, 13)

Result : Appeal allowed.

Narendra s/o Motibhai Patel & ors. Vs. Janardhan Moreshwar (since deceased through L.Rs.) 2009 (12) LJSOFT (NAG) 134

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15 — Maharashtra Rent Control Act, 1999 — Section 3 — Code of Civil Procedure, 1908 — Section 9-A — Constitution of India, 1950 — Article 254(2) — Public Premises — Fixation of standard rent — Maintainability of application — Jurisdiction of Small Causes Court.

Public Premises — Application filed before the Court of Small Causes for fixation of standard rent — Provisions of the Act of 1971 have overriding effect on the Act of 1999 — There may not be a provision to the Act of 1971 for fixing standard rent but there are provisions in the Act of 1971 which empower the authorities to pass an order for recovery of rent and/or compensation from the tenant — Section 15 of the Act of 1971 ousts the jurisdiction of the Courts under the Rent Control Legislation to deal with the matter of

recovery of rent in respect of public premises — Application for fixation of standard rent will not be maintainable regarding premises to which provisions of the Act of 1971 are applicable. (See para 14 to 18)

Result : Petition allowed.

Life Insurance Corporation of India & Anr. Vs. Banatwala & Company 2009 (12) LJSOFT (URC) 51

Registration Act, 1908 — Section 32, 33 — Agreement of sale — Unregistered power of attorney — Validity of registration of sale deed.

See Ashok Kumar Dulichand Sharma Vs. Jethmal Motilal Jedia 2009 (12) LJSOFT (NAG) 96

Registration Act, 1908 — Section 49 — Suit for specific performance — Doctrine of part performance — Claim of protection — Unregistered document.

See Pratapsingh Yelsing Rajput Vs. Nathusingh Dhansingh Rajput (decd.) thru his L.Rs. 2009 (12) LJSOFT (AUR) 207

Rules of Business of Government of Maharashtra — Rule 6 — Jurisdiction of Minister of State — Delegation of powers.

See Babasaheb Sonbaji Wasade Vs. State of Maharashtra 2009 (12) LJSOFT (NAG) 44

Secondary Schools Code, 2002 — Starting of new Secondary School — Conditions of 5 km distance — Whether mandatory — Grant of permission — Setting aside of — Full Bench Reference.

See Shikshan Prasarak Mandal Vs. State of Maharashtra 2009 (12) LJSOFT 34

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 17 — Limitation Act, 1963 — Section 5 — Constitution of India, 1950 — Article 226 — Delay in filing Appeal — Condonation of delay — Jurisdiction of Debts Recovery Tribunal (DRT).

1) Delay of 506 days in filing the Appeal u/s 17 of Securitisation Act — Application filed u/s 5 of Limitation Act praying for condonation of delay — Onus is on the Applicants to make out sufficient cause for condoning delay — No sufficient cause made out to condone the delay, much less of 506 days — DRT has jurisdiction to not only enquire into the illegality and irregularity in the action of the Bank u/s 17(1) but also to set aside the sale and even to order restoration of status quo ante by the parties — However it does not mean that the DRT is obliged to entertain the proceedings even after the same has become hopelessly barred by limitation and no sufficient cause for condoning delay is made out by the Applicants. (See para 4)

2) Writ jurisdiction — Regarding the service of notice both the Authorities have concurrently rejected the claim of the Petitioners and have positively found that Petitioners had full knowledge about the factum of taking over possession of the suit property — Factum of taking over possession is essentially a question of fact which has been answered against petitioners — Not open to the High Court in exercise of writ jurisdiction to delve upon the said aspect and take a different view than the one taken by the two Authorities below even if some other view was possible. (See para 4)

Result : Petition dismissed.

La-Kozy & ors. Vs. ING Vysya Bank Ltd. & ors. 2009 (12) LJSOFT 35

LJSOFT COMPUTER CASE FINDER

Most exhaustive
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Service Regulations for Employees (Other than those in the Flying Crew and those in the Aircraft Engineering Departments) Regulations — Regulation 12(b) Proviso — Voluntary retirement — Interpretation of statutes.

See Padubidri Damodar Shenoy Vs. Indian Airlines Limited (SC) 2009 (12) LJSOFT (SC) 48

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 17(1), 17(3), 22(1) — Cheating — Non-payment of amount — Sick company — Inability to pay.

See Metal Box (India) Ltd. and anr. Vs. Rashmikanth Keshavlal Daftary and anr. 2009 (12) LJSOFT (URC) 167

Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Section 2(C), 7, 9 — Indian Penal Code, 1860 — Section 405, 409, 120-B — Banking Regulation Act, 1949 — Section 6(1)(a), 21, 35A — Security scam — Criminal breach of trust — Criminal Conspiracy — “Securities”

— Definition of — Jurisdiction of Special Court.

1) Security scam — Huge amount of public fund belonging to Public Sector Banks and Financial Institutions diverted for short term investment in the securities market — Transactions of discounting and rediscounting of Bills of Exchange and two Pay Orders at the instance of the private accused — UCO Bank could only have discounted the Bills of Exchange out of bona fide commercial transactions as had been provided under the RBI Circulars which were statutorily binding on UCO Bank — Entire transaction was undertaken with one motive that the funds of UCO Bank should be made available to Harshad Mehta who was the stock broker — Decision to discount the two bills of exchange taken by Accused No.1 only after consulting Accused No.2 — Charge of criminal breach of trust stands established against Accused Nos.1 and 2 — However Accused No.8 was not in a position to issue any directions being a Scale IV employee — Learned Special Judge rightly observed that he therefore could not be said to be guilty of the offence of Criminal Breach of trust. (See para 115, 116)

2) Criminal Conspiracy — It is an independent offence punishable independent of other offences — Its ingredients are (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not illegal in itself but is done by illegal means — Conspiracy ordinarily is hatched in secrecy — Court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence — While however doing so it must bear in mind that meeting of the minds is essential;

mere knowledge or discussion would not be. (See para 117, 118)

3) Mere fact that Accused No.8 might have been present at the meeting of the officers of UCO Bank by itself does not conclusively prove his involvement in the conspiracy hatched by the other officers of the Bank — Something more was needed to be shown that he was a party thereto — Conclusions arrived at by the learned Special Judge regarding the guilt of Accused No.8 for the offence of Criminal Conspiracy disagreed with — Accused No 8 acquitted of the charge of Criminal Conspiracy. (See para 133, 134)

4) Interpretation of statutes — Definition of ‘securities’ as contained in Section 2(c) of 1992 Act is an inclusive one and not exhaustive — It takes within its purview not only the matters specified therein but also all other types of securities as commonly understood — Term ‘securities’ should be given an expansive meaning — Cannot be said that it does not involve ‘bill discounting and rediscounting’ — Not a case where it can be said that the Special Court lacked inherent jurisdiction in trying the offence said to have been committed by the accused. (See para 39 to 51)

5) RBI Circulars — Reserve Bank of India has the requisite power to issue direction to Banks in relation to discounting and rediscounting of Bills of Exchange — Directions issued by RBI have statutory force and can be termed as law in force — All public sector Banks are bound thereby. (See para 55, 56)

6) RBI Circulars — Distinction between exercise of jurisdiction by RBI under the enabling provisions contained in Section 36(1) and the ones u/s 21 and 35-A of the Banking Regulation Act — In terms of Section 36 RBI

may caution or prohibit the Banking Companies but in terms of Sections 21 and 35-A it can issue binding directions. (See para 61, 62)

7) Criminal Breach of Trust — It would, inter alia, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover — Such an act must not only be done dishonestly but also in violation of any direction of law or any contract, express or implied, relating to carrying out the trust — An offence of criminal breach of trust by a public servant attracts the penal provision of Section 409 of IPC — Act of Criminal Breach of Trust per se may involve a civil wrong but a breach of trust with an ingredient of mens rea would give rise to a criminal prosecution as well. (See para 69, 70, 71)

Result : Accordingly.

Sudhir Shantilal Mehta Vs. C.B.I. 2009 (12) LJSOFT (SC) 123

Specific Relief Act, 1963 — Section 14, 37, 42 — Agreement in restraint of trade — Injunction to perform negative agreement — Doctrine of negative covenant — Interim relief.

See Y.T. Entertainment Limited Vs. One More Thought Entertainment Pvt. Ltd. 2009 (12) LJSOFT 124

Specific Relief Act, 1963 — Section 16 — Transfer of Property Act, 1882 — Section 53-A — Registration Act, 1908 — Section 49 — Suit for specific performance — Doctrine of part performance — Claim of protection — Unregistered document.

1) Suit for specific performance — Document titled as “Vikri Paoti” (sale receipt) — Unregistered document — In any sale

transaction before sale deed is written and signed by parties, there is understanding between the parties, they negotiate, settle the terms of sale and only thereafter reduce those terms of sale in the document and then execute it — Cannot be said that the document which is sale receipt cannot be an evidence of agreement between the parties as a result of which the sale receipt came to be executed — Learned District Judge erred in holding that the deed is not duly proved and cannot be read in evidence. (See para 12 to 16)

2) Suit for specific performance of contract — Appellant did not move the court in reasonable time — Vendor had already died — When the suit was filed there were minor children — Property was ancestral property and the appellant/ plaintiff ought to have shown that there was legal necessity for sale of the property — Since no question of limitation was raised by the Court below it is not possible to enter into that question in Second Appeal — However it would not be equitable to allow the specific performance — Specific performance need not be granted merely it is lawful to do so — Appeal allowed to the extent of refund of money and as a consequential relief the respondents would be entitled to get back possession of the house property. (See para 17, 18)

Result : Appeal allowed.

Pratapsingh Yelsing Rajput Vs. Nathusingh Dhansingh Rajput since deceased through his L.Rs. 2009 (12) LJSOFT (AUR) 207

Specific Reliefs Act, 1963 — Section 20 — Specific performance of contract — Appreciation of evidence — Inconsistencies/ variations — Second appeal — Reappreciation of evidence.

See Tukaram Laxman Karale Vs. Baba Govind Sase 2009 (12) LJSOFT (AUR) 154

Specific Relief Act, 1963 — Section 34 — Code of Civil Procedure, 1908 — Order XXXIX Rule 1, 2 — Development Agreement — Interim relief.

Suit for declaration and for specific performance of Agreement and for damages — Plaintiff has entered into an Agreement with the Defendant Society for re-development and re-construction of its two buildings — Decision of the Managing Committee shown to be accepted unanimously by members — Society is bound by the Agreement entered into with the Plaintiff as it was upon what was resolved by the members present and voting in the Special General Body Meetings — Society cannot validly terminate such Agreement — Society cannot commit a breach of the Agreement — Plaintiff can prima facie obtain specific performance of its Agreement with the society. (See para 25, 26, 27)

Result : Accordingly.

D.B.Enterprise Vs. Juhu Chandan Co-op Hsg. Ltd. & ors. 2009 (12) LJSOFT 204

Specific Relief Act, 1963 — Section 36, 37, 38, 10, 12 — Transfer of Property Act, 1882 — Section 53-A — Code of Civil Procedure, 1908 — Order VIII Rule 6A — Agreement for sale — Part performance of contract — Counter-claim.

1) Suit for specific performance — Concurrent finding of fact recorded by both the courts below that it is impossible to accept the contention of the plaintiff that the agreement was an agreement of sale and not a loan transaction — As there was no agreement to transfer the suit property for consideration, the

question of part performance of the contract would not arise — Transaction was a plain and simple loan transaction and therefore Section 53A of T.P. Act is not attracted. (See para 14, 16)

2) Suit for specific performance — Counter claim can be filed in other suits besides money suits and the defendant can always be granted relief in the counter claim — First appellate Court erred in observing that a counter claim can be filed only in respect of a money suit and not for any other reliefs — Since appellate court had observed that this was not an agreement of sale but a loan transaction in which the property of the defendant had been kept as a security with the plaintiff, the appellate court should have granted the relief sought by the defendant in the counter claim. (See para 15)

Result : Accordingly.

Runja Khandu Gaware, Decd. Thru his Legal Heirs Vs. Mhalsabai Dagu Gadak 2009 (12) LJSOFT 59

Succession Act, 1925 — Administration of Will — Grant of probate.

Probate proceedings — Plaintiff himself led evidence along with PW 2 and 3 who were the executors of Will — Plaintiffs stated that the deceased left him surviving as his only heirs and next of kin according to Parsee Succession Act — Plaintiffs filed an affidavit of examination in chief — Defendant in spite of service and notice and knowledge never appeared to cross-examine the plaintiffs — Evidence and the averments so made by plaintiffs remained uncontroverted — Defendant failed to discharge her burden and therefore adverse inference need to be drawn against the defendant — Conduct of defendant itself is self-destructive and goes against the

defendant and it supports the case of the plaintiffs which they have proved by leading sufficient evidence — Caveat is rejected and the Probate is grant to the petitioners/ plaintiffs. (See para 7, 8, 12)

Result : Petition allowed.

Jehangir Ardeshir Rabadi & ors. Vs. Ms.Tehmi Mukadam (Caveator/ Defendant) 2009 (12) LJSOFT 79

Succession Act, 1925 — Section 59, 63 — Evidence Act, 1872 — Section 68 — Will — Genuineness of — Grant of probate.

Testamentary proceedings — Petitioners are the sons of deceased who executed the last will and testament — There are no suspicious circumstances made out and/or even proved by the defendant except by raising the averments — Deceased was fit in mental capacity to sign the will — Plaintiffs proved the requisite facts necessary to support the genuineness of the will — Minor discrepancy in evidence are inconsequential or at least are not sufficient to accept the case of the defendant — Plaintiffs prove that citation was duly served upon the defendant — Defendant failed to prove that the Last Will was not duly executed by the deceased — Plaintiffs prove that the Will was the Last Will executed by the deceased — Allowing the petition the Caveat is dismissed. (See para 7 to 12)

Result : Petition allowed.

Max Cajeton Travasso & anr. Vs. Mrs. I. Fernandes 2009 (12) LJSOFT 152

Succession Act, 1925 — Section 63 — Bombay High Court (Original Side) Rules, 1980 — Rule 370 — Execution of Will — Proof of — Revocation of probate — Testamentary jurisdiction.

1) Revocation of probate — It was the desire of the testator that the entire estate should vest in the trustees of the Trust constituted in 1994 — Testator and his wife were childless — Wife of testator had already been sufficiently provided for during her life time — Proceedings had been non-contentious in view of the affidavit of the widow consenting to the grant of probate — When the grant of probate had proceeded on the basis that the matter was non-contentious fault cannot be found with the executors in not filing the affidavit of the Sub Registrar of Assurances before whom the will was registered — An affidavit of one of the attesting witnesses was required and that requirement was duly complied with — Executors have set their oath in support of the will — Testator has full testamentary power and the Court cannot determine as to whether the disposition is fair or unjust — Once it is established before the Court that the testator was free from influence and was of a sound and disposing mind, the Court has no jurisdiction to question the choice exercised by the testator — Petitioner failed to make out a case for revocation. (See para 18, 19)

2) Testamentary jurisdiction — Court granting probate in the exercise of the testamentary jurisdiction does not adjudicate upon the title of the testator — Question as to whether the testator had title to the residential flat at Woodlands is a matter does not fall for adjudication by the Court granting a probate in the exercise of the testamentary jurisdiction. (See para 13)

Result : Petition dismissed.

Bipin Natwarlal Ganatra Vs. Rohan P. Shah & ors. 2009 (12) LJSOFT 92

Succession Act, 1925 — Section 63, 68 — Hindu Succession Act, 1956 — Section 15(1)(a) — Will — Proof of — Burden of proof.

1) Suit for Probate of the Last Will and Testament of the deceased — Basic burden to prove the case that the Will so executed by the deceased in accordance with law is duly discharged — Averments regarding undue influence, fraud, misrepresentation, suspicious circumstances must be brought on record initially and basically by the parties one who make the averments and or allegations — Defendant failed to discharge the basic burden by not leading the evidence in support of the averments so raised — Having once proved the Will the submission with regard to the suspicious circumstances/ surrounding circumstances in absence of any contra material on record, except the suggestions so put which are not sufficient to discard the case of the Plaintiff — Caveat/objection is dismissed and the Testamentary Suit/ Petition is allowed. (See para 7, 9)

2) Testamentary Suit — Property of the female Hindu dying intestate — Stepson is not entitled as ‘son’ to inherit to his stepmother as one of the heirs — Submission regarding the serving of citations to the step son of the deceased cannot be accepted. (See para 12, 13)

Result : Petition allowed.

Dr. Manoj Shantilal Nanavati & anr. Vs. Nandini M. Dasadia 2009 (12) LJSOFT 115

Telegraph Act, 1885 — Section 3(6), 7-B, 10 — Agreement between private parties — Jurisdiction of Civil Court.

Suit for recovery of amount due in respect of the mobile telephone facility granted by the Plaintiff to the Defendant — Customer

Agreement entered into between the parties — An agreement between private parties cannot confer on either of them statutory powers by incorporation of the provisions of a statute — Section 7B contemplates an arbitration only in respect of disputes arising between the telegraph authority and the person for whose benefit the line has been provided — Section 7B does not include within its ambit licensees under the Act — Section 7B would not be applicable — There is no defence to the claim in the suit — Suit decreed. (See para 8, 9, 13, 19, 20)
Result : Suit decreed.

Vodafone Essar Ltd. Vs. Nitin Goel 2009 (12) LJSOFT 143

Trade Marks Act, 1999 — Section 45 — Infringement of trade mark — Passing off action — Grant of injunction.

1) Plaintiff is the proprietor of “M/s Hebare and Sons” in the business of production of sewing machines under the trade name and trade mark “Hebare” — Defendant selling sewing machines prominently displaying the word “Hebare” in large font on the sewing machines and other words “Amit” and “Ajinkya” are used in small letters by giving them insignificant place — Defendant is the real brother of plaintiff — Both have surname “Hebare” — By deed of dissolution of partnership the defendant specifically transferred the proprietary name of the partnership concern to his brother-plaintiff and thereby goodwill was sold — Name used by the defendant is deceptively similar — Using the name “Hebare” by a third party is no defence for the defendant — Impugned order restrained the defendants from using trade mark “Hebare” not liable to be interfered with.

(See para 16, 17, 21, 22)

2) Trademark — Deed of assignment executed in favour of plaintiff not registered — Plaintiff notwithstanding being not registered is entitled to exercise rights as a registered proprietor of trade mark. (See para 13)
Result : Appeal dismissed.

Waman s/o Manjiram Hebare Vs. Ramesh s/o Manjiram Hebare 2009 (12) LJSOFT (AUR) 56

Transfer of Property Act, 1882 — Section 52, 53-A, 7 — Hindu Minority and Guardianship Act, 1956 — Section 8(2), 8(3) — Evidence Act, 1872 — Section 103 — Property of minor — Part performance of contract — Burden of proof — Deed of cancellation — Doctrine of lis pendence.

1) Claim of protection u/s 53(A) — Transferee, in a contract of transfer can claim protection u/s 53(A) of T.P. Act only in a suit filed by the transferor with whom the transferee has a privity of contract — Plaintiffs were the minors and were exclusive and absolute owners of the suit property — Defendant No.2 - mother of plaintiff - is the transferor — Privity of contract is between the defendant No.2 and defendant Nos.3 to 8 — There was no privity of contract between the plaintiffs and the defendant Nos.3 to 8 — Suit has neither been filed by the transferor nor by any person claiming through the transferor — Defendant Nos.3 to 8 not entitled to protection u/s 53(A) of T.P. Act in a suit filed by the plaintiffs who are not claiming their title through defendant No.2. (See para 19)

2) Doctrine of lis pendence — Agreement revoked or cancelled during the pendency of the suit — Execution of deeds of cancellation

does not amount to transfer or retransfer of property — Even if amounts to transfer, none of the reliefs claimed by the plaintiffs are adversely affected but on the contrary, the same shall advance the reliefs claimed by the plaintiffs — Any transfer of suit property which does not affect the rights of any other party to the suit under the decree or order which may be made, but, on the contrary advances the reliefs claimed in the suit, the same shall not be hit by the provisions of section 52 of T.P. Act. (See para 21)

3) Claim of protection u/s 53(A) — Transferee taking possession of the land in part performance of contract in terms of section 53(A) does not acquire title in the property but he merely becomes entitled to specific enforcement of an agreement, as equitable relief — Provisions of section 103 of Evidence Act are attracted and it states that the burden of proof as to any particular fact lies on that person, who wishes the Court to believe in its existence, unless it is provided by any law that the burden of proof of that fact shall lie on any particular person. (See para 17)
Result : Appeal allowed.

Baliram Sahebrao Tidke & anr. Vs. Saheba s/o Patilba Tidke & ors. 2009 (12) LJSOFT (AUR) 103

Transfer of Property Act, 1882 — Section 53-A — Agreement for sale — Part performance of contract — Counter-claim.
See Runja Khandu Gaware, Decd. Thru his Legal Heirs Vs. Mhalsabai Dagadu Gadak 2009 (12) LJSOFT 59

Transfer of Property Act, 1882 — Section 53-A — Suit for specific performance — Doctrine of part performance — Claim of

protection — Unregistered document.

See Pratapsingh Yelsing Rajput Vs. Nathusingh Dhansingh Rajput since deceased through his L.Rs. 2009 (12) LJSOFT (AUR) 207

Transfer of Property Act, 1882 — Section 105, 106 — Eviction proceedings — Arrears of rent — Lease agreement — Lessor-lessee relationship — Contracts entered through agent — Enforceability by Principal.
See Ramnath Ganpati Vs. Chetandas s/o. Zatmaldas Panjwani (since deceased) by LRs. 2009 (12) LJSOFT (AUR) 163

Transfer of Property Act, 1882 — Section 111(g) — Eviction proceedings — Arrears of rent — Denial of title of landlord.
See Yadav Mahadu Koli since deceased, through LRs. Vs. Sumitrabai Popatlal Shah 2009 (12) LJSOFT (AUR) 63

University Grants Commission Act, 1956 — Section 3 — Admission to MBBS Degree course — Reservation Quota — Entitlement to — Status of institution.
See V. Anto M. Vargheese Vs. Union of India 2009 (12) LJSOFT 81

Voluntary Retirement Scheme Rules — Rule 9 — Employee on leave — Resignation.

Petitioner filed application for voluntarily retirement but the Bank treated the application as resignation and accepted the same — Industrial Court held that the petitioner at the time of filing such application was on leave and was not entitled for the voluntary retirement benefit — Rule 9 provided that the employees on leave can not apply for such

benefit unless they report on work — Industrial Court further held that Bank terminated the services of the complainant illegally and in breach of the terms of contract of service but said grievance cannot be redressed for want of jurisdiction — Findings recorded by the Industrial Court are not perverse in any manner and not liable to be interfered in writ jurisdiction. (See para 4, 5)
Result : Petition dismissed.

Limbaji Baburao Shinde Vs. Osmanabad District Central Co-operative Bank Ltd. 2009 (12) LJSOFT (AUR) 64

Wakf Act, 1995 — Section 14(1), 14(3) — Composition of Board — Powers of nomination — Interpretation of statutes — Judicial review — Scope of.

1) Wakf Board — Composition of Board — Sub-clause (b) of section 14(1) deals with the election of members to the Board — Upon conjoint reading of the provisions of Section 14(1) and 14(3) there is no conflict between the two provisions — Section 14(1) and 14(3) exist in harmony and there is no conflict in them — Power u/s 14(3) would be permitted to be exercised by the State Government only in the event it comes to a subjective satisfaction that the conditions as stipulated therein exists — Departure from the normal rule of having elected representative from categories (i) to (iii) and nominating persons by the State Government, would be permissible only on the conditions stated in Section 14(3) being satisfied — Leave apart recording reasons, there is not even a mention in the file that the State Government has arrived at a subjective satisfaction as contemplated u/s 14(3) so as to invoke the powers of nomination — Conditions

precedent for invoking the powers by the State Government u/s 14(3) were not satisfied — Exercise of power in issuance of the impugned notification was dehors the provisions of Section 14(3) of the Act. (See para 10, 17, 21, 22)

2) Judicial review — Scope of — Formation of opinion by the State Government is purely subjective process — Not be permissible for High Court to challenge the same on the ground of propriety, reasonableness or sufficiency — However it will be the duty of the Court to examine, whether the satisfaction arrived at by the authority is on the basis of the circumstances suggested in the statutory provision itself — Would be permissible to examine as to whether there existed material based on which alone the State Government could form its opinion. (See para 11, 14)

3) Interpretation of statutes — Statute has to be given a plain and literary meaning, unless it leads to ambiguity — Each and every word used by the legislature is to be given its complete meaning — It is presumed that the legislature has used each and every word of the statute with same meaning and, therefore, every word of the statute in its context has to be interpreted. (See para 13, 22)

Result : Petition allowed.

Syed Jameel Ahmed s/o. Syed Janimiya Vs. State of Maharashtra through its Secretary, General Administration Department & ors. 2009 (12) LJSOFT (AUR) 133

Workmen's Compensation Act, 1923 — Section 4-A(3), 19 — Constitution of India, 1950 — Article 141 — Motor accident — Compensation — Penalty — Interest — Show cause notice — Rules of precedent.

1) Compensation — Interest — Accident occurred on 2.12.2005 on which date the liability of the employer to pay the compensation arose — Employer did not accept the liability for compensation and totally denied the claim — Commissioner passed an award on 7.2.2009 — Amount of arrears of compensation “fell due” u/s 4-A(3) on the date of the order of the Commissioner — Period of one month as specified in Section 4-A(3) expired on 7.3.2009 but the employer did not make the payment on/or before the said date — Simple interest @ 12 p.a. became payable by the employer on the amount of arrears of compensation with effect from the date of accident / incident on 2.12.2005 — Commissioner rightly directed payment of interest from the date of incident. (See para 27)

2) Compensation — Penalty — Show cause notice was required to be issued to the employer calling upon him to furnish the explanation for the delay caused in making the payment of arrears — Show cause notice contemplated is after passing of the order by the Commissioner determining the compensation — Order imposing penalty to the extent of 50% of the amount of compensation needs to be quashed and set aside with a direction to the Commissioner to issue a show cause notice providing the appellant / employer a reasonable opportunity of being heard in the matter and to furnish the explanation for the delay caused in making the payment of arrears of compensation and interest, and thereafter to pass an appropriate order. (See para 32)

3) Rules of precedent — Judgment of the Apex Court not considering the earlier view taken by the coordinate Bench — It is not

necessary to follow the view taken by the Apex Court in the later judgment — It is open for the High Court to follow the view taken by the coordinate Bench of the Apex Court, which it deems fit and more in conformity with the provisions of law. (See para 29)

Result : Appeal partly allowed.

Udhav Rangnathrao Pawar Vs. Sheshrao Ramji Jogdand & anr. 2009 (12) LJSOFT (AUR) 60

Workmen's Compensation Act, 1923 — Section 12, 4A — Compensation — Penalty — Interest.

Compensation — Appellant disputed the employer-employee relationship — Where the employer does not accept his liability, one month's period will start running from the date of the order of Commissioner — It is only if the appellant fails to make the payment within the period of one month and is given a show cause notice calling upon to give the explanation for delay, the order regarding penalty can be passed — Order imposing penalty to the extent of 50 % of the amount of compensation quashed and set aside — Trial Court also wrongly granted interest @ 12 % p.a. from the date of filing of the petition till its realization — Interest @ 12 % p.a. shall become payable only after expiry of period of one month from date of the order of the Commissioner. (See para 3, 4, 5)

Result : Appeal partly allowed.

Nandi Sahakari Sakhar Karkhana Limited Vs. Dnyanoba Kashinath Aare and ors. 2009 (12) LJSOFT (AUR) 126