



**SUPREME
COURT
YEARLY
CIVIL DIGEST
2022**

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Aadhaar

Aadhaar Act 2016 - UIDAI directed to issue Aadhaar cards to sex workers without insisting proof of residence. ***Budhadev Karmaskar v. State of West Bengal***, [2022 LiveLaw \(SC\) 525](#)

Act of God

Act of God - Meaning - When nothing of any external natural force had been in operation in a violent or sudden manner, the event of the fire in question could be referable to anything but to an act of God in legal parlance. (Para 53-55) ***State of U.P. v. Mcdowell and Company Ltd.***, [2022 LiveLaw \(SC\) 13](#) : (2022) 6 SCC 223

Administrative Law

Administrative Law - Administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. (Para 30) ***Bharat Sanchar Nigam Ltd. v. Tata Communications Ltd.***, [2022 LiveLaw \(SC\) 792](#) : 2022 (14) SCALE 1

Administrative Law - Appeal challenging adverse Remarks made in the Allahabad HC judgment regarding a Statutory authority - Allowed - Even if the High Court found that the impugned actions of the authorities concerned, particularly of the appellant, had not been strictly in conformity with law or were irregular or were illegal or even perverse, such findings, by themselves, were not leading to an inference as corollary that there had been any deliberate action or omission on the part of the Assessing Authority or the Registering Authority; or that any 'tactics' were adopted. ***Chandra Prakash Mishra v. Flipkart***, [2022 LiveLaw \(SC\) 359](#) : 2022 (6) SCALE 40

Administrative Law - Every erroneous, illegal or even perverse order/action by a Statutory authority, by itself, cannot be termed as wanting in good faith or suffering from malafide - For imputing motives and drawing inference about want of good faith in any person, particularly a statutory authority, something more than mere error or fault ought to exist. (Para 13, 16) ***Chandra Prakash Mishra v. Flipkart***, [2022 LiveLaw \(SC\) 359](#) : 2022 (6) SCALE 40

Administrative Law - For holding the action of the Executive to be arbitrary, there must be a factual basis. (Para 13) ***State of Maharashtra v. Shaikh Mahemud***, [2022 LiveLaw \(SC\) 363](#) : 2022 (6) SCALE 104

Administrative Law - Inter-departmental communications cannot be relied upon as a basis to claim any right - Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second,

it has to be communicated. (Para 14-15) **Mahadeo v. Sovan Devi**, [2022 LiveLaw \(SC\) 730](#) : AIR 2022 SC 4071

Administrative Law - The decision of the State in its executive power cannot be contradictory to the express provision of the statutory Rules, but where the statute and Rules are silent, the State Government, in exercise of its executive power, is competent to supplement the rules. The executive power of the State is to supplement and not supplant. **Director of Teacher's Training Research Education v. OM Jessymol**, [2022 LiveLaw \(SC\) 759](#)

Administrative Law - The requirement to give reasons is satisfied if the concerned authority has provided relevant reasons. Mechanical reasons are not considered adequate. (Para 23) **Ram Chander v. State of Chhattisgarh**, [2022 LiveLaw \(SC\) 401](#) : AIR 2022 SC 2017

Accountability

Administrative Law - Accountability - Three essential constituent dimensions. (i) responsibility, (ii) answerability and (iii) enforceability. (Para 33-35) **Vijay Rajmohan v. State**, [2022 LiveLaw \(SC\) 832](#) : AIR 2022 SC 4974

Central Administrative Tribunal

Central Administrative Tribunal - Punishment for contempt imposed on Advocate for alleged intemperate behaviour in court- SC sets aside CAT order as no trial was conducted - We would think that in the facts of this case, denial of a right of trial which is contemplated also under Section 14(1)(c) of the Act as also Rule 15 of the Rules has resulted in miscarriage of justice. (Para 26) **Mehmood Pracha v. Central Administrative Tribunal**, [2022 LiveLaw \(SC\) 692](#) : AIR 2022 SC 3933

Doctrine of "Unreasonableness"

Administrative Law - Doctrine of "unreasonableness" - It is the intention of a legislature, when using statutory language that confers broad choices on the administrative agencies, that courts should not lightly interfere with such decisions, and should give considerable respect to the decision-makers when reviewing the manner in which discretion was exercised. However, discretion must still be exercised in a manner that is within a reasonable interpretation of the margin of manoeuvre contemplated by the legislature, in accordance with the principles of the rule of law. (Para 78) **Satish Chandra Yadav v. Union of India**, [2022 LiveLaw \(SC\) 798](#) : 2022 (14) SCALE 270

Judicial Review

Administrative Law - Judicial Review - The action based on the subjective opinion or satisfaction can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion - Scope discussed. (Para 28-37) **Amarendra Kumar Pandey v. Union of India**, [2022 LiveLaw \(SC\) 600](#) : 2022 (10) SCALE 42

Maternity Leave

Maternity Leave - A woman cannot be declined maternity leave under the Central Services (Leave Rules) 1972 with respect to her biological child on the ground that her spouse has two children from his earlier marriage. **Deepika Singh v. Central Administrative Tribunal**, [2022 LiveLaw \(SC\) 718](#) : AIR 2022 SC 4108

Natural Justice

Administrative Law - Natural Justice - Importance of natural justice and an opportunity of hearing to be afforded to the affected party in any administrative or quasi-judicial proceedings. (Para 28) **Esteem Properties Pvt. Ltd. v. Chetan Kamble**, [2022 LiveLaw \(SC\) 226](#) : 2022 (4) SCALE 284

Administrative Law - Natural Justice - Importance of natural justice and an opportunity of hearing to be afforded to the affected party in any administrative or quasi-judicial proceedings. (Para 28) **Esteem Properties Pvt. Ltd. v. Chetan Kamble**, [2022 LiveLaw \(SC\) 226](#) : 2022 (4) SCALE 284

Administrative Tribunal Act, 1986

Administrative Tribunal Act, 1986 - Appeal against Jammu and Kashmir High Court judgment setting aside the Full bench judgment of Central Administrative Tribunal - Dismissed - We are in complete agreement with the view taken by the High Court on the procedure which was adopted by the Chairman of the Central Administrative Tribunal. **Daljit Singh v. Arvind Samyals**, [2022 LiveLaw \(SC\) 364](#)

Section 17 - Power to punish for Contempt

Administrative Tribunals Act, 1985; Section 17 - Power of CAT to punish for contempt - Central Administrative Tribunal Rules 13 & 15 - CAT cannot punish for contempt committed in the face of it without trial when the alleged contemnor denies charges - Procedure under Section 14(1)(c) of the Contempt of Courts Act to be followed- CAT has no power of the Supreme Court under Articles 129 and 142 of the Constitution of India. (Paras 14, 15 & 24) **Mehmood Pracha v. Central Administrative Tribunal**, [2022 LiveLaw \(SC\) 692](#) : AIR 2022 SC 3933

Section 25 - Power of Chairman to transfer cases from one Bench to another

Administrative Tribunals Act, 1985; Section 25 - Any decision of Tribunal, including the one passed under Section 25 of the Act could be subjected to scrutiny only before a Division Bench of a High Court within whose jurisdiction the Tribunal concerned falls. (Para 16) **Union of India v. Alapan Bandyopadhyay**, [2022 LiveLaw \(SC\) 12](#) : AIR 2022 SC 499 : (2022) 3 SCC 133

Administrative Tribunals Act, 1985 - Section 25 - Chairman could pass an order of transfer under Section 25 of the Act *suo motu*. (Para 8) **Union of India**

v. Alapan Bandyopadhyay, [2022 LiveLaw \(SC\) 12](#) : AIR 2022 SC 499 : (2022) 3 SCC 133

Section 26 - Decision to be by majority

Administrative Tribunal Act, 1986; Section 26 - Once there is a difference of opinion between the Judicial Member and the Administrative Member of the Tribunal, the matter is required to be referred to the third Member/Chairman and the third Member/Chairman was required to give his own decision upon such a reference. However, the matter is not required to be referred to the Full Bench. *Daljit Singh v. Arvind Samyal*, [2022 LiveLaw \(SC\) 364](#)

Admiralty

Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017; Section 12, 14 - Code of Civil Procedure, 1908; Order 1 Rule 10(2), Order XLIII Rule 1 - Commercial Courts Act, 2015 - An order for addition of a party under Order 1 Rule 10(2) of the CPC is not appealable under section 14 of the Admiralty Act - An appeal does not lie to the Commercial Appellate Division of the High Court from an order of the Commercial Division (Single Bench) of the same High Court for addition of a party in an admiralty suit governed by the Admiralty Act - An intra-court appeal under the Admiralty Act to the Commercial Division of the High Court would lie from any judgment, decree or final order under the Admiralty Act or an interim order under the Admiralty Act relating to the orders specified in Order 43, Rule 1 - An order for addition of a party under Order 1 Rule 10(2) of the CPC is not appealable under section 14 of the Admiralty Act - It could not possibly have been the legislative intent of the Admiralty Act to make all interim orders appealable. (Para 81-88) *Owners and Parties Interested in the Vessel M.V. Polaris Galaxy v. Banque Cantonale De Geneve*, [2022 LiveLaw \(SC\) 793](#)

Admission and Fee

Admission and Fee Regulatory Committee (for Professional Courses offered in Private Un-Aided Professional Institutions) Rules, 2006 (Andhra Pradesh); Rule 4 - The education is not the business to earn profit. The tuition fee shall always be affordable. Determination of fee/review of fee shall be within the parameters of the fixation rules and shall have direct nexus on the factors mentioned in Rule 4 of the Rules, 2006, namely, (a) the location of the professional institution; (b) the nature of the professional course; (c) the cost of available infrastructure; (d) the expenditure on administration and maintenance; (e) a reasonable surplus required for growth and development of the professional Institution; (f) the revenue foregone on account of waiver of fee, if any, in respect of students belonging to the reserved category and other Economically Weaker Sections of the society. All the aforesaid factors are required to be considered by the AFRC while determining/reviewing the tuition fees. (Para 5) *Narayana Medical College v. State of Andhra Pradesh*, [2022 LiveLaw \(SC\) 929](#) : AIR 2022 SC 5686

Admissions

Admissions - While generally admissions of fact by counsel are binding, neither the client nor the court is bound by admissions as to matters of law. (Para 24-25) *Employees State Insurance Co. v. Union of India*, [2022 LiveLaw \(SC\) 78](#) : AIR 2022 SC 1017

Adverse Possession

Adverse Possession - Suit for declaration based on adverse possession having matured into ownership – Maintainable. *Darshan Kaur Bhatia v. Ramesh Gandhi*, [2022 LiveLaw \(SC\) 246](#)

Advocate

Advocate - Senior Advocate Designation - Instead of ten marks to be allocated to a counsel who has put in between ten to twenty years of practice, the marks be allocated commensurate with the standing of the person at the Bar, that is to say, one mark each shall be allocated for every year of practice between ten to twenty years. *Indira Jaising v. Supreme Court of India*, [2022 LiveLaw \(SC\) 451](#)

Advocate Commissioners - The Advocate Commissioner is not a new concept. The advocates are appointed as Court Commissioner to perform diverse administrative and ministerial work as per the provisions of Code of Civil Procedure and Code of Criminal Procedure. (Para 36) *NKGSB Cooperative Bank Ltd. v. Subir Chakravarty*, [2022 LiveLaw \(SC\) 212](#) : AIR 2022 SC 1325 : (2022) 10 SCC 286

Advocates - Role of the advocate as being an officer of the court - An advocate is a guardian of constitutional morality and justice equally with the Judge. He has an important duty as that of a Judge. He bears responsibility towards the society and is expected to act with utmost sincerity and commitment to the cause of justice. He has a duty to the court first. As an officer of the court, he owes allegiance to a higher cause and cannot indulge in consciously misstating the facts or for that matter conceal any material fact within his knowledge - An advocate should be diligent and his conduct should conform to the requirements of the law by which he plays a vital role in the preservation of society and justice system. As an officer of the court, he is under a higher obligation to uphold the rule of law and justice system. (Para 37 - 39) *NKGSB Cooperative Bank Ltd. v. Subir Chakravarty*, [2022 LiveLaw \(SC\) 212](#) : AIR 2022 SC 1325 : (2022) 10 SCC 286

Advocates Act 1961 - Disciplinary action against striking lawyers - Bar Council of India to take appropriate action against all the executive members of different Bar Associations on strike contrary to directions of this Court and logically we would expect their licences to be suspended at least till the work is resumed and further action against the members of the Action Committee. *PLR Projects Pvt. Ltd. v. Mahanadi Coalfields Ltd.*, [2022 LiveLaw \(SC\) 1006](#)

Advocates Act 1961 - Supreme Court Rules - Advocates-on-Record System - Supreme Court has authority to prescribe who can act or plead in the court as per Article 145 of the Constitution read along with Section 52(b) of The Advocates Act, 1961 - Challenge against AoR system dismissed. **Nandini Sharma v. Registrar, Supreme Court of India, [2022 LiveLaw \(SC\) 1018](#)**

Advocates Act, 1961; Section 32 - The enabling provision of Section 32, whereby any Court, authority or person may permit any non-advocate to appear before it or him in any particular case is difficult to be read as creating a corresponding bar in giving permission to a GPA holder of a party to represent that party as such, if the said GPA holder, during pendency of the proceedings in the Court, gets enrolled as an advocate. (Para 14) **S. Ramachandra Rao v. S. Nagabhushana Rao, [2022 LiveLaw \(SC\) 861](#) : AIR 2022 SC 5317**

Affidavits

Affidavits - Once an affidavit has been filed which is on the face of it false to the knowledge of the executants, no benefit can be claimed on the ground that delivery of possession was given. (Para 16) **New Okhla Industrial Development Authority v. Ravindra Kumar Singhvi, [2022 LiveLaw \(SC\) 184](#) : AIR 2022 SC 928 : (2022) 5 SCC 591**

Affidavits - Therefore, affidavits filed were not mere sheets of paper but a solemn statement made before a person authorized to administer an oath or to accept affirmation. The plaintiff had breached such a solemn statement made on oath. (Para 17) **New Okhla Industrial Development Authority v. Ravindra Kumar Singhvi, [2022 LiveLaw \(SC\) 184](#) : AIR 2022 SC 928 : (2022) 5 SCC 591**

Agriculture

Agricultural Produce Markets Act, 1961 (Rajasthan) - Section 9 - It cannot be said to be a mandatory statutory obligation of the Market Committees to provide shop/land/platform on rent/lease. (Para 9) **Krishi Upaj Mandi Samiti v. Commissioner, [2022 LiveLaw \(SC\) 203](#) : AIR 2022 SC 1234 : (2022) 5 SCC 62**

All India Services

All India Services (Conduct) Rules, 1968 - Civil servants should maintain the highest ethical standards of integrity and honesty; political neutrality; fairness and impartiality in the discharge of duties, courtesy, accountability and transparency - Integrity, impartiality, neutrality, transparency and honesty are non-negotiable. Ethical standards necessarily have to be enforced and stringent action taken against the concerned officer whenever there is any breach of ethical standards as laid down in the All India Services (Conduct) Rules, 1968. **Vivek Krishna v. Union of India, [2022 LiveLaw \(SC\) 436](#)**

All India Services (Conduct) Rules, 1968 - Writ petition seeking to impose restrictions to prevent Civil Servants from contesting elections immediately after retirement or resignation from service, by imposing a "Cooling off Period" -

Dismissed - It is not for this Court to decide whether or not there should be any rules/guidelines for a bureaucrat to contest elections - Whether there should be any "Cooling off Period" for civil servants for them to contest elections or not is best left to the concerned Legislature - The allegations of bureaucrats deviating from strict norms of political neutrality with a view to obtaining party tickets to contest elections, is vague, devoid of particulars and unsupported by any materials which could justify intervention of this Court. **Vivek Krishna v. Union of India**, [2022 LiveLaw \(SC\) 436](#)

Amendment

Amendment - If power to amend or modify or relax a notification and/or order exists, the notification and/or order may be amended and/or modified as many times, as may be necessary. A statement made by counsel in Court would not prevent the authority concerned from making amendments and/or modifications provided such amendments and/or modifications were as per the procedure prescribed by law. (Para 47) **Pahwa Plastics Pvt. Ltd. v. Dastak NGO**, [2022 LiveLaw \(SC\) 318](#) : 2022 (5) SCALE 353

Amendment - Whenever the challenge is to the amended provisions, the scope of enquiry, inter alia, ought to be as to whether the same is in consonance with the Principal Act, achieve the object and purpose of the Principal Act and are otherwise just, rational and reasonable. (Para 21) **Noel Harper v. Union of India**, [2022 LiveLaw \(SC\) 355](#) : 2022 (5) SCALE 775

Ancient Monuments

Ancient Monuments and Archaeological Sites and Remains Act, 1958; Sections 20A, 20C, 20D -The repairs and renovation of the buildings, which are existing and the constructions which are necessary for providing basic facilities like drainage, toilets, water supply and distribution of electricity are kept out of the rigour of requirement of statutory permissions. (Para 51) **Ardhendu Kumar Das v. State of Odisha**, [2022 LiveLaw \(SC\) 539](#) : AIR 2022 SC 2695

Ancient Monuments and Archaeological Sites and Remains Act, 1958; Sections 20A, 20C, 20D - When sub-section (4) of Section 20A of the said Act is read in harmony with clause (dc) of Section 2 and the provisions of Sections 20C and 20D of the said Act, we find that the submission that no construction at all can be made in the prohibited area or the regulated area, would be unsustainable. (Para 41) **Ardhendu Kumar Das v. State of Odisha**, [2022 LiveLaw \(SC\) 539](#) : AIR 2022 SC 2695

Ancient Monuments and Archaeological Sites and Remains Act, 1958; Section 2(dc) - Definition of "Construction" - The legislative intent is clear that the re-construction, repair, renovation of the existing buildings has been excluded from the definition. Similarly, the construction, maintenance etc. of drains, drainage works, public latrines and urinals; the construction and maintenance of works meant for providing supply of water to public; and construction etc. for distribution of electricity, which could be construed to be essential services for catering to the needs of the public at large, have

consciously been kept out of the definition of "construction". (Para 41, 42) ***Ardhendu Kumar Das v. State of Odisha***, [2022 LiveLaw \(SC\) 539](#) : AIR 2022 SC 2695

Anganwadi

Anganwadi workers (AWW) and Anganwadi helpers (AWH) - It is high time that the Central Government and State Governments take serious note of the plight of AWWs and AWHs who are expected to render such important services to the society - They are being paid very meagre remuneration and paltry benefits under an insurance scheme of the Central Government. (Para 20) ***Maniben Maganbhai Bhariya v. District Development Officer Dahod***, [2022 LiveLaw \(SC\) 408](#) : AIR 2022 SC 2119

Anticipatory Bail

Anticipatory Bail - SLP Against Madras HC Judgment dismissing anticipatory bail with some observations about requirement of custodial interrogation- Dismissed - High Court, after having found no case for grant of pre-arrest bail, has otherwise not given any such direction of mandatory nature - Observations are essentially of the reasons assigned by the High Court in declining the prayer of the petitioner for pre-arrest bail. ***S. Senthil Kumar v. State of Tamil Nadu***, [2022 LiveLaw \(SC\) 314](#)

Anticipatory bail granted to Trinamool Congress leader Sheikh Sufiyan in a case relating to the murder of a BJP supporter during the West Bengal post - poll violence. ***Sk. Supiyan @ Suffiyan @ Supisan v. Central Bureau of Investigation***, [2022 LiveLaw \(SC\) 146](#) : 2022 (3) SCALE 42

Arbitration

Arbitration Act, 1940

Arbitration Act, 1940 - The powers exercised by the court under the provisions of the 1940 Act are judicial powers and that the power to make an award "Rule of Court" is not a mechanical power. (Para 127 (ii), 113) ***Secretary of Govt. of Kerala Irrigation Department v. James Varghese***, [2022 LiveLaw \(SC\) 447](#) : (2022) 9 SCC 593

Arbitration and Conciliation Act 1996

Arbitration and Conciliation Act 1996 - Can a person who is ineligible to be an arbitrator nominate another arbitrator? Supreme Court refers issue to larger bench. ***JSW Steel Limited v. South Western Railway***, [2022 LiveLaw \(SC\) 693](#)

Arbitration and Conciliation Act, 1996 - Appeal against Bombay HC judgment which dismissed appeal against interim award of the Arbitral tribunal holding that JDIL was not a party to the arbitration agreement and must be deleted from the array of parties - Allowed - The interim award of the Arbitral Tribunal stands vitiated because of: (i) The failure of the arbitral tribunal to decide upon the application for discovery and inspection filed by ONGC; (ii) The failure of the

arbitral tribunal to determine the legal foundation for the application of the group of companies doctrine; and (iii) The decision of the arbitral tribunal that it would decide upon the applications filed by ONGC only after the plea of jurisdiction was disposed of. ***Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises Pvt. Ltd;*** [2022 LiveLaw \(SC\) 416](#) : AIR 2022 SC 2080 : (2022) 8 SCC 42

Arbitrator's fee

Arbitration and Conciliation Act, 1996 - Arbitrator's fee cap is Rs 30 lakhs, ceiling limit applicable to individual arbitrators, not tribunal as a whole. ***Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa JV,*** [2022 LiveLaw \(SC\) 723](#) : AIR 2022 SC 4413

Arbitration and Conciliation Act, 1996 - Arbitrators cannot unilaterally fix their fee as it violates party autonomy. ***Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa JV,*** [2022 LiveLaw \(SC\) 723](#) : AIR 2022 SC 4413

Arbitration and Conciliation Act, 1996 - Arbitrators entitled to charge separate fee for claim & counter claim in arbitration proceedings. ***Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa JV,*** [2022 LiveLaw \(SC\) 723](#) : AIR 2022 SC 4413

Arbitration and Conciliation Act, 1996 - 'Hold preliminary hearings to fix arbitrator's fee': Supreme Court issues directives to govern fees of arbitrators. ***Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa JV,*** [2022 LiveLaw \(SC\) 723](#) : AIR 2022 SC 4413

Interest

Arbitration and Conciliation Act 1996 - Interest - Party not entitled to interest for the period during which the proceedings were deliberately delayed-A party cannot be permitted to derive benefits from its own lapses. [Para 12 to 14] ***Executive Engineer (R and B) v. Gokul Chandra Kanungo,*** [2022 LiveLaw \(SC\) 824](#) : AIR 2022 SC 4857

Arbitration and Conciliation Act, 1996 - Appeal against Bombay HC judgment which dismissed appeal against interim award of the Arbitral tribunal holding that JDIL was not a party to the arbitration agreement and must be deleted from the array of parties - Allowed - The interim award of the Arbitral Tribunal stands vitiated because of: (i) The failure of the arbitral tribunal to decide upon the application for discovery and inspection filed by ONGC; (ii) The failure of the arbitral tribunal to determine the legal foundation for the application of the group of companies doctrine; and (iii) The decision of the arbitral tribunal that it would decide upon the applications filed by ONGC only after the plea of jurisdiction was disposed of. ***Oil and Natural Gas Corporation v. Discovery Enterprises,*** [2022 LiveLaw SC 416](#) : AIR 2022 SC 2080

Jurisdiction

Arbitration and Conciliation Act, 1996 - Jurisdiction - When two or more Courts have jurisdiction to adjudicate disputes arising out of an arbitration

agreement, the parties might, by agreement, decide to refer all disputes to any one Court to the exclusion of all other Courts, which might otherwise have had jurisdiction to decide the disputes. The parties cannot, however, by consent, confer jurisdiction on a Court which inherently lacked jurisdiction. (Para 47) **Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee**, [2022 LiveLaw \(SC\) 329](#) : 2022 (5) SCALE 372

Arbitration and Conciliation Act, 1996 - Only if the agreement of the parties was construed to provide for seat/place of arbitration in India, would Part-I of the 1996 Act be applicable. If the seat/place were outside India, Part-I would not apply, even though the venue of a few sittings may have been in India, or the cause of action may have arisen in India. (Para 36) **Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee**, [2022 LiveLaw \(SC\) 329](#) : 2022 (5) SCALE 372

***Revocation of Arbitration Clauses and Reopening of Awards Act, 1998
(Kerala)***

Arbitration - Revocation of Arbitration Clauses and Reopening of Awards Act, 1998 (Kerala) - The Act is liable to be held unconstitutional on the ground of encroachment upon the judicial powers of the State - The Act has the effect of annulling the awards which have become “Rules of Court”, is a transgression on the judicial functions of the State and therefore, violative of doctrine of “separation of powers”. (Para 122, 127(iii)) **Secretary of Govt. of Kerala Irrigation Department v. James Varghese**, [2022 LiveLaw \(SC\) 447](#) : (2022) 9 SCC 593

Seat and Venue

Arbitration and Conciliation Act, 1996 - Seat and Venue - Sittings at various places are relatable to venue. It cannot be equated with the seat of arbitration or place of arbitration, which has a different connotation. (Para 44, 45) **Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee**, [2022 LiveLaw \(SC\) 329](#) : 2022 (5) SCALE 372

Arbitration and Conciliation Act, 1996 - Special leave petition against an order of the Calcutta High Court, allowing an Arbitration Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator - Allowed - Calcutta High Court inherently lacks jurisdiction to entertain the application. **Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee**, [2022 LiveLaw \(SC\) 329](#) : 2022 (5) SCALE 372

Section 2(e) - “Court”

Arbitration and Conciliation Act, 1996; Section 11(6) and 2(1)(e) - An application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a

Court within the meaning of Section 2(1)(e) of the A&C Act. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent. **Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee**, [2022 LiveLaw \(SC\) 329](#) : 2022 (5) SCALE 372

Arbitration and Conciliation Act, 1996; Section 2(1)(e), 34 - In the absence of the High Court of Orissa having original jurisdiction, the concerned District Court can be said to be 'Court' - The proceedings under Section 34 against the award passed by the Arbitrator shall lie before the concerned District Court, as defined under Section 2(e). **Yashpal Chopra v. Union of India**, [2022 LiveLaw \(SC\) 900](#)

Section 2(h) - "Party"

Arbitration and Conciliation Act, 1996; Section 2(h), 7, 8, 16 - Group of companies doctrine - An arbitration agreement entered into by a company within a group of companies, can bind its non-signatory affiliates or sister concerns if the circumstances demonstrate a mutual intention of the parties to bind both the signatory and affiliated, non-signatory parties - A non-signatory may be bound by the arbitration agreement where: (i) There exists a group of companies; and (ii) Parties have engaged in conduct or made statements indicating an intention to bind a non-signatory - In deciding whether a company within a group of companies which is not a signatory to arbitration agreement would nonetheless be bound by it, the law considers the following factors: (i) The mutual intent of the parties; (ii) The relationship of a non-signatory to a party which is a signatory to the agreement; (iii) The commonality of the subject matter; (iv) The composite nature of the transaction; and (v) The performance of the contract. (Para 18, 23, 26) **Oil and Natural Gas Corporation v. Discovery Enterprises**, [2022 LiveLaw SC 416](#) : AIR 2022 SC 2080

Arbitration and Conciliation Act, 1996; Section 2(h), 7, 8, 16 - Group of Companies Doctrine - An arbitration agreement entered into by a company within a group of companies, can bind its non-signatory affiliates or sister concerns if the circumstances demonstrate a mutual intention of the parties to bind both the signatory and affiliated, non-signatory parties - A non-signatory may be bound by the arbitration agreement where: (i) There exists a group of companies; and (ii) Parties have engaged in conduct or made statements indicating an intention to bind a non-signatory - In deciding whether a company within a group of companies which is not a signatory to arbitration agreement would nonetheless be bound by it, the law considers the following factors: (i) The mutual intent of the parties; (ii) The relationship of a non-signatory to a party which is a signatory to the agreement; (iii) The commonality of the subject matter; (iv) The composite nature of the transaction; and (v) The performance of the contract. (Para 18 , 23, 26) **Oil and Natural Gas Corporation Ltd. v.**

Discovery Enterprises Pvt. Ltd; [2022 LiveLaw \(SC\) 416](#) : AIR 2022 SC 2080 : (2022) 8 SCC 42

Section 7 - Arbitration Agreement

Arbitration and Conciliation Act, 1996; Section 2(h), 7, 8, 16 - Group of companies doctrine - An arbitration agreement entered into by a company within a group of companies, can bind its non-signatory affiliates or sister concerns if the circumstances demonstrate a mutual intention of the parties to bind both the signatory and affiliated, non-signatory parties - A non-signatory may be bound by the arbitration agreement where: (i) There exists a group of companies; and (ii) Parties have engaged in conduct or made statements indicating an intention to bind a non-signatory - In deciding whether a company within a group of companies which is not a signatory to arbitration agreement would nonetheless be bound by it, the law considers the following factors: (i) The mutual intent of the parties; (ii) The relationship of a non-signatory to a party which is a signatory to the agreement; (iii) The commonality of the subject matter; (iv) The composite nature of the transaction; and (v) The performance of the contract. (Para 18, 23, 26) **Oil and Natural Gas Corporation v. Discovery Enterprises,** [2022 LiveLaw SC 416](#) : AIR 2022 SC 2080

Arbitration and Conciliation Act, 1996; Section 7 - Parties to the contract are free to agree on applicability of (1) proper law of contract, (2) proper law of arbitration agreement and (3) proper law of the conduct of arbitration. Parties to the contract also may agree for matters excluded from the purview of arbitration - Unless the effect of agreement results in performance of an unlawful act, an agreement, which is otherwise legal, cannot be held to be void and is binding between the parties. (Para 13.3) **Indian Oil Corporation Ltd. v. NCC Ltd.,** [2022 LiveLaw \(SC\) 616](#)

Arbitration and Conciliation Act, 1996; Section 7 - Principles governing what constitutes an arbitration agreement - Arbitration agreement should disclose a determination and obligation on behalf of parties to refer disputes to arbitration - mere use of the word "arbitration" or "arbitrator" in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. (Para 8-9) **Mahanadi Coalfields Ltd. v. IVRCL AMR Joint Venture,** [2022 LiveLaw \(SC\) 657](#)

Arbitration and Conciliation Act, 1996; Section 7, 11 - Section 7 of the Act does not mandate any particular form for the arbitration clause - Even if we were to assume that the subject-clause lacks certain essential characteristics of arbitration like "final and binding" nature of the award, the parties have evinced clear intention to refer the dispute to arbitration and abide by the decision of the tribunal. The party autonomy to this effect, therefore, deserves to be protected - The deficiency of words in agreement which otherwise fortifies the intention of the parties to arbitrate their disputes, cannot legitimise the annulment of arbitration clause - Courts to give greater emphasis to the substance of the clause, predicated upon the evident intent and objectives of the parties to choose a specific form of dispute resolution to manage conflicts between them.

(Para 14-28) **Babanrao Rajaram Pund v. Samarth Builders & Developers**, [2022 LiveLaw \(SC\) 747](#) : AIR 2022 SC 4161 : (2022) 9 SCC 691

Section 8 - Power to refer parties to arbitration where there is an arbitration agreement

Arbitration and Conciliation Act, 1996; Section 2(h), 7, 8, 16 - Group of companies doctrine - An arbitration agreement entered into by a company within a group of companies, can bind its non-signatory affiliates or sister concerns if the circumstances demonstrate a mutual intention of the parties to bind both the signatory and affiliated, non-signatory parties - A non-signatory may be bound by the arbitration agreement where: (i) There exists a group of companies; and (ii) Parties have engaged in conduct or made statements indicating an intention to bind a non-signatory - In deciding whether a company within a group of companies which is not a signatory to arbitration agreement would nonetheless be bound by it, the law considers the following factors: (i) The mutual intent of the parties; (ii) The relationship of a non-signatory to a party which is a signatory to the agreement; (iii) The commonality of the subject matter; (iv) The composite nature of the transaction; and (v) The performance of the contract. (Para 18, 23, 26) **Oil and Natural Gas Corporation v. Discovery Enterprises**, [2022 LiveLaw SC 416](#) : AIR 2022 SC 2080

Arbitration and Conciliation Act, 1996; Section 8, 11 - Group of Companies Doctrine - There is a clear need for having a re-look at the doctrinal ingredients concerning the group of companies doctrine - Whether the phrase 'claiming through or under' in Sections 8 and 11 could be interpreted to include 'Group of Companies' doctrine? Whether the 'Group of companies' doctrine as expounded by Chloro Controls India Private Limited v. Severn Trent Water Purification Inc. (2013) 1 SCC 641 and subsequent judgments are valid in law? - Issues referred to a larger bench. **Cox and Kings Ltd. v. SAP India**, [2022 LiveLaw \(SC\) 455](#) : (2022) 8 SCC 1

Section 9 - Interim measures, etc., by Court.

Arbitration and Conciliation Act, 1996; Section 9 - Proof of actual attempts to deal with, remove or dispose of the property with a view to defeat or delay the realisation of an impending Arbitral Award is not imperative for grant of relief under Section 9 - A strong possibility of diminution of assets would suffice - The power under Section 9 should not ordinarily be exercised ignoring the basic principles of procedural law as laid down in the CPC, but the technicalities of CPC cannot prevent the Court from securing the ends of justice - If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC. (Para 39-50) **Essar House Pvt. Ltd. v. Arcelor Mittal Nippon Steel India Ltd.**, [2022 LiveLaw \(SC\) 765](#) : AIR 2022 SC 4294

Arbitration and Conciliation Act, 1996; Sections 2(1)(e), 9, 14 and 34 - State Government can confer jurisdiction to hear applications under Sections 9, 14 and 34 of the Arbitration and Conciliation Act, 1996, upon Commercial Courts which are subordinate to the rank of the Principal Civil Judge in the District - All applications or appeals arising out of arbitration under the provisions of Act, 1996, other than international commercial arbitration, shall be filed in and heard and disposed of by the Commercial Courts, exercising the territorial jurisdiction over such arbitration where such commercial courts have been constituted. (Para 6-11) **Jaycee Housing Pvt. Ltd. v. Registrar (General), Orissa High Court, [2022 LiveLaw \(SC\) 860](#) : AIR 2022 SC 5239**

Section 16 - Competence of Arbitral Tribunal to rule on its Jurisdiction

Arbitration and Conciliation Act, 1996; Section 16, 34, 37 - An appeal lies to the Court from the decision of the Arbitral Tribunal that it lacks jurisdiction - Parliament has not specifically constricted the powers of the court while considering an appeal under clause (a) of sub-section (2) of Section 37 by the grounds on which an award can be challenged under Section 34 - In the exercise of the appellate jurisdiction, the court must have due deference to the grounds which have weighed with the tribunal in holding that it lacks jurisdiction having regard to the object and spirit underlying the statute which entrusts the arbitral tribunal with the power to rule on its own jurisdiction - The decision of the tribunal that it lacks jurisdiction is not conclusive because it is subject to an appellate remedy under Section 37(2)(a). However, in the exercise of this appellate power, the court must be mindful of the fact that the statute has entrusted the arbitral tribunal with the power to rule on its own jurisdiction with the purpose of facilitating the efficacy of arbitration as an institutional mechanism for the resolution of disputes. (Para 34 - 39) **Oil and Natural Gas Corporation v. Discovery Enterprises, [2022 LiveLaw SC 416](#) : AIR 2022 SC 2080**

Section 11 - Appointment of Arbitrators

Arbitration and Conciliation Act, 1996; Section 11 - Arbitration application decided and disposed of after a period of four years by Telangana High Court - Very sorry state of affairs - Registrar General of the High Court directed to submit a detailed report/statement pointing out how many Section 11 applications are pending before the High Court and from which year. **Shree Vishnu Constructions v. Engineer in Chief Military Engineering Service, [2022 LiveLaw \(SC\) 345](#)**

Arbitration and Conciliation Act, 1996; Section 11 - Court can undertake preliminary inquiry to ascertain if the dispute is arbitrable or falls under the excepted category in the agreement. (Para 7) **Emaar India Ltd. v. Tarun Aggarwal Projects LLP, [2022 LiveLaw \(SC\) 823](#) : AIR 2022 SC 4678**

Arbitration and Conciliation Act, 1996; Section 11 - Even if an aspect with regard to 'accord and satisfaction' of the claims may/can be considered by the Court at the stage of deciding Section 11 application, it is always advisable and

appropriate that in cases of debatable and disputable facts, good reasonably arguable case, the same should be left to the Arbitral Tribunal. (Para 13) **Indian Oil Corporation Ltd. v. NCC Ltd.**, [2022 LiveLaw \(SC\) 616](#)

Arbitration and Conciliation Act, 1996; Section 11 - The arbitration applications for appointment of an Arbitrator are required to be decided and disposed of at the earliest, otherwise the object and purpose of the Arbitration Act shall be frustrated. (Para 2) **Shree Vishnu Constructions v. Engineer in Chief Military Engineering Service**, [2022 LiveLaw \(SC\) 345](#)

Arbitration and Conciliation Act, 1996; Section 11 - While dealing with petition under Section 11, the Court by default would refer the matter when contentions relating to non arbitrability are plainly arguable. In such case, the issue of non arbitrability is left open to be decided by the Arbitral Tribunal. (Para 11) **Mohammed Masroor Shaikh v. Bharat Bhushan Gupta**, [2022 LiveLaw \(SC\) 120](#) : AIR 2022 SC 1126 : (2022) 4 SCC 156

Arbitration and Conciliation Act, 1996; Section 11(5) - Even in the absence of any arbitration agreement in writing between the parties, with consent the parties may refer the dispute for arbitration and appoint a sole arbitrator/arbitrators by mutual consent and parties may agree mutually on a procedure for appointing an arbitrator or arbitrators even in the absence of any written agreement. (Para 7.2) **Swadesh Kumar Agarwal v. Dinesh Kumar Agarwal**, [2022 LiveLaw \(SC\) 454](#) : AIR 2022 SC 2193 : (2022) 10 SCC 235

Arbitration and Conciliation Act, 1996; Section 11(5), 11(6) - Delay in appointment of arbitrators - If the arbitrators are not appointed at the earliest and the applications under Sections 11(5) and 11(6) of the Arbitration Act are kept pending for a number of years, it will defeat the object and purpose of the enactment of the Arbitration Act and it may lose the significance of an effective Alternative Dispute Resolution Mechanism. If the Commercial disputes are not resolved at the earliest, not only it would affect the commercial relations between the parties but it would also affect economy of the country. **Shree Vishnu Constructions v. Engineer in Chief Military Engineering Service**, [2022 LiveLaw \(SC\) 523](#)

Arbitration and Conciliation Act, 1996; Section 11(5), 11(6) - Directions issued to High Courts to dispose pending applications within 6 months - Ensure that all pending applications under Sections 11(5) and 11(6) of the Arbitration Act and/or any other applications either for substitution of arbitrator and/or change of arbitrator, which are pending for more than one year from the date of filing, must be decided within six months from today. **Shree Vishnu Constructions v. Engineer in Chief Military Engineering Service**, [2022 LiveLaw \(SC\) 523](#)

Arbitration and Conciliation Act, 1996; Section 11(6) - A party to the arbitration agreement can appoint an arbitrator even after an Arbitration Petition has been filed by the other party before the High Court for appointment of an arbitrator if the party has not been given due notice of the same. (Para 16)

***Durga Welding Works v. Chief Engineer*, [2022 LiveLaw \(SC\) 9](#) : (2022) 3 SCC 98**

Arbitration and Conciliation Act, 1996; Section 11(6) - An application under section 11(6) shall be maintainable only in a case where there is a contract between the parties containing the arbitration agreement and the appointment procedure is prescribed and is agreed upon in writing. (Para 6.2) ***Swadesh Kumar Agarwal v. Dinesh Kumar Agarwal*, [2022 LiveLaw \(SC\) 454](#) : AIR 2022 SC 2193 : (2022) 10 SCC 235**

Arbitration and Conciliation Act, 1996; Section 11(6) - The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. In the context of issue of limitation period, it should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed "no-claim certificate" or defence on the plea of novation and "accord and satisfaction". ***Meenakshi Solar Power Pvt. Ltd. v. Abhyudaya Green Economic Zones Pvt. Ltd.*, [2022 LiveLaw \(SC\) 988](#)**

Arbitration and Conciliation Act, 1996; Section 11(6) - Unless on the facet it is found that the dispute is not arbitrable and if it requires further/deeper consideration, the dispute with respect to the arbitrability should be left to the arbitrator. (Para 5.3) ***VGP Marine Kingdom Pvt. Ltd. v. Kay Ellen Arnold*, [2022 LiveLaw \(SC\) 914](#) : AIR 2022 SC 5474**

Arbitration and Conciliation Act; 1996; Section 11(6) - There cannot be two arbitration proceedings with respect to the same contract/transaction-in the present case, earlier the dispute was referred to arbitration and the Arbitrator passed an award on whatever the claims were made. Thereafter, a fresh arbitration proceeding was sought to be initiated with respect to some further claims, may be after final bill-The same is rightly refused (by the High Court) to be referred to arbitration in exercise of Section 11(6) of the Act. ***Tantia Constructions v. Union of India*, [2022 LiveLaw \(SC\) 624](#)**

Arbitration and Conciliation Act, 1996; Section 11(6) and 2(1)(e) - An application under Section 11(6) of the A&C Act for appointment of an Arbitrator/Arbitral Tribunal cannot be moved in any High Court in India, irrespective of its territorial jurisdiction. Section 11(6) of the A&C Act has to be harmoniously read with Section 2(1)(e) of the A&C Act and construed to mean, a High Court which exercises superintendence/supervisory jurisdiction over a Court within the meaning of Section 2(1)(e) of the A&C Act. It could never have been the intention of Section 11(6) of the A&C Act that arbitration proceedings should be initiated in any High Court in India, irrespective of whether the Respondent resided or carried on business within the jurisdiction of that High Court, and irrespective of whether any part of the cause of action arose within the jurisdiction of that Court, to put an opponent at a disadvantage and steal a march over the opponent. ***Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee*, [2022 LiveLaw \(SC\) 329](#) : 2022 (5) SCALE 372**

Arbitration and Conciliation Act, 1996; Section 11(6), 7 - High Court order proceeds on an understanding that the Counsel for both the sides did not dispute the fact that a clause of the Contract Agreement provided for appointment of an arbitrator - An understanding of counsel, cannot be regarded as a binding statement of law on the existence of an arbitration agreement. (Para 18) **Mahanadi Coalfields Ltd. v. IVRCL AMR Joint Venture**, [2022 LiveLaw \(SC\) 657](#)

Section 12 - Grounds for Challenge

Arbitration and Conciliation Act, 1996; Section 12(5) read with Seventh Schedule - An arbitral tribunal constituted as per an arbitration clause before the 2015 amendment to the Arbitration and Conciliation Act 1996 will lose its mandate if it violates the neutrality clause under Section 12(5) read with the Seventh Schedule, which were incorporated through the 2015 amendment. (Para 8, 9) **Ellora Paper Mills Ltd. v. State of Madhya Pradesh**, [2022 LiveLaw \(SC\) 8 : AIR 2022 SC 280 : \(2022\) 3 SCC 1](#)

Section 14 - Failure or Impossibility to Act

Arbitration and Conciliation Act, 1996; Section 11(6),14(1)(a) - Once the arbitrator was appointed by mutual consent and it was alleged that the mandate of the sole arbitrator stood terminated in view of section 14(1)(a), the application under section 11(6) to terminate the mandate of the arbitrator in view of section 14(1)(a) shall not be maintainable - The aggrieved party has to approach the concerned "court" as per sub-section (2) of section 14 of the Act. (Para 8) **Swadesh Kumar Agarwal v. Dinesh Kumar Agarwal**, [2022 LiveLaw \(SC\) 454 : AIR 2022 SC 2193 : \(2022\) 10 SCC 235](#)

Arbitration and Conciliation Act, 1996; Section 11, 11(6A) - Though the Arbitral Tribunal may have jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability, the same can also be considered by the Court at the stage of deciding Section 11 application if the facts are very clear and glaring and in view of the specific clauses in the agreement binding between the parties, whether the dispute is non-arbitrable and/or it falls within the excepted clause. Even at the stage of deciding Section 11 application, the Court may prima facie consider even the aspect with regard to 'accord and satisfaction' of the claims. (Para 13) **Indian Oil Corporation Ltd. v. NCC Ltd.**, [2022 LiveLaw \(SC\) 616](#)

Section 15 - Termination of Mandate and Substitution of Arbitrator

Arbitration and Conciliation Act, 1996; Section 12, 14(1)(a), 15(1)(a) - If the challenge to the arbitrator is made on any of the grounds mentioned in section 12 of the Act, the party aggrieved has to submit an appropriate application before the Arbitral Tribunal itself - Whenever there is a dispute and/or controversy that the mandate of the arbitrator is to be terminated on the grounds mentioned in section 14(1)(a), such a controversy/dispute has to be raised before the concerned "court" only and after the decision by the concerned "court" as defined under section 2(e) and ultimately it is held that the mandate

of the arbitrator is terminated, thereafter, the arbitrator is to be substituted accordingly, that too, according to the rules that were applicable to the initial appointment of the arbitrator - So far as the termination of the mandate of the arbitrator and/or termination of the proceedings mentioned in other provisions like in section 15(1)(a) where he withdraws from office for any reason; or (b) by or pursuant to an agreement of the parties, the dispute need not be raised before the concerned court -The same procedure is required to be followed which was followed at the time of appointment of the sole arbitrator whose mandate is terminated and/or who is replaced. (Para 6.7) **Swadesh Kumar Agarwal v. Dinesh Kumar Agarwal**, [2022 LiveLaw \(SC\) 454](#) : AIR 2022 SC 2193 : (2022) 10 SCC 235

Section 16 - Competence of Arbitral Tribunal to rule on its Jurisdiction

Arbitration and Conciliation Act, 1996; Section 16 - Party taking the plea of absence of jurisdiction is required to establish the grounds on which it set about to establish its plea. (Para 49) **Oil and Natural Gas Corporation v. Discovery Enterprises**, [2022 LiveLaw SC 416](#) : AIR 2022 SC 2080

Arbitration and Conciliation Act, 1996; Section 2(h), 7, 8, 16 - Group of companies doctrine - An arbitration agreement entered into by a company within a group of companies, can bind its non-signatory affiliates or sister concerns if the circumstances demonstrate a mutual intention of the parties to bind both the signatory and affiliated, non-signatory parties - A non-signatory may be bound by the arbitration agreement where: (i) There exists a group of companies; and (ii) Parties have engaged in conduct or made statements indicating an intention to bind a non-signatory - In deciding whether a company within a group of companies which is not a signatory to arbitration agreement would nonetheless be bound by it, the law considers the following factors: (i) The mutual intent of the parties; (ii) The relationship of a non-signatory to a party which is a signatory to the agreement; (iii) The commonality of the subject matter; (iv) The composite nature of the transaction; and (v) The performance of the contract. (Para 18, 23, 26) **Oil and Natural Gas Corporation v. Discovery Enterprises**, [2022 LiveLaw SC 416](#) : AIR 2022 SC 2080

Arbitration and Conciliation Act, 1996; Section 16 - Party taking the plea of absence of jurisdiction is required to establish the grounds on which it set about to establish its plea. (Para 49) **Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises Pvt. Ltd**; [2022 LiveLaw \(SC\) 416](#) : AIR 2022 SC 2080 : (2022) 8 SCC 42

Arbitration and Conciliation Act, 1996; Section 16, 34, 37 - An appeal lies to the Court from the decision of the Arbitral Tribunal that it lacks jurisdiction - Parliament has not specifically constricted the powers of the court while considering an appeal under clause (a) of sub-section (2) of Section 37 by the grounds on which an award can be challenged under Section 34 - In the exercise of the appellate jurisdiction, the court must have due deference to the grounds which have weighed with the tribunal in holding that it lacks jurisdiction having regard to the object and spirit underlying the statute which entrusts the

arbitral tribunal with the power to rule on its own jurisdiction - The decision of the tribunal that it lacks jurisdiction is not conclusive because it is subject to an appellate remedy under Section 37(2)(a). However, in the exercise of this appellate power, the court must be mindful of the fact that the statute has entrusted the arbitral tribunal with the power to rule on its own jurisdiction with the purpose of facilitating the efficacy of arbitration as an institutional mechanism for the resolution of disputes. (Para 34 - 39) ***Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises Pvt. Ltd.***; [2022 LiveLaw \(SC\) 416](#) : AIR 2022 SC 2080 : (2022) 8 SCC 42

Section 17 - Interim Measures ordered by Arbitral Tribunal

Arbitration and Conciliation Act, 1996; Section 17 - Appeal against Delhi HC order which confirmed the interim order passed by Arbitral Tribunal directing the appellant to deposit the rental amount from March, 2020 onwards and up to December, 2021 - Partly allowed - No order could have been passed by the Tribunal by way of interim measure on the applications filed under Section 17 of the Arbitration Act in a case where there is a serious dispute with respect to the liability of the rental amounts to be paid, which is yet to be adjudicated upon and/or considered by the Arbitral Tribunal - The appellant will therefore have to deposit the entire rental amount except the period for which there was complete closure due to lockdown. ***Evergreen Land Mark Pvt. Ltd. v. John Tinson and Company Pvt. Ltd.***; [2022 LiveLaw \(SC\) 389](#) : AIR 2022 SC 1930 : (2022) 7 SCC 757

Section 20 - Place of Arbitration

Arbitration and Conciliation Act, 1996; Section 20 - The appointment of a new arbitrator who holds the arbitration proceedings at a different location would not change the jurisdictional 'seat' already fixed by the earlier or first arbitrator. The place of arbitration in such an event should be treated as a venue where arbitration proceedings are held - Once the jurisdictional 'seat' of arbitration is fixed in terms of sub-section (2) of Section 20 of the Act, then, without the express mutual consent of the parties to the arbitration, 'the seat' cannot be changed. (Para 29) ***BBR (India) Pvt. Ltd. v. S.P. Singla Constructions***, [2022 LiveLaw \(SC\) 493](#) : AIR 2022 SC 2673

Section 21 - Parties to suit may apply for order of reference

Arbitration Act, 1940; Section 21 - The word 'agree' in Section 21 of the Act refers to consensus ad idem between the parties who take a considered decision to forego their right of adjudication before a court where the suit is pending, and mutually agree to have the subject matter of the suit or part thereof adjudicated and decided by an arbitrator. (Para 17) ***M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. Modi Transport Service***, [2022 LiveLaw \(SC\) 471](#) : 2022 (7) SCALE 762

Arbitration Act, 1940; Section 21 - Distinction between the scope and functions of an arbitral tribunal and a commissioner - For submission to arbitration, there must be an arbitration agreement or an agreement in terms of

Section 21 of the Act that the difference or dispute between the parties for which they intend to be determined in a quasi-judicial manner. Commissioners are appointed by the court. Appointment may be with consent of the parties, or even when there is objection to the appointment. Preexisting agreement or the requirement that the parties agree before the court, as is mandatory in case of arbitration, is not necessary when a court directs appointment of a commissioner. In the case of a reference to a commissioner, all that the parties expect from the commissioner is a valuation/ examination of the subject matter referred, which he would do according to his skill, knowledge and experience, which may be without taking any evidence or hearing argument. *(Para 32) M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. Modi Transport Service, 2022 LiveLaw (SC) 471 : 2022 (7) SCALE 762*

Section 23 - Statements of Claim and Defence

Arbitration and Conciliation Act, 1996; Sections 23(2A), 34 - Counter-claim of a party cannot be dismissed merely because the claims were not notified before invoking the arbitration. *National Highway Authority of India v. Transstroy (India) Ltd., 2022 LiveLaw (SC) 586 : 2022 (10) SCALE 429*

Section 30 - Grounds for setting aside award

Arbitration Act, 1940; Section 30, 33 - Scope of interference by courts - A Court does not sit in appeal over an Award passed by an Arbitrator and the only grounds on which it can be challenged are those that have been specified in Sections 30 and 33 of the Arbitration Act, namely, when there is an error on the face of the Award or when the learned Arbitrator has misconducted himself or the proceedings. (Para 10-15) *Atlanta Ltd. v. Union of India, 2022 LiveLaw (SC) 63 : (2022) 3 SCC 739*

Section 31 - Form and Contents of Arbitral Award

Arbitration and Conciliation Act, 1996; Section 31 - Post-award interest can be granted by an Arbitrator on the interest amount awarded. (Para 4-6) *UHL Power Company Ltd. v. State of Himachal Pradesh, 2022 LiveLaw (SC) 18 : (2022) 4 SCC 116*

Arbitration and Conciliation Act, 1996; Section 31(7) - Arbitral tribunal can grant post-award interest on the sum of the award which also includes the interest component - The word sum used under Section 31(7) includes the interest awarded on the substantive claims, therefore, the post award interest would be on both the amount awarded in respect of the substantive claims and the interest awarded on such claims. *Indian Oil Corporation v. U.B. Engineering, 2022 LiveLaw (SC) 409*

Arbitration and Conciliation Act, 1996; Section 31(7) - The arbitrator has the discretion to award post-award interest on a part of the 'sum' - The arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, and the period for which payment of interest is to be made - whether it

should be for the whole or any part of the period between the date on which the cause of action arose and the date of the award - The arbitrator must exercise the discretionary power to grant post award interest reasonably and in good faith, taking into account all relevant circumstances - The purpose of granting post-award interest is to ensure that the award debtor does not delay the payment of the award. (Para 18-22) ***Morgan Securities and Credits Pvt. Ltd. v. Videocon Industries Ltd.***, [2022 LiveLaw \(SC\) 728](#) : AIR 2022 SC 4091

Arbitration and Conciliation Act, 1996; Section 31(7)(a) - If there is an agreement between the parties to the contrary, the Arbitral Tribunal would lose its discretion to award interest and will have to be guided by the agreement between the parties - In the absence of such an agreement, the Arbitral Tribunal would have a discretion to exercise its powers under clause (a) of sub-section (7) of Section 31- The discretion is wide enough. (Para 14-18) ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation***, [2022 LiveLaw \(SC\) 452](#) : AIR 2022 SC 2165 : (2022) 9 SCC 286

Arbitration and Conciliation Act, 1996; Section 31(7)(a) - the section itself requires interest to be at such rate as the arbitral tribunal deems reasonable. When a discretion is vested to an arbitral tribunal to award interest at a rate which it deems reasonable, then a duty would be cast upon the arbitral tribunal to give reasons as to how it deems the rate of interest to be reasonable - When the arbitral tribunal is empowered with such a discretion, the arbitral tribunal would be required to apply its mind to the facts of the case and decide as to whether the interest is payable on whole or any part of the money and also as to whether it is to be awarded to the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. ***Executive Engineer (R and B) v. Gokul Chandra Kanungo***, [2022 LiveLaw \(SC\) 824](#) : AIR 2022 SC 4857

Section 33 - Arbitration agreement or award to be contested by application

Arbitration Act, 1940; Section 30, 33 - Scope of interference by courts - A Court does not sit in appeal over an Award passed by an Arbitrator and the only grounds on which it can be challenged are those that have been specified in Sections 30 and 33 of the Arbitration Act, namely, when there is an error on the face of the Award or when the learned Arbitrator has misconducted himself or the proceedings. (Para 10-15) ***Atlanta Ltd. v. Union of India***, [2022 LiveLaw \(SC\) 63](#) : (2022) 3 SCC 739

Section 34 - Application for setting aside Arbitral Awards

Arbitration and Conciliation Act, 1996; Section 34 - An error in interpretation of a contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction. (Para 45) ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar***, [2022 LiveLaw \(SC\) 121](#) : (2022) 4 SCC 463

Arbitration and Conciliation Act, 1996; Section 34 - Appeal against Punjab & Haryana HC order which allowed to proceed under section 34 of the Arbitration Act, 1996 without insistence for making pre-deposit of 75% of the awarded amount - Order passed by the High Court permitting the proceedings under section 34 of the Arbitration Act, 1996 without insistence for making pre-deposit of 75% of the awarded amount is unsustainable and the same deserves to be quashed and set aside. *Tirupati Steels v. Shubh Industrial Component*, [2022 LiveLaw \(SC\) 383](#) : AIR 2022 SC 1939 : (2022) 7 SCC 429

Arbitration and Conciliation Act, 1996; Section 34 - Arbitral award can be set aside by the court if the court finds the award is vitiated by patent illegality appearing on the face of the award - The award shall not be set aside merely on the ground of erroneous application of law or by misappreciation of evidence. (Para 15) *Haryana Urban Development Authority, Karnal v. M/s. Mehta Construction Company*, [2022 LiveLaw \(SC\) 348](#) : (2022) 5 SCC 432

Arbitration and Conciliation Act, 1996; Section 34 - Limitation Act, 1961; Section 5 - Section 5 of Limitation Act is not applicable to condone the delay beyond the period prescribed under Section 34(3) of Act 1996. *Mahindra and Mahindra Financial Services Ltd. v. Maheshbhai Tinabhai Rathod*, [2022 LiveLaw \(SC\) 5](#) : (2022) 4 SCC 162

Arbitration and Conciliation Act, 1996; Section 34 - Patent Illegality - An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract. (Para 44) *Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar*, [2022 LiveLaw \(SC\) 121](#) : (2022) 4 SCC 463

Arbitration and Conciliation Act, 1996; Section 34 - The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one. (Para 46) *Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar*, [2022 LiveLaw \(SC\) 121](#) : (2022) 4 SCC 463

Arbitration and Conciliation Act, 1996; Section 34 - The court may condone delay of a period up to thirty days in filing of the objections if it is satisfied that the applicant is prevented by sufficient cause from making an application under Section 34(1) of the Act. (Para 10) *Haryana Urban Development Authority, Karnal v. M/s. Mehta Construction Company*, [2022 LiveLaw \(SC\) 348](#) : (2022) 5 SCC 432

Arbitration and Conciliation Act, 1996; Section 34 - The principle that a court while deciding a petition under Section 34 of the Arbitration and Conciliation Act has no jurisdiction to remand the matter to the Arbitrator for a fresh decision would be applicable where the Appellate Court decides the application under Section 34 of the Act on merits - Even in a case where the award is set aside under Section 34 of the Act on whatever the grounds which may be available under Section 34 of the Act, in that case the parties can still agree for the fresh arbitration may be by the same arbitrator - When both the parties agreed to set aside the award and to remit the matter to the learned Sole Arbitrator for fresh reasoned Award, it is not open to contend that the matter may not be and/or ought not to have been remanded to the same sole arbitrator. (Para 8) **Mutha Construction v. Strategic Brand Solutions (I) Pvt. Ltd.**, [2022 LiveLaw \(SC\) 163](#)

Arbitration and Conciliation Act, 1996; Section 34(4) - A harmonious reading of Section 31, 34(1), 34(2A) and 34(4) of the Arbitration and Conciliation Act, 1996, make it clear that in appropriate cases, on the request made by a party, Court can give an opportunity to the arbitrator to resume the arbitral proceedings for giving reasons or to fill up the gaps in the reasoning in support of a finding, which is already rendered in the award. But at the same time, when it prima facie appears that there is a patent illegality in the award itself, by not recording a finding on a contentious issue, in such cases, Court may not accede to the request of a party for giving an opportunity to the Arbitral Tribunal to resume the arbitral proceedings. (Para 21) **I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.** [2022 LiveLaw \(SC\) 2](#) : AIR 2022 SC 301 : (2022) 3 SCC 121

Arbitration and Conciliation Act, 1996; Section 34(4) - If there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself. Under guise of either additional reasons or filling up the gaps in the reasoning, the power conferred on the Court cannot be relegated to the Arbitrator. In absence of any finding on contentious issue, no amount of reasons can cure the defect in the award. (Para 21) **I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.** [2022 LiveLaw \(SC\) 2](#) : AIR 2022 SC 301 : (2022) 3 SCC 121

Arbitration and Conciliation Act, 1996; Section 34(4) - Merely because an application is filed under Section 34(4) of the Act by a party, it is not always obligatory on the part of the Court to remit the matter to Arbitral Tribunal. The discretionary power conferred under Section 34(4) of the Act, is to be exercised where there is inadequate reasoning or to fill up the gaps in the reasoning, in support of the findings which are already recorded in the award. Under guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the Arbitrator, where there are no findings on the contentious issues in the award. (Para 21) **I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.** [2022 LiveLaw \(SC\) 2](#): AIR 2022 SC 301 : (2022) 3 SCC 121

Arbitration and Conciliation Act, 1996; Section 34(4) - The discretion vested with the Court for remitting the matter to Arbitral Tribunal to give an opportunity to resume the proceedings or not. The words “where it is appropriate” itself indicate that it is the discretion to be exercised by the Court, to remit the matter when requested by a party. When application is filed under Section 34(4) of the Act, the same is to be considered keeping in mind the grounds raised in the application under Section 34(1) of the Act by the party, who has questioned the award of the Arbitral Tribunal and the grounds raised in the application filed under Section 34(4) of the Act and the reply thereto. (Para 21) ***I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.*** [2022 LiveLaw \(SC\) 2](#) : AIR 2022 SC 301 : (2022) 3 SCC 121

Arbitration and Conciliation Act, 1996; Section 16, 34, 37 - An appeal lies to the Court from the decision of the Arbitral Tribunal that it lacks jurisdiction - Parliament has not specifically constricted the powers of the court while considering an appeal under clause (a) of sub-section (2) of Section 37 by the grounds on which an award can be challenged under Section 34 - In the exercise of the appellate jurisdiction, the court must have due deference to the grounds which have weighed with the tribunal in holding that it lacks jurisdiction having regard to the object and spirit underlying the statute which entrusts the arbitral tribunal with the power to rule on its own jurisdiction - The decision of the tribunal that it lacks jurisdiction is not conclusive because it is subject to an appellate remedy under Section 37(2)(a). However, in the exercise of this appellate power, the court must be mindful of the fact that the statute has entrusted the arbitral tribunal with the power to rule on its own jurisdiction with the purpose of facilitating the efficacy of arbitration as an institutional mechanism for the resolution of disputes. (Para 34 - 39) ***Oil and Natural Gas Corporation v. Discovery Enterprises***, [2022 LiveLaw SC 416](#) : AIR 2022 SC 2080

Section 37 - Appealable Orders

Arbitration and Conciliation Act, 1996; Section 16, 34, 37 - An appeal lies to the Court from the decision of the Arbitral Tribunal that it lacks jurisdiction - Parliament has not specifically constricted the powers of the court while considering an appeal under clause (a) of sub-section (2) of Section 37 by the grounds on which an award can be challenged under Section 34 - In the exercise of the appellate jurisdiction, the court must have due deference to the grounds which have weighed with the tribunal in holding that it lacks jurisdiction having regard to the object and spirit underlying the statute which entrusts the arbitral tribunal with the power to rule on its own jurisdiction - The decision of the tribunal that it lacks jurisdiction is not conclusive because it is subject to an appellate remedy under Section 37(2)(a). However, in the exercise of this appellate power, the court must be mindful of the fact that the statute has entrusted the arbitral tribunal with the power to rule on its own jurisdiction with the purpose of facilitating the efficacy of arbitration as an institutional mechanism for the resolution of disputes. (Para 34 - 39) ***Oil and Natural Gas***

Corporation v. Discovery Enterprises, [2022 LiveLaw SC 416](#) : AIR 2022 SC 2080

Arbitration and Conciliation Act, 1996; Section 34, 37 - An award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal - High Court cannot enter into the merits of the claim in an appeal under Section 37. (Para 8) **Haryana Tourism Ltd. v. Kandhari Beverages Ltd., [2022 LiveLaw \(SC\) 38](#) : (2022) 3 SCC 237**

Arbitration and Conciliation Act, 1996; Section 34, 37 - It would not be open for the court in the proceedings under Section 34 or in the appeal under Section 37 to modify the award, the appropriate course to be adopted in such event is to set aside the award and remit the matter. (Para 40) **National Highways Authority of India v. P. Nagaraju @ Cheluvaiah, [2022 LiveLaw \(SC\) 584](#) : 2022 (9) SCALE 823**

Arbitration and Conciliation Act, 1996; Section 34, 37 - While examining the award within the parameters permissible under Section 34 of Act, 1996 and while examining the determination of compensation as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the award for the ultimate conclusion. (Para 24) **National Highways Authority of India v. P. Nagaraju @ Cheluvaiah, [2022 LiveLaw \(SC\) 584](#) : 2022 (9) SCALE 823**

Arbitration and Conciliation Act, 1996; Section 34, 37 - Reference to wrong provision, as long as power exists would not matter. **Premier Sea Foods v. Caravel Shipping Services, [2022 LiveLaw \(SC\) 54](#)**

Arbitration and Conciliation Act, 1996; Section 34, 37 - The jurisdiction conferred on Courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an Appellate Court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed - if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned Arbitrator proceeds to accept one interpretation as against the other. (Para 15-21) **UHL Power Company Ltd. v. State of Himachal Pradesh, [2022 LiveLaw \(SC\) 18](#) : (2022) 4 SCC 116**

Arbitration and Conciliation Act, 1996; Section 37 - Limitation Act, 1963; Section 3, 5 - The right of appeal is a statutory right, subject to the laws of limitation. The law of limitation is valid substantive law, which extinguishes the right to sue, and/or the right to appeal. Once an appeal is found to be barred by limitation, there can be no question of any obligation of the Court to consider the merits of the case of the Appellant. **State of Uttar Pradesh v. Satish Chand Shivhare, [2022 LiveLaw \(SC\) 430](#)**

Arbitration and Conciliation Act, 1996; Section 37 - Limitation Act, 1963; Section 3, 5 - The law of limitation binds everybody including the Government. The usual explanation of red tapism, pushing of files and the rigmarole of procedures cannot be accepted as sufficient cause - A different yardstick for condonation of delay cannot be laid down because the government is involved. (Para 17) **State of Uttar Pradesh v. Satish Chand Shivhare**, [2022 LiveLaw \(SC\) 430](#)

Arbitration and Conciliation Act, 1996; Section 37 - The High Court has no jurisdiction to remand the matter to the same Arbitrator unless it is consented by both the parties that the matter be remanded to the same Arbitrator -The High Court either may relegate the parties for fresh arbitration or to consider the appeal on merits on the basis of the material available on record within the scope and ambit of the jurisdiction under Section 37. (Para 3) **Dr. A. Parthasarathy v. E Springs Avenues Pvt. Ltd**; [2022 LiveLaw \(SC\) 199](#)

Section 42 - Jurisdiction

Arbitration and Conciliation Act, 1996; Section 42 - The Section has obviously been enacted to prevent the parties from being dragged into proceedings in different Courts, when more than one Court has jurisdiction. Where with respect to any arbitration agreement, any application under Part I of the A&C Act has been made in a Court, that Court alone would have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement, and the arbitral proceedings, would have to be made in that Court and in no other Court, unless, of course, the Court in which the first application had been instituted, inherently lacked jurisdiction to entertain that application. The Section which starts with a non obstante clause, is binding irrespective of any other law for the time being in force, and irrespective of any other provision in Part I of the A&C Act. (Para 31) **Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee**, [2022 LiveLaw \(SC\) 329](#) : 2022 (5) SCALE 372

Arbitration and Conciliation Act, 1996; Section 42 and 11(6) - Section 42 cannot possibly have any application to an application under Section 11(6), which necessarily has to be made before a High Court, unless the earlier application was also made in a High Court. (Para 32) **Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee**, [2022 LiveLaw \(SC\) 329](#) : 2022 (5) SCALE 372

Architects

Architects Act, 1972 - Section 21, 45 - Minimum Standards of Architectural Education Regulations, 2017 - The Council of Architecture may prescribe minimum standards of architectural education, either by way of regulations issued under Section 45(2) or even otherwise. It is only in cases where the Council chooses to prescribe standards in the form of regulations that the requirement of approval of the Central Government under Section 45(1) would

become necessary. (Para 15) **Council of Architecture v. Academic Society of Architects (TASA)**, [2022 LiveLaw \(SC\) 172](#) : (2022) 5 SCC 161

Armed Forces

Armed Forces Tribunal (AFT) dismissed applications challenging the denial of Permanent Commission (PC) in the Indian Navy observing that there was no gender bias or mala fides in the grant of PC - Whether the AFT could have adjudicated on the validity of the selection proceedings when relevant material was disclosed only to the AFT in a sealed cover? The failure to disclose relevant material has caused substantial prejudice to the appellants. This case exposes the danger of following a sealed cover procedure - AFT to reconsider the entire matter afresh. **Cdr Amit Kumar Sharma v. Union of India**, [2022 LiveLaw \(SC\) 951](#)

Armed Forces Tribunal Act, 2007; Section 15 - AFT would be justified in interfering with the finding of the court martial where its finding is legally not sustainable due to any reason whatsoever. It would be permissible to interfere with such a finding when it involves a wrong decision on a question of law - AFT would be justified in allowing an appeal against conviction by a court-martial when there was a material irregularity in the course of the trial resulting in miscarriage of justice. (Para 27) **Union of India v. Major R. Metri No. 08585N**, [2022 LiveLaw \(SC\) 343](#) : AIR 2022 SC 1661 : (2022) 6 SCC 525

Army

Army Act, 1950 - Army Regulations - Regulation 349 - Pending the Court of Inquiry, an opportunity of hearing not required to be afforded before suspending Army officers - Under Regulation 349 also, there is no requirement of such a procedure to be followed. **Col. Vineet Raman Sharda v. Union of India**, [2022 LiveLaw \(SC\) 606](#)

Army Act, 1950 - Section 125 - Section 125 not only recognizes that an element of discretion has been vested in the designated officer, but it also postulates that the designated officer should have decided that the proceedings be instituted by the court -martial in which event the court -martial would take place. (Para 44) **State of Sikkim v. Jasbir Singh**, [2022 LiveLaw \(SC\) 116](#) : (2022) 7 SCC 287

Army Act, 1950 - Section 70 - The ingredients of Section 70 are: (i) The offence must be committed by a person subject to the Army Act; (ii) The offence must be committed against a person who is not subject to military, naval or air force law; and (iii) The offence must be of murder, culpable homicide not amounting to murder or rape. (Para 43) **State of Sikkim v. Jasbir Singh**, [2022 LiveLaw \(SC\) 116](#) : (2022) 7 SCC 287

Army Act, 1950; Section 122 - For the purpose of Section 122, the two dates will be relevant i.e., the date when the alleged offence comes to the knowledge of the person aggrieved and the date on which the authority competent to initiate action comes to know about the alleged offence - In this case, a letter dated

13.08.2015 written by the aggrieved person to the concerned authority which showed that he was aware of the alleged offence - The date 13.08.2015 would be the crucial date on which the aggrieved person had the knowledge about the commission of the alleged offence. Therefore the time had started running from the said date for the purpose of Section 122 - The contention that the date of aggrieved person's knowledge about the commission of the alleged offence should be construed as the date when the authority prima facie concluded after the Court of Inquiry that the offence was committed, cannot be accepted - The Convening Authority having directed the trial by General Court Martial vide order dated 22.11.2018, the same was clearly beyond three years and therefore barred under Section 122 of the Act. **Col. Anil Kumar Gupta v. Union of India, 2022 LiveLaw (SC) 931 : AIR 2022 SC 5626**

Army Law - Appeal against Armed Forces Tribunal order of conviction and dismissal from service of former Lt Gen SK Sahni for allegations relating to procurement of ration by Army purchase organisation - Allowed - AFT has specifically come to a finding that the respondent has not committed any fraud or did not commit any act which resulted in actual loss or wrongful gain to any person. We are unable to appreciate as to on what basis the learned AFT comes to a conclusion that the acts lead to an inference that the attempts were made to cause a wrongful gain. **Union of India v. Lt. Gen SK Sahni, 2022 LiveLaw (SC) 310 : (2022) 6 SCC 544**

Atiyat Enquiries

Atiyat Enquiries Act, 1952 (Andhra Pradesh (Telangana Area)) - The Jurisdiction of the Atiyat Court would be limited to the disputes relating to Atiyat grants as defined in the Enquiries Act. (Para 165) **State of Andhra Pradesh v. A.P. State Wakf Board, 2022 LiveLaw (SC) 136**

Award of Tender

Award of Tender - Contractor cannot be blacklisted for life - One cannot be blacklisted for life. The order of blacklisting to the extent that it has not specified the period cannot be sustained. **Chauhan Builders Raibareli v. State of Uttar Pradesh, 2022 LiveLaw (SC) 694**

Award of Tender - There is no public duty on the part of the State to indicate the HSN code for GST rates in the tender document - Para 56- We are at a loss to further understand how in the name of producing a level playing field, the State, when it decides to award a contract, would be obliged to undertake the ordeal of finding out the correct HSN Code and the tax applicable for the product, which they wish to procure. This is, particularly so when the State is not burdened with the liability to pay the tax. The liability to pay tax, in the case before us, is squarely on the supplier. (Para 47) **Union of India v. Bharat Forge Ltd., 2022 LiveLaw (SC) 691 : AIR 2022 SC 3821**

B

Banking

Banking - The Bank employee always holds the position of trust where honesty and integrity are the sine qua non. (Para 11) ***United Bank of India v. Bachan Prasad Lall***, [2022 LiveLaw \(SC\) 164](#) : AIR 2022 SC 943 : (2022) 4 SCC 358

Banking Law - Bank's Liability for acts of employees - Acts of bank/post office employees, when done during their course of employment, are binding on the bank/post office at the instance of the person who is damnified by the fraud and wrongful acts of the officers of the bank/post office. Post office / bank, can and is entitled to proceed against the officers for the loss caused due to the fraud etc., but this would not absolve them from their liability if the employee involved was acting in the course of his employment and duties. (Para 37) ***Pradeep Kumar v. Post Master General***, [2022 LiveLaw \(SC\) 139](#) : (2022) 6 SCC 351

Banking Law - Bank's Liability for acts of employees - What is relevant is whether the crime, in the form of fraud etc., was perpetrated by the servant/employee during the course of his employment. Once this is established, the employer would be liable for the employee's wrongful act, even if they amount to a crime. Whether the fraud is committed during the course of employment would be a question of fact that needs to be determined in the facts and circumstances of the case. (Para 38) ***Pradeep Kumar v. Post Master General***, [2022 LiveLaw \(SC\) 139](#) : (2022) 6 SCC 351

Banking Regulation (Amendment) Act, 2020 - Transfer Petitions filed by RBI - All the writ petitions which have been filed before the High Courts challenging the validity of the Banking Regulation (Amendment) Act 2020 and/or the circular dated 25 June 2021 shall stand transferred to the High Court of Madras. ***Reserve Bank of India v. Big Kancheepuram Cooperative Town Bank Ltd.***, [2022 LiveLaw \(SC\) 850](#)

Bar Council

Bar Council of India Rules - Provisional enrolment - Persons engaged in other employments can be permitted to provisionally enrol with the concerned Bar Council and to appear in the All India Bar Examination (AIBE), and that upon clearing the AIBE, they can be given a period of 6 months to decide whether to join legal profession or continue with the other job. ***Bar Council of India v. Twinkle Rahul Mangonkar***, [2022 LiveLaw \(SC\) 414](#)

Basic Structure Doctrine

Basic Structure Doctrine - It is therefore, inaccurate to say that provisions that enable, exercise of power, would not violate the basic structure of the Constitution. The enabling provision in question's basic premise, its potential to overbear the constitutional ethos, or overcome a particular value, would be in issue. The court's inquiry therefore, cannot stop at the threshold, when an enabling provision is enacted. Its potential for violating the basic structure of the Constitution is precisely the power it confers, on the legislature, or the executive. (Para 157) *Janhit Abhiyan v. Union of India*, [2022 LiveLaw \(SC\) 922](#)

Blacklisting

Blacklisting - "Debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission. It is for the State or appropriate authority to pass an order of blacklisting/debarment in the facts and circumstances of the case - "Debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor. (Para 8.7 and 9.1) *State of Odisha v. Panda Infraproject*, [2022 LiveLaw \(SC\) 206](#) : (2022) 4 SCC 393

Blacklisting - Guidelines issued by Odisha Government that blacklisting period per offence shall be limited to three years subject to an overall maximum cumulative period of ten years for multiple offences - Disapproved - Duration of blacklisting cannot be solely per offence. Seriousness of the lapse and the incident and/or gravity of commission and omission on the part of the contractor which led to the incident should be the relevant considerations. In a given case, it may happen that the commission and omission is very grave and because of the serious lapse and/or negligence, a major incident would have taken place. In such a case, it may be the contractor's first offence, in such a case, the period/duration of the blacklisting/banning can be more than three years. However, as the said guidelines are not under challenge, we rest the matter there and leave it to the State Government to suitably amend and/or modify the said office memorandum. However, what we have observed above can be a guide while determining the period of debarment/blacklisting. (Para 9.1) *State of Odisha v. Panda Infraproject*, [2022 LiveLaw \(SC\) 206](#): (2022) 4 SCC 393

Blacklisting - Show cause notice was issued upon the contractor by which the contractor was called upon to show cause why he be not blacklisted; the show cause notice was replied to by the contractor and thereafter, after considering the material on record and the reply submitted by the contractor and having found the serious lapses which led to a serious incident in which one person died and eleven others were injured, the State Government took a conscious decision to blacklist the contractor. Therefore, it cannot be said the order blacklisting the contractor was in violation of principles of natural justice. (Para 8.5) *State of Odisha v. Panda Infraproject*, [2022 LiveLaw \(SC\) 206](#) : (2022) 4 SCC 393

Bonded Labour

Bonded Labour System (Abolition) Act, 1976; Sections 16-17- For attracting the provision of Section 16 of the Act, the prosecution must establish that an accused has forced and compelled the victim to render bonded labour. This force and compulsion must be at the instance of the accused and the prosecution must establish the same beyond reasonable doubt. Similarly, under Section 17 of the Act, there is an obligation on the prosecution to establish that the accused has advanced a bonded debt to the victim. (Para 11) **Selvakumar v. Manjula**, [2022 LiveLaw \(SC\) 786](#)

Buildings

Buildings (Lease, Rent and Eviction) Control Act, 1960 (Andhra Pradesh); Section 10 - Bonafide Requirement - The landlord was carrying on business and that he had children for whom he wanted to set-up a business - Rent Control Appellate Authority passed Eviction Order - Andhra Pradesh HC, while allowing Revision Petition observed that the eldest son of the Landlord was still pursuing studies and therefore the requirement of the land lord was not bona fide - Allowing the appeal, the SC observed: There is no bar for someone who is pursuing higher studies, to start a business. The High Court, for a moment did not realize that it was dealing with a revision, where its jurisdiction was limited. **Mohammed Sadiq v. Deepak Manglani**, [2022 LiveLaw \(SC\) 957](#)

C

Carriage by Air

Carriage by Air Act, 1972; Rule 30 - Limitation Act, 1963; Section 29(2) - Rule 30 expressly excludes the Limitation Act as provided in Section 29 - Rule 30 (2) does not enable applicability of exclusion of periods for the purpose of reckoning the period of two years. (Para 43) **Bhagwandas B. Ramchandani v. British Airways**, [2022 LiveLaw \(SC\) 645](#)

CBSE

CBSE is only a society registered under the Societies Registration Act, 1860 and the school affiliated to it is not a creature of the statute and hence not a statutory body - CBSE itself is not a statutory body nor the regulations framed by it has any statutory force. Secondly, the mere fact that the Board grants recognition to the institutions on certain terms and conditions itself does not confer any enforceable right on any person as against the Committee of Management - Thus, where a teacher or non-teaching staff challenges action of Committee of Management that it has violated the terms of contract or the rules of the Affiliation Byelaws, the appropriate remedy of such teacher or

employee is to approach the CBSE or to take such other legal remedy available under law. It is open to the CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that the Committee of Management has not performed its duties in accordance with the Affiliation Byelaws. (Para 28-33) **St. Mary's Educational institute v. Rajendra Prasad Bhargava**, [2022 LiveLaw \(SC\) 708](#)

Central Educational Institutions (Reservation in Teachers' Cadre) Act, 2019

Central Educational Institutions (Reservation in Teachers' Cadre) Act, 2019 - Supreme Court directs Centre and IITs to follow the reservation and act as per the reservations provided under the Act. **Sachchida Nand Pandey v. Union of India**, [2022 LiveLaw \(SC\) 1037](#)

Central Electricity Authority

Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 - Regulation 116 - The width and amplitude of Regulation 116 cannot be restricted by interpreting the word 'deviation' as having lesser scope than exemption. 'Deviation' from the Regulations would amount to either exemption or relaxation. Therefore, we are in agreement with the Division Bench that the order dated 13.02.2019 cannot be said to have been issued beyond the power conferred by Regulation 116 of 2010 Regulations. **Muhammed A.A. v. State of Kerala**, [2022 LiveLaw \(SC\) 188](#) : AIR 2022 SC 1251

Central Excise

Central Excise Act, 1944; Section 11B - Central Excise Rules, 2002 ; Rule 18 - While making claim for rebate of duty under Rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 shall have to be applied and applicable. (Para 15) **Sansera Engineering Ltd. v. Deputy Commissioner, Large Tax Payer Unit, Bengaluru**, [2022 LiveLaw \(SC\) 997](#)

Central Excise Act, 1944; Section 173L - For the purpose of considering the value for refund under Section 173-L what is required to be considered is the value of the returned goods - "value" means the market value of the excisable goods and not the ex-duty value thereof. Therefore, the submission on behalf of the assessee that the returned goods may be treated as a raw material and therefore the "value" of the raw material can be considered for the purpose of "value" while determining the refund under Section 173-L cannot be accepted. (Para 5) **Peacock Industries Ltd. v. Union of India**, [2022 LiveLaw \(SC\) 740](#) : AIR 2022 SC 4132

Central Excise and Customs Commissionerates Inspector (Central Excise, Preventive Officer and Examiner) Group 'B' Posts Recruitment Rules 2016 - The absence of a provision for filling up a post in the Commissionerate by absorption of persons belonging to the cadre of another

Commissionerate clearly indicates that the cadre is treated as a posting unit and there is no occasion to absorb a person from outside the cadre who holds a similar or comparable post. (Para 32) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Central Excise Rules, 1944 - Commissioner of Customs and Central Excise could not have invoked the powers under Rule 173Q(2) of the Central Excise Rules, 1944 on 26.03.2007 and 29.03.2007 for confiscation of land, buildings etc., when on such date, the said Rule 173Q(2) was not in the Statute books, having been omitted by a notification dated 12.05.2000. (Para 47) **Punjab National Bank v. Union of India**, [2022 LiveLaw \(SC\) 208](#) : AIR 2022 SC 1475 : (2022) 7 SCC 260

Central Excise Tariff Act, 1988 - Modified Vapour Absorption Chiller Machines cannot be categorized as a Heat Pump to avail concessional tariff benefits - The end use of MVAC is to produce Chilled Water. The use of heat as one of the sources in the airconditioning system would not take away the primary or basic function of the MVAC, which is to cool and not heat water - Definition of a product given in the HSN should be given due weightage in the classification of a product for the purpose of levying excise duty. **Thermax Ltd v. Commissioner of Central Excise, Pune-1**, [2022 LiveLaw \(SC\) 881](#) : AIR 2022 SC 5067

Central Goods and Services

Central Goods and Services Tax Act, 2017; Section 174(2)(c) - Whether the Union of India can be directed to adhere to the representation as made by it in the Office Memorandum dated 7th January 2003 even after the enactment of the CGST Act ? - Proviso to Section 174(2)(c) provides therein that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded - If the contention is accepted, it will amount to enforcing a representation made in the said O.M. of 2003 and 2003 Notification contrary to the legislative incorporation in the proviso to Section 174(2)(c) of the CGST Act. **Hero Motocorp Ltd. v. Union of India**, [2022 LiveLaw \(SC\) 852](#) : AIR 2022 SC 5572

Central Goods and Services Tax Act, 2017; Section 56 - In terms of the principal part of Section 56 of the CGST Act, the interest would be awarded at the rate of 6 per cent. The award of interest at 9 per cent would be attracted only if the matter was covered by the proviso to the said Section 56 - Wherever a statute specifies or regulates the interest, the interest will be payable in terms of the provisions of the statute - Wherever a statute, on the other hand, is silent about the rate of interest and there is no express bar for payment of interest, any delay in paying the compensation or the amounts due, would attract award of interest at a reasonable rate on equitable grounds. (Para 18-19) **Union of India v. Willowood Chemicals**, [2022 LiveLaw \(SC\) 398](#) : AIR 2022 SC 3009 : (2022) 9 SCC 341

Central Sales Tax

Central Sales Tax Act 1956 - Court directed the state of Andhra Pradesh to transfer to Jharkhand the amount of central sales tax deposited by Tata Motors with respect to the sale of buses to the Andhra Pradesh State Road Transport Corporation (APSRTC) -transaction in question, namely, sales effected through RSO, Vijayawada with respect to vehicles/buses sold to APSRTC, the sale/s is/are found to be in the nature of inter-state sale/s. In that view of the matter, the appellant – Tata Motors Limited was liable to pay central sales tax to the State of Jharkhand. However, treating the sale as stock transfer, the appellant/its representative had paid the tax on the aforesaid transaction to the State of Andhra Pradesh which is not leviable by the State of Andhra Pradesh. Therefore, the amount of central sales tax recovered by the State of Andhra Pradesh is required to be transferred to the State of Jharkhand and the same is required to be adjusted towards the amount of tax to be paid to the State of Jharkhand. ***Tata Motors Ltd. v. Central Sales Tax Appellate Authority, 2022 LiveLaw (SC) 847***

Central Sales Tax Act 1956 - Prior to insertion of Section 22(1B) to the Central Sales Tax Act, 1956, there was no provision by which the Appellate Authority could have issued directions for refund of the tax collected by the State which has been held by the Appellate Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction. However, by the Finance Act, 2010, Section 22(1B) has been inserted to Act 1956 providing for refund-in line with Section 22(1B) of the Act 1956, the State of Andhra Pradesh is directed to transfer to the State of Jharkhand the amount of central sales tax deposited by the appellant with the State of Andhra Pradesh with respect to transaction in question. ***Tata Motors Ltd. v. Central Sales Tax Appellate Authority, 2022 LiveLaw (SC) 847***

CETSTAT

CETSTAT judgments overruled - Some judgments relied upon by the assessee and the CESTAT have limited precedential value - the Apex Court had merely affirmed the ruling of CESTAT in these judgements without providing independent reasoning - Overruled Volkswagen India Pvt. Ltd. v. CCE, Pune-I; Computer Sciences Corporation India Pvt. Ltd. v. Commissioner of Service Tax; SRF Ltd. v. Commissioner and Commissioner of Central Excise v. Coca Cola India Pvt. Ltd. [Para 59] ***C.C. C.E. & S.T. Bangalore (Adjudication) Etc. v. M/s. Northern Operating Systems Pvt. Ltd., 2022 LiveLaw (SC) 526 : AIR 2022 SC 2450***

Child Custody

Child Custody - Income and/or the age and/or the bigger family cannot be the sole criteria to tilt the balance in custody matters - One should not doubt the capacity and/or ability of the paternal grandparents to take care of their grandson - Grand Parents are more attached emotionally with grandchildren.

(Para 7.2) **Swaminathan Kunchu Acharya v. State of Gujarat**, [2022 LiveLaw \(SC\) 547](#) : AIR 2022 SC 2774 : (2022) 8 SCC 804

Child Custody - The question 'what is the wish/desire of the child' is different and distinct from the question 'what would be in the best interest of the child'. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to 'what would be in the best interest of the child' is a matter to be decided by the court taking into account all the relevant circumstances. When couples are at loggerheads and wanted to part their ways as parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child - Unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, 'what would be the best interest of the child concerned' - Welfare of the child should be the paramount consideration. (Para 8) **Rohith Thammana Gowda v. State of Karnataka**, [2022 LiveLaw \(SC\) 643](#) : AIR 2022 SC 3511

Cinematograph

Cinematograph Act, 1952 - An injunction action can be initiated even after a certificate is issued under the Cinematograph Act. The Court may examine the film and judge whether its public display, breaches the norms of decency or contravenes the law. A film which is defamatory or indecent or breaches copyright cannot be allowed to be exhibited only because a certificate has been issued. The examples are of course illustrative. (Para 10) **Shri Babuji Rawji Shah v. S. Hussain Zaidi**, [2022 LiveLaw \(SC\) 213](#) : 2022 (4) SCALE 440

Cinematograph Act, 1952 - Guidelines for certification of films - A book or a film that illustrates the consequences of a social evil must necessarily show that social evil. A film that carries a message and depicts social circumstances of a group of underprivileged women is not impermissible. (Para 11) **Shri Babuji Rawji Shah v. S. Hussain Zaidi**, [2022 LiveLaw \(SC\) 213](#) : 2022 (4) SCALE 440

Cinematograph Act, 1952 - SLP Against Bombay High Court order refusing to grant interim injunction against release of the film "Gangubai Kathiawadi" - Dismissed - The film certificate issued by the CBFC prima facie shows that the film is not defamatory. Prima facie, it appears that the movie is an artistic expression within the parameters of law. (Para 25) **Shri Babuji Rawji Shah v. S. Hussain Zaidi**, [2022 LiveLaw \(SC\) 213](#) : 2022 (4) SCALE 440

Cinematograph Act, 1952 - The fact that the film has been certified by CBFC, which comprises of a body of experts prima facie shows compliance with the requirements of the guidelines. (Para 13) **Shri Babuji Rawji Shah v. S. Hussain Zaidi**, [2022 LiveLaw \(SC\) 213](#) : 2022 (4) SCALE 440

CISF

CISF Rules, 2001; Rule 52 - Appellate power under Rule 52 of the CISF Rules, 2001, cannot be equated with power of judicial review exercised by constitutional courts. (Para 9) **Union of India v. Managobinda Samantaray**, [2022 LiveLaw \(SC\) 244](#) : 2022 (4) SCALE 667

Civil Cases

Civil Cases - Pleadings - Relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice. (Para 15-18) **Akella Lalita v. Sri Konda Hanumantha Rao**, [2022 LiveLaw \(SC\) 638](#) : AIR 2022 SC 3544

Civil Litigation

Civil Litigation - Eviction order passed in 1989 yet not permitted to be executed by the judgment debtor by initiating the proceedings one after another - This is a clear example of the abuse of the process of law and the Court and not permitting the judgment -creditor to get the benefit under the decree which is passed in his favour in the year 1989 - Special Leave Petitions dismissed with cost which is quantified at Rs.25,000/- . **M. Chinnamuthu v. Kamaleshan @ Shanmugam**, [2022 LiveLaw \(SC\) 209](#)

Civil Litigation – Judgment Creditor is entitled to enjoy the fruit of the litigation within a reasonable time - In our justice delivery system, the real litigation starts only after the decree is passed and the judgment -creditor has to wait for number of years for enjoying the fruit of the decree and the litigation. If such a delayed tactics is permitted, the litigant would lose the confidence in the justice delivery system. Every litigation has to put to an end at a particular time. **M. Chinnamuthu v. Kamaleshan @ Shanmugam**, [2022 LiveLaw \(SC\) 209](#)

Civil Suit

Civil Suit - If a party to a suit does not appear in the witness box to state their own case and does not offer themselves to be cross-examined by the other side, a presumption would arise that the case set up is not correct. (Para 12) **Seethakathi Trust Madras v. Krishnaveni**, [2022 LiveLaw \(SC\) 58](#) : AIR 2022 SC 558 : (2022) 3 SCC 150

Civil Suit - If the title to the property was the basis of the relief of possession, the relief for permanent injunction can be said to be a consequential relief. (Para 11) **Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai**, [2022 LiveLaw \(SC\) 241](#) : 2022 (4) SCALE 352

Civil Suit - Injunction - Once the dispute with respect to title is settled and it is held against the plaintiff, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner. (Para 9) **Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai**, [2022 LiveLaw \(SC\) 241](#) : 2022 (4) SCALE 352

Civil Suit - The rights of the parties have to be determined on the date when lis commences i.e., on the date of filing of the suit. The plaintiff is entitled to decree on that day when he initiated the proceedings, therefore, rights of the parties have to be examined as on the said day. ***Shankarlal Nadani v. Sohanlal Jain***, [2022 LiveLaw \(SC\) 367](#) : AIR 2022 SC 1813

Civil Trial

Civil Trial - Once a document has been admitted in evidence, such admission cannot be called in question at any stage of the suit or proceedings on the ground that the instrument has not been duly stamped. Objection as to admissibility of a document on the ground of sufficiency of stamp, has to be raised when the document is tendered in evidence. Thereafter, it is not open to the parties, or even the court to reexamine the order or issue. ***Sirikonda Madhava Rao v. N. Hemalatha***, [2022 LiveLaw \(SC\) 970](#)

Coal Mines

Coal Mines (Nationalisation) Act, 1973; Section 3 - What was transferred to and vested in the Central Government were the coal mines - The ownership of the land was immaterial. If the land fell within the definition of the expression "mine" under the Nationalisation Act, the same stood transferred to and vested in the Central Government under Section 3(1). (Para 13) ***Bharat Coking Coal Ltd. v. Mahendra Pal Bhatia***, [2022 LiveLaw \(SC\) 350](#) : AIR 2022 SC 1646 : (2022) 6 SCC 99

Coal Mines (Nationalisation) Act, 1973; Sections 2(h) and 3(1) - Focus is on the property and not on who the owner of the property is - Even the lands and buildings used solely for the location of the management, sale or liaison offices or for the residence of officers and staff were also included in the definition of the word "mine". (Para 15) ***Bharat Coking Coal Ltd. v. Mahendra Pal Bhatia***, [2022 LiveLaw \(SC\) 350](#) : AIR 2022 SC 1646 : (2022) 6 SCC 99

Code of Civil Procedure, 1908

Code of Civil Procedure, 1908; The rules of procedure are essentially intended to subserve the cause of justice and are not for punishment of the parties in conduct of the proceedings. (Para 26.1) ***Prakash Corporates v. Dee Vee Projects Ltd.***, [2022 LiveLaw \(SC\) 162](#) : AIR 2022 SC 946 : (2022) 5 SCC 112

Dominus Litus

Code of Civil Procedure, 1908 - Plaintiff is dominus litus, and they cannot be compelled to seek relief against anyone. (Para 8.16) ***Small Industries Development Bank of India v. Sibco Investment Pvt. Ltd.***, [2022 LiveLaw \(SC\) 7](#) : (2022) 3 SCC 56

Execution

Code of Civil Procedure, 1908 - Execution Proceedings - It is an old saying that the difficulties of the litigant in India begin when he has obtained a decree.

The evil was noticed as far back in 1872 by the Privy Council in relation to the difficulties faced by the decree holder in execution of the decree. After more than a century, there has been no improvement and still the decree holder faces the same problem what was being faced in the past. A litigant coming to Court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he primarily wants from the Court of Justice is the relief and if it is a money decree, he wants that money what he is entitled for in terms of the decree, must be satisfied by the judgment debtor at the earliest possible without fail keeping in view the reasonable restrictions/rights which are available to the judgment debtor under the provisions of the statute or the code, as the case may be. (Para 3) **Griesheim GmbH v. Goyal MG Gases Pvt. Ltd.**, [2022 LiveLaw \(SC\) 95](#) : AIR 2022 SC 696

Procedural Defect

Code of Civil Procedure, 1908 - The procedural defect may fall within the purview of irregularity and capable of being cured, but it should not be allowed to defeat the substantive right accrued to the litigant without affording reasonable opportunity. (Para 10) **Ramnath Exports Pvt. Ltd. v. Vinita Mehta**, [2022 LiveLaw \(SC\) 564](#) : (2022) 7 SCC 678

Code of Civil Procedure, 1908 - While procedure is said to be the handmaiden of justice and substantial justice must prevail and the former may take the backseat, failure to follow the procedure laid down by law can result in grave miscarriage of justice to the judgment debtor and delay in the decree holder realising the fruits of the decree. (Para 1) **Rajbir v. Suraj Bhan**, [2022 LiveLaw \(SC\) 255](#) : 2022 (5) SCALE 321

Section 2(12) - "Mesne Profits"

Code of Civil Procedure, 1908; Section 2(12) - Transfer of Property Act, 1882; Section 111(a) - Tenant while continuing in possession after the expiry of the lease liable to pay mesne profits - A tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. (Para 60) **Indian Oil Corporation Ltd. v. Sudera Realty Pvt. Ltd.**, [2022 LiveLaw \(SC\) 744](#) : AIR 2022 SC 5077

Section 9 - Courts to try all civil suits unless barred.

Code of Civil Procedure, 1908; Section 9 - Civil Courts to determine all disputes of civil nature unless the same is barred under statute either expressly or by necessary implication and such a bar is not to be readily inferred. The provision seeking to bar jurisdiction of a Civil Court requires strict interpretation and the Court would normally lean in favour of construction which would uphold the jurisdiction of the Civil Court. (Para 43) **Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd.**, [2022 LiveLaw \(SC\) 941](#)

Code of Civil Procedure, 1908; Section 9 - Law on ouster of jurisdiction of civil courts - The jurisdiction of the civil courts to try suits of a civil nature is

expansive and the onus to prove the ouster of the jurisdiction is on the party that asserts it. The court observed that even in cases where the jurisdiction of the civil court is barred by a statute, the test is to determine if the authority or tribunal constituted under the statute has the power to grant reliefs that the civil courts would normally grant in suits filed before them. (Para 15) **Rajani v. Smita**, [2022 LiveLaw \(SC\) 702](#)

Code of Civil Procedure, 1908; Section 9 - Maharashtra Housing and Area Development Act, 1976; Sections 71, 177 - The reliefs sought in the plaint are: (i) the removal of the unauthorized construction; (ii) a permanent prohibitory injunction restraining the defendants from constructing over the open site and causing 'nuisance'; and (iii) restoration of the water connection as it was prior to the construction - The reliefs claimed are beyond the scope of the Act - A suit of this nature will be maintainable before the civil court and would not be barred by Section 71 or Section 177 of the Act. (Para 16) **Rajani v. Smita**, [2022 LiveLaw \(SC\) 702](#)

Code of Civil Procedure, 1908; Section 9 - Recovery of Debts Due to Banks and Financial Institutions Act, 1993; Section 17, 18, 19 - Jurisdiction of a Civil Court to try a suit filed by a borrower against a Bank or Financial Institution is not ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt - There is no provision in the RDB Act by which the remedy of a civil suit by a defendant in a claim by the bank is ousted, but it is the matter of choice of that defendant. Such a defendant may file a counterclaim, or may be desirous of availing of the more strenuous procedure established under the Code, and that is a choice which he takes with the consequences thereof. (Para 45, 56) **Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd.**, [2022 LiveLaw \(SC\) 941](#)

Section 10 - Stay of Suit

Code of Civil Procedure, 1908; Section 10 - Application under Section 10 CPC, by its very nature, requires immediate consideration and before any other steps in the suit - If the prayer made in the application moved under Section 10 were to be granted, the trial of the subject suit is not to be proceeded with at all. (Para 26) **Prakash Corporates v. Dee Vee Projects Ltd.**, [2022 LiveLaw \(SC\) 162](#) : AIR 2022 SC 946 : (2022) 5 SCC 112

Section 11 - Res Judicata

Code of Civil Procedure, 1908; Section 11 - Res Judicata - Doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata. (Para 10) **S. Ramachandra Rao v. S. Nagabhushana Rao**, [2022 LiveLaw \(SC\) 861](#) : AIR 2022 SC 5317

Code of Civil Procedure, 1908; Section 11 - Res Judicata - For res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality - Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit. The reason is that the first suit is not decided on merits - Conditions that must be satisfied to constitute a plea of res judicata laid down. (Para 30-31) **R.M. Sundaram @ Meenakshisundaram v. Sri Kayarohanasamy and Neelayadhakshi Amman Temple**, [2022 LiveLaw \(SC\) 612](#)

Code of Civil Procedure, 1908; Section 11 - Res Judicata - To succeed and establish a prayer for res judicata, the party taking the said prayer must place on record a copy of the pleadings and the judgments passed, including the appellate judgment which has attained finality. (Para 32) **R.M. Sundaram @ Meenakshisundaram v. Sri Kayarohanasamy and Neelayadhakshi Amman Temple**, [2022 LiveLaw \(SC\) 612](#)

Code of Civil Procedure, 1908; Section 11 - Res Judicata - When the suit was dismissed for technical reasons, which decision is not an adjudication on merits of the dispute that would operate as res judicata on the merits of the matter. (Para 32) **R.M. Sundaram @ Meenakshisundaram v. Sri Kayarohanasamy and Neelayadhakshi Amman Temple**, [2022 LiveLaw \(SC\) 612](#)

Code of Civil Procedure, 1908; Section 11 - The principle of constructive res judicata has no application when there was no formal adjudication between the parties after full hearing. (Para 52) **Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd.**, [2022 LiveLaw \(SC\) 729](#) : AIR 2022 SC 4256

Section 24 - General power of transfer and withdrawal

Code of Civil Procedure, 1908; Section 24 - Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer - In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose

protective umbrella they are seeking their sustenance to life. (Para 9) **NCV Aishwarya v. AS Saravana Karthik Sha**, [2022 LiveLaw \(SC\) 627](#) : AIR 2022 SC 4318

Code of Civil Procedure, 1908; Section 24 - The cardinal principle for exercise of power under Section 24 CPC is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. **NCV Aishwarya v. AS Saravana Karthik Sha**, [2022 LiveLaw \(SC\) 627](#) : AIR 2022 SC 4318

Code of Civil Procedure, 1908; Section 24 - When two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions. (Para 10-11) **NCV Aishwarya v. AS Saravana Karthik Sha**, [2022 LiveLaw \(SC\) 627](#) : AIR 2022 SC 4318

Section 25 - Power of Supreme Court to transfer suits, etc.

Code of Civil Procedure, 1908; Section 25 - Jurisdiction under Section 25 cannot be extended to determine the question of territorial jurisdiction of the proceedings- The plea of jurisdiction or the lack of it can be prompted before the Court in which the proceedings are pending. (Para 4-5) **Neilan International Co. Ltd. v. Powerica Ltd.**, [2022 LiveLaw \(SC\) 566](#)

Section 34 - Interest

Code of Civil Procedure, 1908; Section 34 - S. 34 of the Code of Civil Procedure (CPC), award of interest is a discretionary exercise, steeped in equitable considerations. Interest is payable for different purposes such as compensatory, penal, etc. (Para 12.1) **Small Industries Development Bank of India v. Sibco Investment Pvt. Ltd.**, [2022 LiveLaw \(SC\) 7](#) : (2022) 3 SCC 56

Section 38 - Court by which decree may be executed

Code of Civil Procedure, 1908; Sections 38, 39 - For the effective working of Section 39 of CPC, in other words, there must be a Court which has passed a decree - When Sections 38 and 39 of the CPC are not as such applicable, the decree holder may seek to execute the decree in any Court which otherwise has jurisdiction. (Para 24) **Bhagyoday Cooperative Bank Ltd. v. Ravindra Balkrishna Patel**, [2022 LiveLaw \(SC\) 1020](#)

Section 44A - Execution of decrees passed by Courts in reciprocating territory

Code of Civil Procedure, 1908; Section 44A - Delhi High Court Act, 1966 - Section 5 - The expression "District Court" in Section 44A for execution of foreign decree, will be construed to be a Court holding ordinary original civil jurisdiction in terms of its pecuniary limits as being notified under Section 5(2) of the Act 1966. (Para 27) **Griesheim GmbH v. Goyal MG Gases Pvt. Ltd.**, [2022 LiveLaw \(SC\) 95](#) : AIR 2022 SC 696

Code of Civil Procedure, 1908; Section 44A - Delhi High Court Act, 1966 - Section 5 - The High Court of Delhi in exercise of its original jurisdiction is a competent Court to entertain a petition for executing a money decree (in excess of Rs.20 lakhs) of a foreign Court which is notified as a superior Court of reciprocating territory under Section 44A of the Code. (Para 28) **Griesheim GmbH v. Goyal MG Gases Pvt. Ltd.**, [2022 LiveLaw \(SC\) 95](#) : AIR 2022 SC 696

Section 64 - Private alienation of property after attachment to be void

Code of Civil Procedure, 1908; Section 64(2) and Order XXI Rule 58 - To get the benefit of sub-section (2) of Section 64 of the CPC, the objector and/or subsequent purchaser has to plead and prove that he is the *bona fide* purchaser, who has entered into the transaction prior to the order of attachment. (Para 4) **Dokala Hari Babu v. Kotra Appa Rao**, [2022 LiveLaw \(SC\) 342](#)

Section 96 - Appeal from Original Decree

Code of Civil Procedure, 1908 - One First Appeal filed by defendant against a common judgment disposing two suits - An application (CLMA) seeking permission to file a single appeal assailing the common judgment alongwith two separate decrees filed - The first appeal admitted by High Court - A decade later, the High Court without passing any order on the said CLMA, at the time of hearing of the appeal, accepted the preliminary objection regarding maintainability of single first appeal without entering into the merits of the case - Allowing appeal, the Supreme Court observed that the approach adopted by High Court is not correct, because on dismissal of the CLMA, the appellant might have had the opportunity to rectify the defect by way of filing separate appeal under Section 96 CPC challenging the same judgment with separate decree - Matter remanded to the High Court to decide the CLMA before deciding the preliminary objection of maintainability of one appeal. **Ramnath Exports Pvt. Ltd. v. Vinita Mehta**, [2022 LiveLaw \(SC\) 564](#) : (2022) 7 SCC 678

Code of Civil Procedure, 1908; Section 96 - An appeal is a continuation of the proceedings of the original court. Ordinarily, First appeal involves a re-hearing on law as well as on fact as invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law are open for consideration by re-appreciating the material and evidence. The first appellate court is required to address on all the issues and decide the appeal assigning valid reasons either in support or against by re-appraisal - It must record its findings dealing all the issues, considering oral as well as documentary evidence led by the parties. (Para 8) **Ramnath Exports Pvt. Ltd. v. Vinita Mehta**, [2022 LiveLaw \(SC\) 564](#) : (2022) 7 SCC 678

Code of Civil Procedure, 1908; Section 96, 105 and Order IX Rule 13 - The appellant, while challenging ex parte decree by filing an appeal, can always point out from the record of the trial court that the order passed to proceed with the suit ex parte against him was illegal - Only when the application made by a defendant under Rule 13 of Order IX of CPC is dismissed that such a defendant

cannot agitate in the appeal against ex parte decree that the order directing that the suit shall proceed ex parte was illegal or incorrect - Though the appellant would not be entitled to lead evidence in appeal for making out a sufficient cause for his absence before the trial court, he can always argue on the basis of the record of the suit that either the suit summons was not served upon him or that even otherwise also, the trial court was not justified in proceeding ex parte against him. (Para 8) **G.N.R. Babu @ S.N. Babu v. Dr. B.C. Muthappa**, [2022 LiveLaw \(SC\) 748](#) : AIR 2022 SC 4213

Code of Civil Procedure, 1908; Sections 96-100 - Any aggrieved party can prefer an appeal with the leave of the Court - A person who is affected by a judgment but is not a party to the suit, can prefer an appeal with the leave of the Court. The sine qua non for filing an appeal by a third party is that he must have been affected by reason of the judgment and decree which is sought to be impugned. (Para 29-31) **My Palace Mutually Aided Cooperative Society v. B. Mahesh**, [2022 LiveLaw \(SC\) 698](#) : 2022 (12) SCALE 230

Section 100 - Second Appeal

Code of Civil Procedure, 1908; Section 100 - Electricity Act, 2003; Section 125 - For determining whether a case involves substantial question of law, the test is not merely the importance of the question, but its importance to the case itself necessitating the decision of the question. The appropriate test for determining whether the question of law raised in the case is substantial would be to see whether it directly and substantially affects the rights of the parties. If it is established that the decision is contrary to law or the decision has failed to determine some material issue of law or if there is substantial error or defect in the decision of the case on merits, the court can interfere with the conclusion of the lower court or tribunal. The stakes involved in the case are immaterial as long as the impact or effect of the question of law has a bearing on the lis between the parties - In a second appeal, the appellant is entitled to point out that the order impugned is bad in law because it is de hors the pleadings, or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against the provision of law or the decision is one which no Judge acting judicially could reasonably have reached. Once the appellate court is satisfied, after hearing the appeal, that the appeal involves a substantial question of law, it has to formulate the question and direct issuance of notice to the respondent. (Para 30-31) **BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 857](#) : 2022 (15) SCALE 588

Code of Civil Procedure, 1908; Section 100 - Second Appeal - Perversity in arriving at a factual finding gives rise to a substantial question of law, attracting intervention of the High Court under Section 100 of the CPC - There is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse.

Azgar Barid v. Mazambi @ Pyaremabi, [2022 LiveLaw \(SC\) 193](#) : AIR 2022 SC 1304 : (2022) 5 SCC 334

Code of Civil Procedure, 1908; Section 100 - Second Appeal - Question of law ought to have been framed under Section 100 of the said Code. Even if the question of law had not been framed at the stage of admission, at least before the deciding the case the said question of law ought to have been framed. (Para 22) **Seethakathi Trust Madras v. Krishnaveni, [2022 LiveLaw \(SC\) 58](#) : AIR 2022 SC 558 : (2022) 3 SCC 150**

Code of Civil Procedure, 1908; Section 100 - In the State of Haryana a court in second appeal is not required to formulate a substantial question of law, as what is applicable in Haryana is Section 41 of the Punjab Courts Act, 1918 and not Section 100 of CPC - But only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law - Second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court. (Para 10-15) **Satyender v. Saroj, [2022 LiveLaw \(SC\) 679](#) : AIR 2022 SC 4732**

Section 114 - Review

Code of Civil Procedure, 1908; Section 114, Order XLVII - Distinction between an erroneous decision as against an error apparent on the face of the record - An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction - A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review. (Para 26) **S. Madhusudhan Reddy v. V. Narayana Reddy, [2022 LiveLaw \(SC\) 685](#) : 2022 (12) SCALE 261**

Section 144 - Application for Restitution

Code of Civil Procedure, 1908; Section 144 - Appeal against Division Bench direction that the State shall be at liberty to recover the excess amount paid to the original writ petitioners - Dismissed - By applying Section 144 CPC also, the amount paid pursuant to the order passed by the learned Single Judge which has been set aside by the Division Bench is required to be refunded/returned by the original writ petitioners. **Mekha Ram v. State of Rajasthan, [2022 LiveLaw \(SC\) 324](#) : AIR 2022 SC 1591**

Section 151 - Saving of inherent powers of Court

Code of Civil Procedure, 1908; Section 151 - Consent Decree - The Court can entertain an Application under Section 151 of the CPC for alterations/modification of the consent decree if the same is vitiated by fraud,

misrepresentation, or misunderstanding. (Para 13) ***Ajanta LLP v. Casio*, 2022 [LiveLaw \(SC\) 127](#) : (2022) 5 SCC 449**

Code of Civil Procedure, 1908; Section 151 - Order XXIII Rule 3 - Even assuming there is a mistake, a consent decree cannot be modified/ altered unless the mistake is a patent or obvious mistake. Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/ misunderstanding by a party to the consent decree. (Para 13) ***Ajanta LLP v. Casio*, 2022 [LiveLaw \(SC\) 127](#) : (2022) 5 SCC 449**

Code of Civil Procedure, 1908; Section 151 - Order XXIII Rule 3 - Consent Decree - A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment. A consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. (Para 12) ***Ajanta LLP v. Casio*, 2022 [LiveLaw \(SC\) 127](#) : (2022) 5 SCC 449**

Code of Civil Procedure, 1908; Section 151 - Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law - It cannot be said that the civil courts can exercise substantive jurisdiction to unsettle already decided issues. A Court having jurisdiction over the relevant subject matter has the power to decide and may come either to a right or a wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect decree is passed by the jurisdictional court, the same is binding on the parties until it is set aside by an appellate court or through other remedies provided in law - Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the CPC. (Para 26-28) ***My Palace Mutually Aided Cooperative Society v. B. Mahesh*, 2022 [LiveLaw \(SC\) 698](#) : 2022 (12) SCALE 230**

Code of Civil Procedure, 1908; Section 151, Order VII Rule 10 - Recovery of Debts Due to Banks and Financial Institutions Act, 1993; Section 19, 31 - An independent suit filed by the borrower against the bank or financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act - Since there is no such power, there is no question of transfer of the suit whether by consent or otherwise - Proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the Civil Court - It is not open to a defendant, who may have taken recourse to the Civil Court, to seek a stay on the decision of the DRT awaiting the verdict of his suit before the Civil Court as it is a matter of his choice. (Para 49- 56) ***Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd.*, 2022 [LiveLaw \(SC\) 941](#)**

Section 153A - Power to amend decree or order where appeal is summarily dismissed

Code of Civil Procedure, 1908; Section 153A - Order XLI Rule 11 - An application before the Trial Court for correction of a decree could be maintained only if the appeal was to be decided by the High Court under Rule 11, Order 41 of the Code of Civil Procedure. **B. Boraiah v. M.G. Thirthaprasad, 2022 LiveLaw (SC) 160**

Code of Civil Procedure, 1908; Section 153A - The Trial Court has no jurisdiction to entertain the application for correction of decree passed by the High Court in the first appeal and cross objection - In such a case, the application for correction could be maintained only before the High Court where the decree has been finally confirmed. **B. Boraiah v. M.G. Thirthaprasad, 2022 LiveLaw (SC) 160**

Order 1 Rule 9 - Misjoinder and nonjoinder

Code of Civil Procedure, 1973; Order I Rule 9 - A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a "necessary party" is not impleaded, the suit itself is liable to be dismissed - For being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party. (Para 17-20) **Moreshar Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi, 2022 LiveLaw (SC) 802 : AIR 2022 SC 4710**

Order 1 Rule 10 - Court may strike out or add parties

Code of Civil Procedure, 1908; Order I Rule 10 - Plaintiffs are the *domius litis* - Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs - In case the counter-claim is allowed, it will not be open for the plaintiffs to contend that no decree in the counter-claim be passed in absence of the subsequent purchasers - Non-impleading the subsequent purchasers as defendants on the objection raised by the plaintiffs shall be at the risk of the plaintiffs. (Para 5 - 7) **Sudhamayee Pattnaik v. Bibhu Prasad Sahoo, 2022 LiveLaw (SC) 773 : AIR 2022 SC 4304**

Code of Civil Procedure, 1908; Order I Rule 10 - The principle that the plaintiffs is the *dominus litus* shall be applicable only in a case where parties sought to be added as defendants are necessary and / or proper parties. Plaintiffs cannot be permitted to join any party as a defendant who may not be necessary and / or proper parties at all on the ground that the plaintiffs is the *dominus litus*. (Para 9) **Asian Hotels (North) Ltd. v. Alok Kumar Lodha, 2022 LiveLaw (SC) 585 : AIR 2022 SC 3322 : (2022) 8 SCC 145**

Code of Civil Procedure, 1908; Order I Rule 3 - Non-joining of necessary parties is fatal. (Para 18) **B.R. Patil v. Talsa Y. Sawkar**, [2022 LiveLaw \(SC\) 165](#) : 2022 (4) SCALE 122

Order 2 Rule 2 - Suit to include the whole claim

Code of Civil Procedure, 1908; Order II Rule 2 - Constructive Res Judicata - The party claiming and raising the plea of constructive res judicata/Order II Rule 2 of the Code must place on record in evidence the pleadings of the previous suit and establish the identity of the cause of actions, which cannot be established in the absence of record of judgment and decree which is pleaded to operate as estoppel. (Para 33) **R.M. Sundaram @ Meenakshisundaram v. Sri Kayarohanasamy and Neelayadhakshi Amman Temple**, [2022 LiveLaw \(SC\) 612](#)

Code of Civil Procedure, 1908; Order II Rule 2 - Order II Rule 2 of the CPC cannot apply to an amendment which is sought on an existing suit - It applies only for a subsequent suit. (Para 49-50, 70) **Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd.**, [2022 LiveLaw \(SC\) 729](#) : AIR 2022 SC 4256

Order 2 Rule 3 - Joinder of causes of action

Code of Civil Procedure, 1908; Order II Rule 2, 3 - Joinder of causes of action - Order II Rule 3 does not compel a plaintiff to join two or more causes of action in a single suit. The failure to join together all claims arising from a cause of action will be visited with consequences proclaimed in Order II Rule 2 - The Code of Civil Procedure indeed permits a plaintiff to join causes of action but it does not compel a plaintiff to do so. (Para 16, 17) **B.R. Patil v. Talsa Y. Sawkar**, [2022 LiveLaw \(SC\) 165](#) : 2022 (4) SCALE 122

Order 6 Rule 17 - Amendment of Pleadings

Code of Civil Procedure, 1908; Order VI Rule 17 - All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side - The prayer for amendment is to be allowed (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and (ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations) - A prayer for amendment is generally required to be allowed unless (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration, (ii) the amendment changes the nature of the suit, (iii) the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence - In dealing with a prayer for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated

by costs. (Para 70) ***Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd., 2022 LiveLaw (SC) 729 : AIR 2022 SC 4256***

Code of Civil Procedure, 1908; Order VI Rule 17 - Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision. (Para 70) ***Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd., 2022 LiveLaw (SC) 729 : AIR 2022 SC 4256***

Code of Civil Procedure, 1908; Order VI Rule 17 - If, by permitting plaintiffs to amend the plaint including a prayer clause nature of the suit is likely to be changed, in that case, the Court would not be justified in allowing the amendment. It would also result in misjoinder of causes of action. (Para 8) ***Asian Hotels (North) Ltd. v. Alok Kumar Lodha, 2022 LiveLaw (SC) 585 : AIR 2022 SC 3322 : (2022) 8 SCC 145***

Code of Civil Procedure, 1908; Order VI Rule 17 - Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed. - Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation - Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint - Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed - Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (Para 70) ***Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd., 2022 LiveLaw (SC) 729 : AIR 2022 SC 4256***

Order 7 Rule 10 - Return of Plaint

Code of Civil Procedure, 1908; Section 151, Order VII Rule 10 - Recovery of Debts Due to Banks and Financial Institutions Act, 1993; Section 19, 31 - An independent suit filed by the borrower against the bank or financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act - Since there is no such power, there is no question of transfer of the suit

whether by consent or otherwise - Proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the Civil Court - It is not open to a defendant, who may have taken recourse to the Civil Court, to seek a stay on the decision of the DRT awaiting the verdict of his suit before the Civil Court as it is a matter of his choice. (Para 49- 56) **Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd.**, [2022 LiveLaw \(SC\) 941](#)

Order 7 Rule 11 - Rejection of Complaint

Code of Civil Procedure, 1908; Order VII Rule 11 - A mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/or barred by law. It has been consistently held by this Court that if clever drafting of the complaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage. (Para 10) **Sree Surya Developers and Promoters v. N. Sailesh Prasad**, [2022 LiveLaw \(SC\) 143](#) : AIR 2022 SC 1031 : (2022) 5 SCC 736

Code of Civil Procedure, 1908; Order VII Rule 11 - At the stage of deciding the application under Order VII Rule 11 of CPC only the averments and allegations in the application/complaint are to be considered and not the written 37 statement and/or reply to the application and/or the defence. (Para 12) **Swadesh Kumar Agarwal v. Dinesh Kumar Agarwal**, [2022 LiveLaw \(SC\) 454](#) : AIR 2022 SC 2193 : (2022) 10 SCC 235

Code of Civil Procedure, 1908; Order VII Rule 11 - Averments in the complaint alone are to be examined while considering an application for rejection of complaint - No other extraneous factor can be taken into consideration. **H.S. Deekshit v. Metropoli Overseas Ltd.**, [2022 LiveLaw \(SC\) 703](#)

Code of Civil Procedure, 1908; Order VII Rule 11 - M.P. Land Revenue Code, 1959; Sections 250, 257 - Appeal against High Court which allowed application filed by defendants seeking rejection of complaint on the ground that the suit before the Civil Court would be barred in view of Section 257 of the M.P. Land Revenue Code, 1959 - Allowed - High Court did not appreciate the fact that the plaintiff had earlier approached the Revenue Authority / Tehsildar where he was nonsuited on the ground that Revenue Authority / Tehsildar had no jurisdiction to decide the dispute with respect to title to the suit property - Defendants cannot be permitted to take two contradictory stands before two different authorities/courts. **Premlata @ Sunita v. Naseeb Bee**, [2022 LiveLaw \(SC\) 317](#) : AIR 2022 SC 1560 : (2022) 6 SCC 585

Code of Civil Procedure, 1908; Order VII Rule 11 - Order VII Rule 11 does not provide that the court is to discharge its duty of rejecting the complaint only on an application - The power under Order VII Rule 11 is available to the court to be exercised *suo motu* - It would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order VII Rule 12. (Para 68) **Patil Automation Pvt. Ltd. v.**

Rakheja Engineers Private Ltd., [2022 LiveLaw \(SC\) 678](#) : AIR 2022 SC 3848 : (2022) 10 SCC 1

Code of Civil Procedure, 1908; Order VII Rule 11 - Order XXIII Rule 3A - At the stage of deciding the application under Order VII Rule 11 CPC, the only thing which was required to be considered is whether the suit would be maintainable or not and that the suit challenging the Compromise Decree would be maintainable or not in view of Order XXIII Rule 3A CPC - Court is not required to consider on merits the validity of the Compromise Decree. (Para 6) **Sree Surya Developers and Promoters v. N. Sailesh Prasad, [2022 LiveLaw SC 143](#) : AIR 2022 SC 1031 : (2022) 5 SCC 736**

Code of Civil Procedure, 1908; Order VII Rule 11 - Rejection of Complaint - While considering an application under Order VII Rule 11 CPC, the Court has to go through the entire complaint averments and cannot reject the complaint by reading only few lines/passages and ignoring the other relevant parts of the complaint - Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a complaint can be rejected - The complaint cannot be rejected partially. (Para 7, 7.1, 7.4) **Biswanath Banik v. Sulanga Bose, [2022 LiveLaw \(SC\) 280](#) : AIR 2022 SC 1519 : (2022) 7 SCC 731**

Code of Civil Procedure, 1908; Order VII Rule 11 - Rejection of Complaint - The case on behalf of the petitioner is that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a ground to reject the complaint at the threshold in exercise of powers under Order 7, Rule 11 CPC. **Gurdev Singh v. Harvinder Singh, [2022 LiveLaw \(SC\) 963](#)**

Code of Civil Procedure, 1908; Order VII Rule 11 - Suit seeking declaration that the cheque issued in the name of the appellant was a security and the appellant had no right to encash it - In essence, the suit attempts to frustrate the possibility of the appellant initiating action under the provision of the NI Act for dishonour of cheque - Such reliefs are barred by law - Revisional court was just in allowing application under Order VII Rule 11 seeking rejection of complaint. **Frost International Ltd. v. Milan Developers & Builders, [2022 LiveLaw \(SC\) 340](#) : (2022) 8 SCC 633**

Code of Civil Procedure, 1908; Order VII Rule 11 - Suit seeking declaration that the cheque issued in the name of the appellant was a security and the appellant had no right to encash it - In essence, the suit attempts to frustrate the possibility of the appellant initiating action under the provision of the NI Act for dishonour of cheque - Such reliefs are barred by law - Revisional court was just in allowing application under Order VII Rule 11 seeking rejection of complaint. **Frost International Ltd. v. Milan Developers & Builders, [2022 LiveLaw \(SC\) 340](#) : (2022) 8 SCC 633**

Code of Civil Procedure, 1908 - Order VII Rule 11 - A mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/or barred by law. It has been consistently held by this Court that if clever drafting of the complaint has created the illusion of a

cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage. (Para 10) **Sree Surya Developers and Promoters v. N. Sailesh Prasad**, [2022 LiveLaw \(SC\) 143](#) : AIR 2022 SC 1031 : (2022) 5 SCC 736

Code of Civil Procedure, 1908 - Order VII Rule 11 - At the stage of deciding the application under Order VII Rule 11 CPC, the only thing which was required to be considered is whether the suit would be maintainable or not and that the suit challenging the Compromise Decree would be maintainable or not in view of Order XXIII Rule 3A CPC - Court is not required to consider on merits the validity of the Compromise Decree. (Para 6) **Sree Surya Developers and Promoters v. N. Sailesh Prasad**, [2022 LiveLaw \(SC\) 143](#) : AIR 2022 SC 1031 : (2022) 5 SCC 736

Order 8 Rule 1 - Written Statement

Code of Civil Procedure, 1908; Order VIII Rule 1 - The time limit for filing of the written statement is not mandatory - Delay in filing of the written statement could very well be compensated with costs. (Para 3-4) **Bharat Kalra v. Raj Kishan Chabra**, [2022 LiveLaw \(SC\) 465](#)

Code of Civil Procedure, 1908; Order VIII Rule 1 proviso and Order V Rule 1(1) second proviso - Time limit for filing written statement not mandatory when the suit was instituted before the normal Civil Court and transferred to a Commercial Court after the expiry of 120 days. **Raj Process Equipments and Systems v. Honest Derivatives Pvt. Ltd.**, [2022 LiveLaw \(SC\) 928](#)

Order 8 Rule 1A - Duty of Defendant to produce Documents upon which Relief is claimed or Relief upon by him

Code of Civil Procedure, 1908; Order VIII Rule 1A (3) - To deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice - Trial Court should have imposed some costs rather than to decline the production of the documents itself - Rules of procedure are hand-maid of justice. **Levaku Pedda Reddamma v. Gottumukkala Venkata Subbamma**, [2022 LiveLaw \(SC\) 533](#)

Order 8 Rule 6A - Counter-claim by Defendant

Code of Civil Procedure, 1908; Order VIII Rule 6A - A counter claim can be set up only "against the claim of the plaintiffs" - Since there was no claim of the plaintiffs regarding the property, the defendants were barred to raise any counter claim on these properties as it has nothing to do with the plaintiffs - A counter claim can be made by the defendant, even on a separate or independent cause of action. (Para 16) **Satyender v. Saroj**, [2022 LiveLaw \(SC\) 679](#) : AIR 2022 SC 4732

Code of Civil Procedure, 1908; Order VIII Rule 6A CPC - Counter-claim in question could not have been removed out of consideration merely because it was presented after a long time since after filing of the written statement - No bar for taking the belatedly filed counter-claim on record, which was indeed filed

before framing of issues. (Para 13-14) **Mahesh Govindji Trivedi v. Bakul Maganlal Vyas**, [2022 LiveLaw \(SC\) 836](#)

Order 9 Rule 13 - Setting aside decrees ex parte

Code of Civil Procedure, 1908; Order IX Rule 13 - Appeal against judgment of High Court that affirmed the Trial Court order setting aside the ex parte decree but held that the defendants cannot be permitted to file their written statement - Allowed - It should have been left to the Trial Court to consider the prayer of defendants whether to allow them to file written statement or not. **Sudhir Ranjan Patra v Himansu Sekhar Srichandan**, [2022 LiveLaw \(SC\) 492](#) : AIR 2022 SC 2881

Code of Civil Procedure, 1908; Order IX Rule 13 - On setting aside the ex-parte judgment and decree, though the defendants who had not filed the written statement, can be permitted to participate in the suit and cross-examine the witnesses. (Para 3.1) **Nanda Dulal Pradhan v. Dibakar Pradhan**, [2022 LiveLaw \(SC\) 579](#)

Code of Civil Procedure, 1908; Order IX Rule 13 - When an ex-parte decree is set aside and the suit is restored to file, the defendants cannot be relegated to the position prior to the date of hearing of the suit when he was placed ex-parte. He would be debarred from filing any written statement in the suit, but then he can participate in the hearing of the suit inasmuch cross-examine the witness of the plaintiff and address arguments. (Para 6) **Sudhir Ranjan Patra v Himansu Sekhar Srichandan**, [2022 LiveLaw \(SC\) 492](#) : AIR 2022 SC 2881

Order 12 Rule 6 - Judgment on Admissions

Code of Civil Procedure, 1908; Order XII Rule 6 - The power to pass judgment on admissions is discretionary and cannot be claimed as a matter of right - The said power should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the Court can refuse to invoke it. (Para 16-18) **Karan Kapoor v. Madhuri Kumar**, [2022 LiveLaw \(SC\) 567](#) : (2022) 10 SCC 496

Order 14 Rule 2 - Court to pronounce judgment on all issues

Code of Civil Procedure, 1908 - Order XIV Rule 2 - If the determination of the issue of limitation is not a pure question of law, it cannot be decided as preliminary issue. (Para 15) **Mongia Realty and Buildwell Pvt. Ltd. v. Manik Sethi**, [2022 LiveLaw \(SC\) 148](#) : 2022 (3) SCALE 270

Code of Civil Procedure, 1908; Order XIV Rule 2 - The plea of res judicata in appropriate cases may be determined as preliminary issue when it is neither a disputed question of fact nor a mixed question of law and fact - Preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. (Para 20, 30) **Sathyanath v. Sarojamani**, [2022 LiveLaw \(SC\) 458](#) : AIR 2022 SC 2242 : (2022) 7 SCC 644

Code of Civil Procedure, 1908; Order XIV Rule 2 - To avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues. (Para 33) **Sathyanath v. Sarojamani**, [2022 LiveLaw \(SC\) 458](#) : AIR 2022 SC 2242 : (2022) 7 SCC 644

Code of Civil Procedure, 1908; Order XIV, Rule 2(2)(b) - Issue of limitation can be framed and determined as a preliminary issue in a case where it can be decided on admitted facts - Though limitation is a mixed question of law and facts it will shed the said character and would get confined to one of question of law when the foundational fact(s), determining the starting point of limitation is vividly and specifically made in the plaint averment - The provisions under Order XIV Rule 2(1) and Rule 2(2)(b) permit to deal with and dispose of a suit in accordance with the decision on the preliminary issue. (Para 18, 26) **Sukhbiri Devi v. Union of India**, [2022 LiveLaw \(SC\) 810](#) : AIR 2022 SC 5058

Order 15 Rule 5 - Striking off Defence on failure to deposit admitted Rent¹

Code of Civil Procedure, 1908; Order XV Rule 5 - As per these provisions, in a suit by a lessor for eviction of a lessee after the determination of lease and for recovery of rent or compensation for use and occupation, the defendant is under the obligation: (1) to deposit the entire amount admitted by him to be due together with interest at the rate of 9% per annum on or before the first hearing of the suit; and (2) to regularly deposit the monthly amount due within a week of its accrual throughout the pendency of the suit. The consequence of default in making either of these deposits is that the Court may strike off his defence. The expression 'first hearing' means the date for filing written statement or the date for hearing mentioned in the summons; and in case of multiple dates, the last of them. The expression 'monthly amount due' means the amount due every month, whether as rent or damages for use and occupation at the admitted rate of rent after making no other deduction except taxes, if paid to the local authority on lessor's account. It is, however, expected that before making an order striking off defence, the Court would consider the representation of the defendant, if made within 10 days of the first hearing or within 10 days of the expiry of one week from the date of accrual of monthly amount. (Para 9.1) **Asha Rani Gupta v. Sir Vineet Kumar**, [2022 LiveLaw \(SC\) 607](#)

Code of Civil Procedure, 1908; Order XV Rule 5 - it cannot be laid down as a general proposition that by merely denying the title of plaintiff or relationship of landlord- tenant/lessor-lessee, a defendant of the suit of the present nature could enjoy the property during the pendency of the suit without depositing the

¹ Rule 5 of Order XV was inserted to CPC for its application in the State of Uttar Pradesh by the Uttar Pradesh Laws (Amendment) Act, 1972; it was substituted by the Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 w.e.f. 01.01.1977 and was slightly amended by Notification No. 121/IV-h-36-D dated 10.02.1981 w.e.f. 03.10.1981.

amount of rent/damages. (Para 14) **Asha Rani Gupta v. Sir Vineet Kumar**, [2022 LiveLaw \(SC\) 607](#)

Order 20 Rule 5 - Court to state its Decision on each Issue

Code of Civil Procedure, 1908; Order XX Rule 5 - To avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues. (Para 33) **Sathyanath v. Sarojamani**, [2022 LiveLaw \(SC\) 458](#) : AIR 2022 SC 2242 : (2022) 7 SCC 644

Order 20 Rule 18 - Decree in Suit for Partition of Property

Code of Civil Procedure, 1908; Order XX Rule 18 - Partition Suits - Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, *suo motu* and without requiring initiation of any separate proceedings - The courts should not adjourn the matter sine die. (Para 32-34) **Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan**, [2022 LiveLaw \(SC\) 549](#) : AIR 2022 SC 2841

Code of Civil Procedure, 1908; Order XX Rule 18 - Partition Suits - The distinction between preliminary and final decree - A preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in preliminary decree and after the inquiry having been conducted and rights of the parties being finally determined, a final decree incorporating such determination needs to be drawn up. (Para 29-30) **Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan**, [2022 LiveLaw \(SC\) 549](#) : AIR 2022 SC 2841

Code of Civil Procedure, 1908; Order XX Rule 18 - Partition Suits - Final decree proceedings can be initiated at any point of time. There is no limitation for initiating final decree proceedings. Either of the parties to the suit can move an application for preparation of a final decree and, any of the defendants can also move application for the purpose. By mere passing of a preliminary decree the suit is not disposed of. **Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan**, [2022 LiveLaw \(SC\) 549](#) : AIR 2022 SC 2841

Order 21 - Execution of Decrees and Orders

Code of Civil Procedure, 1908; Order XXI - Appeal against High Court judgment which upheld the procedure adopted by the Execution Court that did not invite objections under Order XXI Rule 34 from Judgment debtor to draft sale deed produced by Decree holder - Allowed - Clearly contravenes the salutary provisions of Order XXI Rule 34 - The objections of the appellant to the draft sale deed to be considered. **Rajbir v. Suraj Bhan**, [2022 LiveLaw \(SC\) 255](#) : 2022 (5) SCALE 321

Code of Civil Procedure, 1908; Order XXI - Execution - While it is true that the court must be diligent in the matter of executing a decree passed after

adjudication which spans a long period of time, it is also the duty of the court to execute the decree as it is and in accordance with law - Though, it is indeed open to the executing court to construe the decree; it cannot go beyond the decree. (Para 11, 14) **Rajbir v. Suraj Bhan**, [2022 LiveLaw \(SC\) 255](#) : 2022 (5) **SCALE 321**

Code of Civil Procedure, 1908; Order XXI - Execution - While it is true that the court must be diligent in the matter of executing a decree passed after adjudication which spans a long period of time, it is also the duty of the court to execute the decree as it is and in accordance with law - Though, it is indeed open to the executing court to construe the decree; it cannot go beyond the decree. (Para 11, 14) **Rajbir v. Suraj Bhan**, [2022 LiveLaw \(SC\) 255](#) : 2022 (5) **SCALE 321**

Code of Civil Procedure, 1908; Order XXI - Execution Proceedings - Execution Court must dispose of the execution proceedings within six months from the date of filing - It is duty bound to record reasons in writing when it is unable to dispose of the matter - Direction issued in [Rahul S. Shah Vs. Jinendra Kumar Gandhi \(2021\) 6 SCC 418](#) is meant to be observed. **Bhoj Raj Garg v. Goyal Educational and Welfare Society**, [2022 LiveLaw \(SC\) 976](#)

Code of Civil Procedure, 1908; Order XXI - Execution Proceedings - The woes of a decree holder begin after obtaining a decree. It is in execution that a decree holder is confronted with an unimaginably large number of obstacles. (Para 1) **Bhagyoday Cooperative Bank Ltd. v. Ravindra Balkrishna Patel**, [2022 LiveLaw \(SC\) 1020](#)

Code of Civil Procedure, 1908; Order XXI - Order XXI is exhaustive and in the nature of a complete Code as to how the execution proceedings should take place. This is the second stage after the success of the party in the civil proceedings. It is often said in our country that another legal battle, more prolonged, starts in execution proceedings defeating the right of the party which has succeeded in establishing its claim in civil proceedings - There cannot be a licence to prolong the litigation ad infinitum. (Para 39) **Jagan Singh & Co. v. Ludhiana Improvement Trust**, [2022 LiveLaw \(SC\) 733](#)

Code of Civil Procedure, 1908; Order XXI - The mere dismissal of the first application on the ground of default may not result in the decree holder being precluded from filing a fresh execution petition provided it is within time. (Para 21) **Bhagyoday Cooperative Bank Ltd. v. Ravindra Balkrishna Patel**, [2022 LiveLaw \(SC\) 1020](#)

Order 21 Rule 34 - Decree for execution of document

Code of Civil Procedure, 1908 - Appeal against High Court judgment which upheld the procedure adopted by the Execution Court that did not invite objections under Order XXI Rule 34 from Judgment debtor to draft sale deed produced by Decree holder - Allowed - Clearly contravenes the salutary provisions of Order XXI Rule 34 - The objections of the appellant to the draft sale deed to be considered. **Rajbir v. Suraj Bhan**, [2022 LiveLaw \(SC\) 255](#) :

2022 (5) SCALE 321

Code of Civil Procedure, 1908; Order XXI Rule 34 - It is the duty of the court to cause the draft to be served upon the judgment debtor and to apply its mind and to make alterations in the draft, if needed, when objections are filed - It will be thereafter that the decree holder is to deliver it to the court with the alterations if any made by the court, on proper stamp paper, if required and the execution of the document is effected by the court or the officer appointed. (Para 10 -11) **Rajbir v. Suraj Bhan**, [2022 LiveLaw \(SC\) 255](#) : 2022 (5) SCALE 321

Code of Civil Procedure, 1908; Order XXI Rule 34 - It is the duty of the court to cause the draft to be served upon the judgment debtor and to apply its mind and to make alterations in the draft, if needed, when objections are filed - It will be thereafter that the decree holder is to deliver it to the court with the alterations if any made by the court, on proper stamp paper, if required and the execution of the document is effected by the court or the officer appointed. (Para 10-11) **Rajbir v. Suraj Bhan**, [2022 LiveLaw \(SC\) 255](#) : 2022 (5) SCALE 321

Code of Civil Procedure, 1908; Order XXI Rule 34 - Order XXI Rule 34 cannot be diluted and any such departure from the provisions can have highly deleterious consequences not merely qua the parties in question but also persons who come to deal with those parties in future. It can lead to further litigation. (Para 14) **Rajbir v. Suraj Bhan**, [2022 LiveLaw \(SC\) 255](#) : 2022 (5) SCALE 321

Code of Civil Procedure, 1908; Order XXI Rule 34 - Order XXI Rule 34 cannot be diluted and any such departure from the provisions can have highly deleterious consequences not merely qua the parties in question but also persons who come to deal with those parties in future. It can lead to further litigation. (Para 14) **Rajbir v. Suraj Bhan**, [2022 LiveLaw \(SC\) 255](#) : 2022 (5) SCALE 321

Order 21 Rules 46 - Attachment of debt, share and other property not in possession of judgment-debtor

Code of Civil Procedure, 1908; Order XXI Rules 46, 46A - Execution Court should have first attached the debt under Order 21 Rule 46 before proceeding to pass the order under Order 21 Rule 46A - Order 21 Rule 46A in the case of debt must be understood as a debt spoken of in Order 21 Rule 46 of CPC and the debt must have been attached under Order 21 Rule 46 - Order 21 Rule 46A excepts, debt secured by a mortgage or a charge. Once these conditions are fulfilled, then upon an application being made by the 'attaching creditor' a notice may be issued to the garnishee. (Para 27- 28) **Bhagyoday Cooperative Bank Ltd. v. Ravindra Balkrishna Patel**, [2022 LiveLaw \(SC\) 1020](#)

Order 21 Rules 46A - Notice to Garnishee

Code of Civil Procedure, 1908; Order XXI Rules 46, 46A - The exception is in regard to 'such other property' which though not in the possession of the judgment debtor, is property deposited or is in the custody of any Court - In

regard to such property Order 21 Rule 46 and therefore Order 21 Rule 46A will not apply. (Para 25) ***Bhagyoday Cooperative Bank Ltd. v. Ravindra Balkrishna Patel***, [2022 LiveLaw \(SC\) 1020](#)

Order 21 Rule 58 - Adjudication of claims to, or objections to attachment of property

Code of Civil Procedure, 1908; Section 64(2) and Order XXI Rule 58 - To get the benefit of sub-section (2) of Section 64 of the CPC, the objector and/or subsequent purchaser has to plead and prove that he is the *bona fide* purchaser, who has entered into the transaction prior to the order of attachment. (Para 4) ***Dokala Hari Babu v. Kotra Appa Rao***, [2022 LiveLaw \(SC\) 342](#)

Order 21 Rule 90 - Application to set aside sale on ground of irregularity or fraud

Code of Civil Procedure, 1908; Order XXI Rule 90(3) - The twin conditions of material irregularity of fraud and substantial injury has to be satisfied before an auction sale can be set aside under Order XXI Rule 90(3) -No sale could be set aside unless the Court is satisfied that the applicant has sustained substantial injury by reason of irregularity or fraud in completing or conducting the sale. (Para 11, 38) ***Jagan Singh & Co. v. Ludhiana Improvement Trust***, [2022 LiveLaw \(SC\) 733](#)

Order 21 Rule 97 - Resistance or obstruction to possession of immovable property

Code of Civil Procedure, 1908; Order XXI Rule 97 - The bona-fide purchaser of the suit property is not entitled objecting execution of the decree by the decree holder. (Para 15) ***Shriram Housing Finance and Investment India Ltd. v. Omesh Mishra Memorial Charitable Trust***, [2022 LiveLaw \(SC\) 565](#)

Code of Civil Procedure, 1908; Order XXI Rule 97-102 - Applications under Rule 97 and Rule 99 are subject to Rule 101 which provides for determination of questions relating to disputes as to right, title or interest in the property arising between the parties to the proceedings or their representatives on an application made under Rule 97 or Rule 99. Effectively, the said Rule does away with the requirement of filing of fresh suit for adjudication of disputes. (Para 14, 16) ***Shriram Housing Finance and Investment India Ltd. v. Omesh Mishra Memorial Charitable Trust***, [2022 LiveLaw \(SC\) 565](#)

Order 22 Rule 1 - No abatement by party's death, if right to sue survives

Code of Civil Procedure, 1908; Order XXII Rule 1 - 4 - While considering whether the suit/appeal has abated due to non-bringing the legal representatives of plaintiffs/defendants or not, the Court has to examine if the right to sue survives against the surviving respondents - Court has to consider the effect of abatement of the appeal against each of the respondents in case of multiple respondents. (Para 9- 9.2) ***Delhi Development Authority v. Diwan Chand Anand***, [2022 LiveLaw \(SC\) 581](#) : (2022) 10 SCC 428

Order 22 Rule 2 - Procedure where one of several plaintiffs or defendants dies and right to sue survives

Code of Civil Procedure, 1908; Order XXII Rule 2 - When the legal representative has been brought on record in appeal though from an interlocutory order, such impleadment will enure towards the proceedings in the suit itself. (Para 11 - 12) ***Maringmei Acham v. M. Maringmei Khuripou***, [2022 LiveLaw \(SC\) 958](#)

Code of Civil Procedure, 1908; Order XXII Rule 2 - Where there are more than one plaintiffs, the entire suit cannot be held to be abated on the death of one of the plaintiffs. (Para 8-9) ***Siravarapu Appa Rao v. Dokala Appa Rao***, [2022 LiveLaw \(SC\) 845](#)

Order 22 Rule 10 - Procedure in case of assignment before final order in suit

Code of Civil Procedure, 1908; Order XXII Rule 10 - The death of one of the partners does not foreclose the continuation of the civil proceedings initiated by the firm - Where two persons have sued in the name of a partnership firm and if one of such persons dies during the pendency of the proceedings, it is not necessary to join the legal representatives of the deceased as a party to such proceedings, which shall continue in accordance with law. (Para 6-11) ***Sumer Singh Galundia v. Jeevan Singh***, [2022 LiveLaw \(SC\) 1041](#)

Order 22 Rule 11 - Application of Order to appeals

Code of Civil Procedure, 1908; Order XXII Rule 2, 11 - A second appeal does not abate on death of one of the respondents when the right to sue survives against the surviving respondent - Abatement occurs only when the cause of action does not survive upon or against the surviving party. (Para 6-9) ***Sakharam v. Kishanrao***, [2022 LiveLaw \(SC\) 722](#)

Order 23 Rule 3 - Compromise of Suit

Code of Civil Procedure, 1908; Order 23 Rule 3 - An aggrieved person against the compromise decree has a right to file an application before the Court which granted the decree - He has the right to avail either the remedy of appeal in terms of Order 43 Rule 1A CPC or by way of an application before the court granting decree. ***Vipan Aggarwal v. Raman Gandotra***, [2022 LiveLaw \(SC\) 442](#)

Order 23 Rule 3A - Bar to Suit

Code of Civil Procedure, 1908 - Order XXIII Rule 3A - At the stage of deciding the application under Order VII Rule 11 CPC, the only thing which was required to be considered is whether the suit would be maintainable or not and that the suit challenging the Compromise Decree would be maintainable or not in view of Order XXIII Rule 3A CPC - Court is not required to consider on merits the validity of the Compromise Decree. (Para 6) ***Sree Surya Developers and Promoters v. N. Sailesh Prasad***, [2022 LiveLaw SC 143](#) : AIR 2022 SC 1031 : (2022) 5 SCC 736

Code of Civil Procedure, 1908 - Order XXIII Rule 3A - A party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable. (Para 8) **Sree Surya Developers and Promoters v. N. Sailesh Prasad**, [2022 LiveLaw \(SC\) 143](#) : AIR 2022 SC 1031 : (2022) 5 SCC 736

Order 26 Rule 9 - Commissions to make local investigations

Code of Civil Procedure, 1908; Order XXVI Rule 9, 11 - The commissioners' reports are 'non-adjudicatory in nature', and the courts adjudicate upon the rights of the parties - It is only an opinion or noting, as the case may be with the details and/or statement to the court the actual state of affairs. Such a report does not automatically form part of the court's opinion, as the court has the power to confirm, vary or set aside the report or in a given case issue a new commission. (Para 33) **M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. Modi Transport Service**, [2022 LiveLaw \(SC\) 471](#) : 2022 (7) SCALE 762

Order 26 Rule 11 - Commission to examine or adjust Accounts.

Code of Civil Procedure, 1908; Order XXVI Rule 11 - Arbitration Act, 1940; Section 21 - Distinction between the scope and functions of an arbitral tribunal and a commissioner - For submission to arbitration, there must be an arbitration agreement or an agreement in terms of Section 21 of the Act that the difference or dispute between the parties for which they intend to be determined in a quasi-judicial manner. Commissioners are appointed by the court. Appointment may be with consent of the parties, or even when there is objection to the appointment. Preexisting agreement or the requirement that the parties agree before the court, as is mandatory in case of arbitration, is not necessary when a court directs appointment of a commissioner. In the case of a reference to a commissioner, all that the parties expect from the commissioner is a valuation/ examination of the subject matter referred, which he would do according to his skill, knowledge and experience, which may be without taking any evidence or hearing argument. (Para 32) **M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. Modi Transport Service**, [2022 LiveLaw \(SC\) 471](#) : 2022 (7) SCALE 762

Code of Civil Procedure, 1908; Order XXVI Rule 11 - We would like to introduce the principle of a 'facilitator' which a court may appoint, be it a commissioner or an expert, for a specific purpose and cause for ascertainment of a fact which may be even disputed. In some cases, the commissioner may even hear the parties and give his expert opinion based on the material or evidence produced by the parties before the commissioner. (Para 32) **M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. Modi Transport Service**, [2022 LiveLaw \(SC\) 471](#) : 2022 (7) SCALE 762

Order 30 Rule 4 - Right of suit on death of partner

Code of Civil Procedure, 1908; Order XXX Rule 4 - The death of one of the partners does not foreclose the continuation of the civil proceedings initiated by the firm - Where two persons have sued in the name of a partnership firm and if one of such persons dies during the pendency of the proceedings, it is not necessary to join the legal representatives of the deceased as a party to such proceedings, which shall continue in accordance with law. (Para 6-11) **Sumer Singh Galundia v. Jeevan Singh**, [2022 LiveLaw \(SC\) 1041](#)

Order 33 Rule 1 - Suits by Indigent Persons

Code of Civil Procedure, 1908; Order XXXIII Rule 1 - When having prima facie found that the plaint does not disclose any cause of action and the suit is barred by res judicata it cannot be said that the Trial Court committed any error in rejecting the application to sue as indigent persons - However, observations that the suit is barred by res judicata and/or on no cause of action shall be treated confine to deciding the application to sue as indigent person only. (Para 6.4 - 6.6) **Solomon Selvaraj v. Indrani Bhagawan Singh**, [2022 LiveLaw \(SC\) 1004](#)

Order 33 Rule 7 - Procedure at hearing

Code of Civil Procedure, 1908; Order XXXIII Rules 1, 7, 8 - If the application to sue as indigent person is granted thereafter the suit shall be numbered and registered - Till then the plaint/suit shall be at pre-numbered and pre-registered stage. (Para 6.2) **Solomon Selvaraj v. Indrani Bhagawan Singh**, [2022 LiveLaw \(SC\) 1004](#)

Order 33 Rule 8 - Procedure if application admitted

Code of Civil Procedure, 1908; Order XXXIII Rules 1, 7, 8 - If the application to sue as indigent person is granted thereafter the suit shall be numbered and registered - Till then the plaint/suit shall be at pre-numbered and pre-registered stage. (Para 6.2) **Solomon Selvaraj v. Indrani Bhagawan Singh**, [2022 LiveLaw \(SC\) 1004](#)

Order 37 Rule 3 - Procedure for the appearance of defendant

Code of Civil Procedure, 1908; Order XXXVII Rule 3 - Summary Suit - Grant of leave to defend (with or without conditions) is the ordinary rule; and denial of leave to defend is an exception - Even if there remains a reasonable doubt about the probability of defence, sterner or higher conditions as stated above could be imposed while granting leave but, denying the leave would be ordinarily countenanced only in such cases where the defendant fails to show any genuine triable issue and the Court finds the defence to be frivolous or vexatious. (Para 17) **B.L. Kashyap and Sons v. JMS Steels & Power**, [2022 LiveLaw \(SC\) 59](#) : AIR 2022 SC 785 : (2022) 3 SCC 294

Order 39 - Temporary Injunctions and Interlocutory Orders

Code of Civil Procedure, 1908; Order XXXIX - Interim injunctions - While considering the question of grant of interim injunction, the courts are required to consider the three tests of prima facie case, balance of convenience and irreparable injury. (Para 36) ***Shyam Sel and Power Ltd. v. Shyam Steel Industries Ltd;*** [2022 LiveLaw \(SC\) 282](#) : 2022 (4) SCALE 720

Order 39 Rule 2A - Consequence of disobedience or breach of injunction

Code of Civil Procedure, 1908; Order XXXIX Rule 2A - contempt of a civil nature can be made out under Order XXXIX Rule 2-A CPC not when there has been mere “disobedience”, but only when there has been “wilful disobedience”. The allegation of wilful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere “disobedience” but “wilful” and “conscious” - The power must be exercised with caution rather than on mere probability. ***Future Coupons Pvt. Ltd. v. Amazon.com NV Investment Holdings LLC,*** [2022 LiveLaw \(SC\) 114](#) : (2022) 6 SCC 121

Order 41 Rule 11 - Power to dismiss appeal without sending notice to Lower Court

Code of Civil Procedure, 1908; Section 153A - Order XLI Rule 11 - An application before the Trial Court for correction of a decree could be maintained only if the appeal was to be decided by the High Court under Rule 11, Order 41 of the Code of Civil Procedure. ***B. Boraiah v. M.G. Thirthaprasad,*** [2022 LiveLaw \(SC\) 160](#)

Order 41 Rule 24 - Where evidence on record sufficient, Appellate Court may determine case finally

Code of Civil Procedure, 1908; Order XLI Rule 24 - To avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues. (Para 33) ***Sathyanath v. Sarojamani,*** [2022 LiveLaw \(SC\) 458](#) : AIR 2022 SC 2242 : (2022) 7 SCC 644

Order 41 Rule 25 - Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from

Code of Civil Procedure, 1908; Order XLI Rule 25 - If evidence is recorded by the learned Trial Court on all the issues, it would facilitate the first Appellate Court to decide the questions of fact even by reformulating the issues - It is only when the first Appellate Court finds that there is no evidence led by the parties, the first Appellate Court can call upon the parties to lead evidence on such additional issues, either before the Appellate Court or before the Trial Court. (Para 32) ***Sathyanath v. Sarojamani,*** [2022 LiveLaw \(SC\) 458](#) : AIR 2022 SC 2242 : (2022) 7 SCC 644

Order 41 Rule 27 - Production of Additional Evidence in Appellate Court

Code of Civil Procedure, 1908; Order 41 Rule 27 - High Court dismissed an application for additional evidence filed by the appellant to bring on record certain sale deeds and certified copy of the judgments and awards passed in other land acquisition cases, which he contended, were relevant for the purpose of determining the fair market value - Allowed - It was a case of awarding of fair compensation to the land owner whose land has been acquired for public purpose - There was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court ought to have allowed the application for additional evidence. ***Sanjay Kumar Singh v. State of Jharkhand***, [2022 LiveLaw \(SC\) 268](#) : AIR 2022 SC 1372 : (2022) 7 SCC 247

Code of Civil Procedure, 1908; Order 41 Rule 27 - The appellate court to take additional evidence in exceptional circumstances - Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed - The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause - The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. (Para 4) ***Sanjay Kumar Singh v. State of Jharkhand***, [2022 LiveLaw \(SC\) 268](#) : AIR 2022 SC 1372 : (2022) 7 SCC 247

Code of Civil Procedure, 1908; Order 41 Rule 27 - Though a party can produce additional evidence at the appellate stage, the same has to be within the four corners of law - The party has to establish that notwithstanding the exercise of due diligence, such evidence was not within its knowledge or could not even after due diligence, be produced by it at the time when the decree appealed against was passed. (Para 10) ***Sunil Kumar Maity v. State Bank of India***, [2022 LiveLaw \(SC\) 77](#) : AIR 2022 SC 577

Order 41 Rule 33 - Power of Court of Appeal

Code of Civil Procedure, 1908; Order 41 Rule 33 - The Rule clothes the appellate court with an extra ordinary power, which however is a rare jurisdiction. It is to reach justice in the special facts of a case. It is not an ordinary rule to be applied across the board in all the appeals. In fact, the principle is inter alia no doubt that even if there is no appeal by any of the parties in the proceedings, an order can be passed in his favour in the appeal carried by the other side. (Para 13) ***Eastern Coalfields Ltd. v. Rabindra Kumar Bharti***, [2022 LiveLaw \(SC\) 374](#) : 2022 (6) SCALE 228

Order 43 Rule 1A - Right to challenge Non-Appealable Orders in Appeal against Decrees

Code of Civil Procedure, 1908; Order 43 Rule 1A - An aggrieved person against the compromise decree has a right to file an application before the Court which granted the decree - He has the right to avail either the remedy of appeal in terms of Order 43 Rule 1A CPC or by way of an application before the court granting decree. ***Vipan Aggarwal v. Raman Gandotra***, [2022 LiveLaw \(SC\) 442](#)

Order 47 - Review

Code of Civil Procedure, 1908; Section 114, Order XLVII - Distinction between an erroneous decision as against an error apparent on the face of the record - An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction - A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review. (Para 26) ***S. Madhusudhan Reddy v. V. Narayana Reddy***, [2022 LiveLaw \(SC\) 685](#) : 2022 (12) SCALE 261

Order 47 Rule 1 - Application for Review of Judgment

Code of Civil Procedure, 1908; Order XLVII Rule 1 - A review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason - Scope of review jurisdiction discussed. (Para 11- 25) ***S. Madhusudhan Reddy v. V. Narayana Reddy***, [2022 LiveLaw \(SC\) 685](#) : 2022 (12) SCALE 261

Code of Civil Procedure, 1908; Section 114, Order XLVII Rule 1 - "for any other sufficient reason" means "a reason sufficient on grounds, at least analogous to those specified in the rule". (Para 26) ***S. Madhusudhan Reddy v. V. Narayana Reddy***, [2022 LiveLaw \(SC\) 685](#) : 2022 (12) SCALE 261

Code of Civil Procedure, 1908; Order XLVII Rule 1 - In order to satisfy the requirements prescribed in Order XLVII Rule 1 CPC, it is imperative for a party to establish that discovery of the new material or evidence was neither within its knowledge when the decree was passed, nor could the party have laid its hands on such documents/evidence after having exercised due diligence, prior to passing of the order. (Para 33) ***S. Madhusudhan Reddy v. V. Narayana Reddy***, [2022 LiveLaw \(SC\) 685](#) : 2022 (12) SCALE 261

Commercial Courts Act, 2015

Commercial Courts Act, 2015 - Mediation lightens the load of the judges- Section 12A contemplated only for a class of suits not requiring urgent relief-

suits which contemplate urgent interim relief, the Law-giver has carefully vouchsafed immediate access to justice as contemplated ordinarily through the courts. The carving out of a class of suits and selecting them for compulsory mediation, harmonises with the attainment of the object of the law. The load on the Judges is lightened. They can concentrate on matters where urgent interim relief is contemplated and, on other matters, which already crowd their dockets. (Para 54) **Patil Automation Pvt. Ltd. v. Rakheja Engineers Private Ltd.**, [2022 LiveLaw \(SC\) 678](#) : AIR 2022 SC 3848 : (2022) 10 SCC 1

Commercial Courts Act, 2015 - Order excluding period between 15.03.2020 till 28.02.2022 for the purposes of limitation in Re: Cognizance of Extension of Limitation 2022 LiveLaw (SC) 31 - Applicable with respect to the limitation prescribed under the Commercial Courts Act, 2015 also. **Babasaheb Raosaheb Kobarne v. Pyrotek India Pvt. Ltd.**, [2022 LiveLaw \(SC\) 520](#)

Commercial Courts Act, 2015; Section 3 - State Government can confer jurisdiction to hear applications under Sections 9, 14 and 34 of the Arbitration and Conciliation Act, 1996, upon Commercial Courts which are subordinate to the rank of the Principal Civil Judge in the District - All applications or appeals arising out of arbitration under the provisions of Act, 1996, other than international commercial arbitration, shall be filed in and heard and disposed of by the Commercial Courts, exercising the territorial jurisdiction over such arbitration where such commercial courts have been constituted. (Para 6-11) **Jaycee Housing Pvt. Ltd. v. Registrar (General), Orissa High Court**, [2022 LiveLaw \(SC\) 860](#) : AIR 2022 SC 5239

Commercial Courts Act, 2015 - Pre-institution mediation - Section 12A not a procedural provision- Exhausting pre-institution mediation by the plaintiff, with all the benefits that may accrue to the parties and, more importantly, the justice delivery system as a whole, would make Section 12A not a mere procedural provision. The design and scope of the Act, as amended in 2018, by which Section 12A was inserted, would make it clear that Parliament intended to give it a mandatory flavour. (Para 43) **Patil Automation Pvt. Ltd. v. Rakheja Engineers Private Ltd.**, [2022 LiveLaw \(SC\) 678](#) : AIR 2022 SC 3848 : (2022) 10 SCC 1

Commercial Courts Act, 2015; Section 12A - Code of Civil Procedure, 1908; Order VII Rule 11 - In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12A, the plaint should be rejected without issuing summons. (Para 68) **Patil Automation Pvt. Ltd. v. Rakheja Engineers Private Ltd.**, [2022 LiveLaw \(SC\) 678](#) : AIR 2022 SC 3848 : (2022) 10 SCC 1

Commercial Courts Act, 2015; Section 12A - Pre-institution mediation declared to be mandatory- any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court- Declaration with effect

from 22.08.2022. (Para 84) **Patil Automation Pvt. Ltd. v. Rakheja Engineers Private Ltd.**, [2022 LiveLaw \(SC\) 678](#) : AIR 2022 SC 3848 : (2022) 10 SCC 1

Commercial Courts Act, 2015; Section 16 - Code of Civil Procedure, 1908; Order V Rule 1, Order VIII Rule 1 and Order VIII Rule 10 CPC - The orders passed by the Supreme Court on 23.03.2020, 06.05.2020, 10.07.2020, 27.04.2021 and 23.09.2021 in SMWP No. 3 of 2020 applies in relation to the period prescribed for filing the written statement - Unrealistic and illogical to assume that while the Court has provided for exclusion of period for institution of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had expired between 15.03.2020 to 02.10.2021) could still be filed within 90 days from 03.10.2021 but the period for filing written statement, if expired during that period, has to operate against the defendant - the period envisaged finally in the order dated 23.09.2021 is required to be excluded in computing the period of limitation even for filing the written statement and even in cases where the delay is otherwise not condonable - The orders in SMWP No. 3 of 2020 were of extraordinary measures in extraordinary circumstances and their operation cannot be curtailed with reference to the ordinary operation of law. (Para 20.2) **Prakash Corporates v. Dee Vee Projects Ltd.**; [2022 LiveLaw \(SC\) 162](#) : AIR 2022 SC 946 : (2022) 5 SCC 112

Commercial Courts Act, 2015; Section 16 - Code of Civil Procedure, 1908 - Order V Rule 1, Order VIII Rule 1 and Order VIII Rule 10 CPC - In the ordinary circumstances, On expiry of 120th day from the date of service of summons, the defendant forfeits the right to file the written statement and no Court can make an order to extend such time beyond 120 days from the date of service of summons. (Para 16) **Prakash Corporates v. Dee Vee Projects Ltd.**, [2022 LiveLaw \(SC\) 162](#) : AIR 2022 SC 946 : (2022) 5 SCC 112

Commercial Courts Act, 2015; Section 16 - Code of Civil Procedure, 1908; Section 10, Order V Rule 1, Order VIII Rule 1 and Order VIII Rule 10 CPC - These provisions are intended to provide the consequences in relation to a defendant who omits to perform his part in progress of the suit as envisaged by the rules of procedure and are not intended to override all other provisions of CPC like those of Section 10. (Para 26.1) **Prakash Corporates v. Dee Vee Projects Ltd.**, [2022 LiveLaw \(SC\) 162](#) : AIR 2022 SC 946 : (2022) 5 SCC 112

Commission of Inquiry Act, 1952

Commission of Inquiry Act, 1952 - In respect of criminal charges, an accused can be tried by a Court of law and not merely on the basis of the report of the Commissioner under the Inquiry Act. Such a report is not conclusive and an independent action has to be taken by the State or by the victims against the Organizers before the competent court of law to prove the criminal offences said to be committed by certain accused. (Para 49) **Sanjay Gupta v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 368](#) : (2022) 7 SCC 203

Commission of Inquiry Act, 1952 - The Commission under the Act shall be appointed either by the Executive or by the Legislature but not by the Judiciary

in terms of the provisions of Inquiry Act. (Para 46, 50) **Sanjay Gupta v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 368](#) : (2022) 7 SCC 203

Companies Act, 1956

Companies Act, 1956 - Insolvency and Bankruptcy Code, 2016 - Appeal against NCLAT order which dismissed appeals against NCLT order denying relief to appellant workmen/employees with regard to their claim relating to salary, which they claimed for the period involving CIRP- Partly allowed - (i) That the wages/salaries of the workmen/employees of the Corporate Debtor for the period during CIRP can be included in the CIRP costs provided it is established and proved that the Interim Resolution Professional/Resolution Professional managed the operations of the corporate debtor as a going concern during the CIRP and that the concerned workmen/employees of the corporate debtor actually worked during the CIRP and in such an eventuality, the wages/salaries of those workmen/employees who actually worked during the CIRP period when the resolution professional managed the operations of the corporate debtor as a going concern, shall be paid treating it and/or considering it as part of CIRP costs and the same shall be payable in full first as per Section 53(1)(a) of the IB Code; (ii) considering Section 36(4) of the IB code and when the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets, the share of the workmen dues shall be kept outside the liquidation process and the concerned workmen/employees shall have to be paid the same out of such provident fund, gratuity fund and pension fund, if any, available and the Liquidator shall not have any claim over such funds. **Sunil Kumar Jain v. Sundaresh Bhatt**, [2022 LiveLaw \(SC\) 382](#) : AIR 2022 SC 1985 : (2022) 7 SCC 540

Companies Act, 1956 - Insolvency and Bankruptcy Code, 2016 - Legislative History with respect to workmen/employee's dues towards the wages/salaries including the amount due and payable towards provident fund, gratuity and pension fund - discussed. (Para 8.2) **Sunil Kumar Jain v. Sundaresh Bhatt**, [2022 LiveLaw \(SC\) 382](#) : AIR 2022 SC 1985 : (2022) 7 SCC 540

Section 10F - Appeals against the order of the Company Law Board

Companies Act, 1956; Section 10F - Re-appraisal of entire evidence by the High Court is not permissible - Has to restrict its determination to the purported questions of law arising from the order of CLB. (Para 24) **Mahima Datla v. Renuka Datla**, [2022 LiveLaw \(SC\) 479](#) : (2022) 10 SCC 258

Section 397 - Application to Company Law Board for relief in cases of oppression

Companies Act, 1956; Section 397 - An order could be made on application made under sub-section (1), if the Court is of the opinion that (i) the Company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members, and; (ii) the facts would justify the making of a winding up order on the ground that it was just and equitable that the Company should be wound up, and; (iii) the winding up order would

unfairly prejudice the Petitioners - An application for relief can be brought by any member who complain that the 25 affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members. The intention of the legislature is that majority shareholders who oppress the minority shareholders and conduct the affairs of the company prejudicial to public interest may invoke the jurisdiction of CLB. (Para 39) **Mahima Datla v. Renuka Datla**, [2022 LiveLaw \(SC\) 479](#) : (2022) 10 SCC 258

Companies Act, 2013

Companies Act, 2013 - Centre directed to ensure that the term of NCLT members appointed in future is 5 years as per Section 413 - We however direct that in making appointments to the NCLT in the future, the Union Government shall be bound by the statutory provisions embodied in Section 413 of the Companies Act 2013. (Para 27, 28) **National Company Law Tribunal Bar Association v. Union of India**, [2022 LiveLaw \(SC\) 665](#)

Companies Act, 2013 - Term of members of National Company Law Tribunal - Section 413- Appointment of persons as members of the NCLT for a period of three years is not contemplated by the provisions of Section 413(1). An administrative notification for appointment has to be consistent with the statute which governs appointments to the Tribunal. (Para 17) **National Company Law Tribunal Bar Association v. Union of India**, [2022 LiveLaw \(SC\) 665](#)

Companies Act, 2013 - Advertisement of winding up petition - The power to dispense with any advertisement, is now made available specifically under the statutory regime of 2013. (Para 7) **Devas Multimedia v. Antrix Corporation**, [2022 LiveLaw \(SC\) 57](#) : 2022 (1) SCALE 474

Companies Act, 2013 - Appeal filed by Devas Multimedia challenging the orders passed by the NCLT and NCLAT allowing the winding up on a petition filed by ISRO's commercial arm Antrix Corporation - Dismissed. **Devas Multimedia v. Antrix Corporation**, [2022 LiveLaw \(SC\) 57](#) : 2022 (1) SCALE 474

Memorandum of Association

Companies Act, 2013 - Memorandum of Association - A company's MOA is its charter and outlines the purpose for which the company has been created. The object clause in an MOA is considered to be representative of the purpose of a company and it is expected that the company will fulfill/attempt to fulfill the objects it has laid out in its MOA. (Para. 52) **Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.**, [2022 LiveLaw \(SC\) 129](#) : (2022) 7 SCC 164

Section 170 - Register of directors and key managerial personnel and their shareholding.

Companies Act, 2013; Section 170 - Companies Act, 1956; Section 394 (1)(a) - Amalgamation - Amalgamation is unlike the winding up of a corporate

entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues – enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence, i.e., the transferee company. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings - Upon amalgamation, the cause of action or the complaint does not per se cease – depending of course, upon the structure and objective of enactment - The quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall. (Para 18) **Principal Commissioner of Income Tax (Central) – 2 v. Mahagun Realtors (P) Ltd;** [2022 LiveLaw \(SC\) 346](#) : AIR 2022 SC 1672

Section 188 - Related party transactions

Companies Act, 2013; Section 188 - Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015; Regulation 23 - Related parties abstained from voting in special resolution which approved a related party transaction - They voted in Extraordinary GM convened for rescinding the said resolution - SAT held the bar of voting as per Section 188 of the Companies Act, 2013 on related parties operated only at the time of entering into a contract or arrangement, i.e., when the resolution dated 15.07.2014 was passed; and therein the said related parties indeed abstained from voting. It found no fault in the said parties voting in the recalling/rescinding of the said resolution - The view, as taken by the Appellate Tribunal, in the given set of facts and circumstances of the present case, appears to be a plausible view of the matter. **Securities and Exchange Board of India v. R.T. Agro Pvt. Ltd.,** [2022 LiveLaw \(SC\) 424](#)

Section 196 - Appointment of managing director, whole-time director or manager

Companies Act, 2013; Section 196, Schedule V - No person shall be eligible to be a whole-time Director of a Company after attaining the age of 70 years unless such appointment is approved by a special resolution of the Company. (Para 35) **Mahima Datla v. Renuka Datla,** [2022 LiveLaw \(SC\) 479](#) : (2022) 10 SCC 258

Section 271 - Circumstances in which company may be wound up by Tribunal

Companies Act, 2013; Section 271 - Companies Act, 1956 - Distinguishing features between the 1956 Act and the 2013 Act, with regard to the question of availability of fraud as a ground for the winding up of a company discussed - In contrast to the 1956 Act, the 2013 Act provides 2 different routes for the winding up of a company on the ground of fraud - (i) winding up under clause (c) of Section 271 (directly on the ground of fraud) by any person authorised by the

Central Government by notification; or (ii) winding up under clause (e) of Section 271 (on the ground that it is just and equitable to wind up) in terms of Section 224(2)(a) on the basis of a report of investigation under Section 213(b). (Para 6) **Devas Multimedia v. Antrix Corporation**, [2022 LiveLaw \(SC\) 57](#) : 2022 (1) SCALE 474

Companies Act, 2013; Section 271 - If the conduct of the affairs of the company in a fraudulent manner is a continuing process, the right to apply for winding up becomes recurring. (Para 8.22) **Devas Multimedia v. Antrix Corporation**, [2022 LiveLaw \(SC\) 57](#) : 2022 (1) SCALE 474

Company Secretaries Regulations, 1982

Company Secretaries Regulations, 1982; Regulation 92(2) - There is a distinction between the absence and the post fallen vacant. Regulation 92(2) shall be applicable only in a case of absence and not in a case where the post of Chairman and/or office bearer has fallen vacant. (Para 4.4) **Institute of Company Secretaries of India v. Biman Debnath**, [2022 LiveLaw \(SC\) 945](#)

Company Secretaries Regulations, 1982; Regulations 117(2), 119(2) - Regulation 117(2) shall be applicable in a case where the elected member of the Regional Council has been disqualified on he being found guilty of any professional or other misconduct and awarded penalty of fine. Therefore, in case of a vacation of office as per Regulation 117(2), such post fallen vacant is required to be filled in by election by electing another person from amongst its members to hold the office for the remaining period of a year (Regulation 119(2)). (Para 4.4) **Institute of Company Secretaries of India v. Biman Debnath**, [2022 LiveLaw \(SC\) 945](#)

Competition Act, 2002

Competition Act, 2002; Section 3 - Lotteries - If in the tendering process there is an element of anti-competition which would require investigation by the CCI, that cannot be prevented under the pretext of the lottery business being res extra commercium, more so when the State Government decides to deal in lotteries. (Para 39) **Competition Commission v. State of Mizoram**, [2022 LiveLaw \(SC\) 75](#) : (2022) 7 SCC 73

Competitive Examinations

Competitive examinations - Merit - Merit cannot be reduced to narrow definitions of performance in an open competitive examination which only provides formal equality of opportunity. Competitive examinations assess basic current competency to allocate educational resources but are not reflective of excellence, capabilities and potential of an individual which are also shaped by lived experiences, subsequent training and individual character. Crucially, open competitive examinations do not reflect the social, economic and cultural advantage that accrues to certain classes and contributes to their success in such examinations. (Para 59(ii)) **Neil Aurelio Nunes v. Union of India**, [2022 LiveLaw \(SC\) 73](#) : (2022) 4 SCC 1

Conflict of Laws

Conflict of Laws - If there is any inconsistency between two legislations, the later law, even if general in nature, would override an earlier special law. (Para 18) *Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal*, [2022 LiveLaw \(SC\) 221](#) : (2022) 6 SCC 496

Constitution of India

Constitution of India, 1950 - After a period of 10 years from the date of execution of the Sale Deed with NOIDA, the petitioner made a representation to it requesting to allot a plot as agreed in terms of the Sale Deed - High Court directed NOIDA to consider the representation - NOIDA rejected it - This was again challenged before High Court by the Petitioner - High Court dismissed writ petition - SLP challenging the said High Court judgment dismissed. *Surjeet Singh Sahni v. State of U.P.*, [2022 LiveLaw \(SC\) 232](#) : 2022 (4) SCALE 280

Constitution of India, 1950 - Appeal against High Court order that set aside order issued by Municipality cancelling work order to appellant - Allowed - In absence of any evidence and material on record and there being disputed questions of facts the High Court ought not to have passed the impugned judgment and order directing the Council to continue the work order. *Municipal Corporation Gondia v. Divi Works & Suppliers HUF*, [2022 LiveLaw \(SC\) 225](#) : 2022 (4) SCALE 262

Constitution of India, 1950 - Court's duty to protect constitutional values - Court is charged with the duty to protect the fundamental rights and also preserve the constitutional values and the secular democratic character of the nation and in particular, the rule of law. *Shaheen Abdullah v. Union of India*, [2022 LiveLaw \(SC\) 872](#)

Constitution of India, 1950 - Governor's Powers - Schedule 5 cannot be read as conferring upon the Governor absolute power and/or unfettered power, notwithstanding the provisions contained in Part III of the Constitution. *Satyajit Kumar v. State of Jharkhand*, [2022 LiveLaw \(SC\) 651](#)

Constitution of India, 1950 - Judicial Interference in policy matters - APM Terminals B.V. v. Union of India and anr. - consistent view of the Court - a change in policy by the Government can have an overriding effect over private treaties between the Government and a private party, if the same was in the general public interest - provide such change in policy was guided by reason - in case of conflict between public interest and personal interest, public interest should prevail - when a policy is changed by the State, which is in the general public interest, such policy would prevail over the individual rights/interests - in the present case, the policy change was not only in the larger public interest but also in the interest of the respondents/original allottees of plots of land [Para 61 - 63 & 65] *Yamuna Expressway Industrial Development Authority v. Shakuntla Education and Welfare Society*, [2022 LiveLaw \(SC\) 536](#) : 2022 (8) SCALE 470

Constitution of India, 1950 - Levy of Excise Duty - Appeal against High Court order which set aside demand notice issued to pay excise duty on the weak spirit, which was more than 2% allowable wastage - Dismissed - Wastage generated has been found to be unfit and unsafe for potable purpose - the State has power to levy excise duty only in respect of the alcoholic liquor for human consumption. **State of Orissa v. Utkal Distilleries Ltd;** [2022 LiveLaw \(SC\) 240](#) : (2022) 5 SCC 326

Constitution of India, 1950 - Levy of Excise Duty - State Legislature has no authority to levy duty or tax on alcohol, which is not for human consumption as that could be levied only by the Centre - State only empowered to levy excise duty on alcoholic liquor for human consumption. **State of Orissa v. Utkal Distilleries Ltd;** [2022 LiveLaw \(SC\) 240](#) : (2022) 5 SCC 326

Constitution of India, 1950 - Manipur Assembly passed the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Repealing Act, 2018 - The Manipur Legislature was competent to enact the Repealing Act, 2018. The saving clause in the Repealing Act, 2018 is struck down. However, this shall not affect the acts, deeds and decisions duly undertaken by the Parliamentary Secretaries under the 2012 Act till discontinuation of their appointments, which are hereby saved. (Para 26) **State of Manipur v. Surjakumar Okram,** [2022 LiveLaw \(SC\) 113](#)

Constitution of India, 1950 - Part IXB inserted by the Constitution (97th Amendment) Act, 2011 would not be applicable to the local co-operative societies, whereas the same would be applicable to the multi-State co-operative societies and the societies within the Union territories. (Para 45A-45C) **Bengal Secretariat Cooperative Land Mortgage Bank and Housing Society Ltd. v. Alope Kumar,** [2022 LiveLaw \(SC\) 849](#)

Constitution of India, 1950 - Permissibility of sub-classification amongst backward classes as has been done in the 2021 Act cannot be contested. Reasonableness of sub-classification is a separate question. (Para 33) **Pattali Makkal Katchi v. A. Mayilerumperumal,** [2022 LiveLaw \(SC\) 333](#) : AIR 2022 SC 1865

Constitution of India, 1950 - Prohibition of Cow Slaughter Act, 2004 (Madhya Pradesh) - Appeal against High Court order refusing to interfere with confiscation order passed by District Magistrate despite acquittal in connected criminal case under MP Cow Slaughter Prohibition Act - Allowed - The order of acquittal was passed as evidence was missing to connect the accused with the charges. The confiscation of the appellant's truck when he is acquitted in the Criminal prosecution, amounts to arbitrary deprivation of his property and violates the right guaranteed to each person under Article 300A - The District Magistrate's order of Confiscation (ignoring the Trial Court's judgment of acquittal), is not only arbitrary but also inconsistent with the legal requirements. **Abdul Vahab v. State of Madhya Pradesh,** [2022 LiveLaw \(SC\) 243](#) : 2022 (4) SCALE 401

Constitution of India, 1950 - Supreme Court upholds Haryana Sikh Gurudwara (Management) Act, 2014 - Holds that Haryana State legislature has competence to enact the said Act - The Act does not violate the rights of Sikhs under Articles 25 and 26 of the Constitution - Since the affairs of the Sikh minority in the State are to be managed by the Sikhs alone, therefore, it cannot be said to be violative of any of the fundamental rights conferred under Articles 25 and 26 of the Constitution. ***Harbhajan Singh v. State of Haryana*, 2022 LiveLaw (SC) 782**

Constitution of India, 1950 - Tamil Nadu Special Reservation of seats in Educational Institutions including Private Educational Institutions and of appointments or posts in the services under the State within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021 declared unconstitutional - Upheld the Madras High Court judgment holding that there is no substantial basis for classifying the Vanniakula Kshatriyas into one group to be treated differentially from the remaining 115 communities within the MBCs and DNCs, and therefore, the 2021 Act is in violation of Articles 14, 15 and 16. (Para 74) ***Pattali Makkal Katchi v. A. Mayilerumperumal*, 2022 LiveLaw (SC) 333 : AIR 2022 SC 1865**

Constitution of India, 1950 - The conclusion of the High Court that determining the extent of reservation amongst the 'Backward Classes of citizens' can be done only by amending the 1994 Act in view of Article 31-B is unsustainable - State Legislature did not lack competence to enact a legislation for determining the extent of reservation amongst the MBCs and DNCs. (Para 46) ***Pattali Makkal Katchi v. A. Mayilerumperumal*, 2022 LiveLaw (SC) 333 : AIR 2022 SC 1865**

Constitution of India, 1950 - The High Court has committed an error in holding that the 2021 Act is violative of Article 342-A. (Para 31) ***Pattali Makkal Katchi v. A. Mayilerumperumal*, 2022 LiveLaw (SC) 333 : AIR 2022 SC 1865**

Constitution of India, 1950 - The State's competence to enact the 2021 Act with the Governor's assent cannot be faulted with nor can the State be compelled by the courts to reserve the 2021 Act for assent of the President. (Para 51) ***Pattali Makkal Katchi v. A. Mayilerumperumal*, 2022 LiveLaw (SC) 333 : AIR 2022 SC 1865**

Constitution of India, 1950 - There is no bar on the legislative competence of the State to enact the 2021 Act. (Para 71) ***Pattali Makkal Katchi v. A. Mayilerumperumal*, 2022 LiveLaw (SC) 333 : AIR 2022 SC 1865**

Constitution of India, 1950 - Under the Xth Schedule of the Constitution, the Speaker of a Legislative Assembly does not have power to deny pension and other benefits available to a former MLA while deciding a disqualification plea against him. ***Gyanendra Kumar Singh v. Bihar Legislative Assembly Patna*, 2022 LiveLaw (SC) 808**

Constitution of India, 1950 - Writ Petition Challenging Bihar Government notification approving issuance of caste certificate to Lohar community -

Allowed - Lohars were not included as members of the Scheduled Tribe right from the beginning and they were, in fact, included as members of the OBCs in the State of Bihar - Lohar is not same as Lohara. Including Lohars alongside 'Lohara' is clearly illegal and arbitrary - State to pay costs of Rs. 5 Lakhs to the petitioners. ***Sunil Kumar Rai v. State of Bihar***, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Constitution of India - Writ of Habeas Corpus in Cases of Child's Custody - in a petition seeking a writ of Habeas Corpus in a matter relating to a claim for custody of a child, the principal issue which should be taken into consideration is as to whether from the facts of the case, it can be stated that the custody of the child is illegal - whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person - whenever a question arises before a court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child - welfare is an all-encompassing word - It includes material welfare - while material considerations have their place they are secondary matters - more important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents - the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute - the jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as *parens patriae*, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity - The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. [Para 75, 80, 81, 86, 88, 89] ***Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu***, [2022 LiveLaw \(SC\) 605](#)

Article 2 - Admission or establishment of new States

Constitution of India, 1950; Articles 2, 3 13, 19(1)(e) - Andhra Pradesh State Reorganisation Act, 2014 - There is only one domicile i.e. domicile of the country and there is no separate domicile for a State -The Reorganization Act or any guidelines framed thereunder cannot take away from citizens, the right to reside and settle in any part of the country - When a State is divided and the employees and officers of the State Government have to be allotted to the two states, such allocation has to be done on the basis of the Rules and Regulations and by guidelines - However they have to be construed harmoniously with the fundamental rights guaranteed under the Constitution of India. (Para 59-68) ***State of Telangana v. B. Subba Rayadu***, [2022 LiveLaw \(SC\) 767](#) : AIR 2022 SC 4373

Article 12 - Fundamental Rights - Definition

Constitution of India, 1950; Article 12 - State - The determination of a body as a 'State' is not a rigid set of principles. What is to be seen is whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government, albeit if the control is mere regulatory, whether under statute or otherwise, it will not serve to make the body a State. Also, the presence of some element of public duty or function would not by itself suffice for bringing a body within the net of Article 12. (Para 6) ***Kishor Madhukar Pinglikar v. Automotive Research Association of India***, [2022 LiveLaw \(SC\) 189](#)

Constitution of India, 1950; Article 12 - State - Whether Automotive Research Association of India Is A State -The majority of the members of the Association are associated with the manufacturers of the automobiles or their components and are not in service of the government. They are private players and from the motor vehicle industry - The main objective and function of the association relate to motor vehicles which is not directly or indirectly a field connected with functions of the government - One function assigned to the Association, which is not the primary and forms a small fraction of their activities and functions performed by the Association, would not matter. An overall and holistic view of the functions and activities, including the primary function(s), should be taken into consideration - Association is not an agency or instrumentality of the Government. Further, the Government does not have deep and pervasive control over it. (Para 18 - 24) ***Kishor Madhukar Pinglikar v. Automotive Research Association of India***, [2022 LiveLaw \(SC\) 189](#)

Constitution of India, 1950; Article 12 - While exercising its functions on the administrative side, the High Court would also be a State within the meaning of Article 12 of the Constitution of India. (Para 39) ***Ms. X v. Registrar General***, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Article 14 - Equality before law

Constitution of India, 1950; Article 14 - Appeal filed by power distribution companies assailing the order of Appellate Tribunal for Electricity, New Delhi which had directed the Andhra Pradesh Electricity Regulatory Commission to dispose of two applications filed by the parties before it. Displeased with the conduct of the appellants in the dispute the Court imposed a cost of Rs. 5,00,000 (five lakhs) on them. ***Southern Power Distribution Power Company Ltd. v. Hinduja National Power Corporation Ltd.***, [2022 LiveLaw \(SC\) 117](#) : (2022) 5 SCC 484

Constitution of India, 1950; Article 14 - Classification Test - When there is a reasonable basis for a classification adopted by taking note of the exigencies and diverse situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one - When the differentiation is clearly distinguishable with adequate demarcation duly identified, the object of Article 14 gets satisfied. Social, revenue and economic

considerations are certainly permissible parameters in classifying a particular group - Courts could not act like appellate authorities especially when a classification is introduced by way of a policy decision clearly identifying the group of beneficiaries by analysing the relevant materials - When a classification is made on the recommendation made by a body of experts constituted for the purpose, courts will have to be more wary of entering into the said arena as its interference would amount to substituting its views, a process which is best avoided. (Para 14-18) ***State of Uttarakhand v. Sudhir Budakoti***, [2022 LiveLaw \(SC\) 354](#) : AIR 2022 SC 1767

Constitution of India, 1950; Article 14 - does not prohibit the classification of persons or class of persons provided it is not arbitrary - classification has to be reasonable - classification is permissible provided it is founded on an intelligible differentia - classification must have a rational nexus to the objects sought to be achieved by it - whether Haj Committees under the 2002 Act, can be treated as a separate class - on the ground both HGOs and the Haj Committee render service to the same class of persons, the classification made by treating the Haj Committee as a separate class, cannot be questioned - different classes of service providers rendering the same service to the same class of service recipients does not amount to discrimination - Haj Committee is a statutory committee which is entrusted with various functions for the welfare of Haj pilgrims - profit motive is completely absent in the case of the Haj Committee - Haj Committee constitutes a class in itself when it comes to rendering service to Haj pilgrims - it is a separate class as distinguished from HGOs. [Para 56, 60] ***All India Haj Umrah Tour Organizer Association Mumbai v. Union of India***, [2022 LiveLaw \(SC\) 632](#)

Constitution of India, 1950; Article 14 - Equal Protection of Law - Atypical families which are different from traditional family units also entitled to equal protection of law- Familial relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. (Para 26) ***Deepika Singh v. Central Administrative Tribunal***, [2022 LiveLaw \(SC\) 718](#) : AIR 2022 SC 4108

Constitution of India, 1950; Article 14 - Every action of a State is required to be guided by the touchstone of non-arbitrariness, reasonableness and rationality. Every action of a State is equally required to be guided by public interest. Every holder of a public office is a trustee, whose highest duty is to the people of the country. The Public Authority is therefore required to exercise the powers only for the public good. (Para 100) ***Southern Power Distribution Power Company Ltd. v. Hinduja National Power Corporation Ltd.***, [2022 LiveLaw \(SC\) 117](#) : (2022) 5 SCC 484

Constitution of India, 1950; Article 14 - Inter-play between the plea of legitimate expectation and Article 14 - For a decision to be non-arbitrary, the reasonable/legitimate expectations of the claimant have to be considered. However, to decide whether the expectation of the claimant is reasonable or legitimate in the context, is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. (Para 14)] **State of West Bengal v. Gitashree Dutta (Dey)**, [2022 LiveLaw \(SC\) 527](#)

Constitution of India, 1950; Article 14 - Non-consideration of the relevant material and consideration of the extraneous material would come into the realm of irrationality. An action which is arbitrary, irrational and unreasonable would be hit by Article 14 of the Constitution of India. (Para 66) **Ms. X v. Registrar General**, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Constitution of India, 1950; Article 14 - Policy Decision - The policy of the State of Rajasthan is that while selecting Nurse Compounder Junior Grade, the bonus marks are to be given to such employees who have done similar work under the State Government and under the various schemes - Whether such bonus marks would also be available to the contractual employees working under the NHM/NRHM schemes in other States - The policy of the State of Rajasthan to restrict the benefit of bonus marks only to such employees who have worked under different organizations in the State of Rajasthan and to employees working under the NHM/NRHM schemes in the State of Rajasthan, cannot be said to be arbitrary. (Para 22) **Satya Dev Bhagaur v. State of Rajasthan**, [2022 LiveLaw \(SC\) 177](#) : (2022) 5 SCC 314

Constitution of India, 1950; Article 14 - Reasonable Classification - It is well within the power and authority of the statutory authorities to reasonably classify different sets of employees and categorise them for the nature of benefits they might get from an existing scheme-classification of the employees made by the authorities on the basis of the salary drawn in the 2014 amendment meets the test of reasonable classification contemplated in Article 14 of the Constitution of India. (Para 30, 32) **Employees Provident Fund Organization v. B. Sunil Kumar**, [2022 LiveLaw \(SC\) 912](#) : AIR 2022 SC 5634

Constitution of India, 1950; Article 14 - Right to equality - The right against unfair State action is part of Article 14. Unequals being treated equally is tabooed under Article 14 of the Constitution. (Para 8) **Sunil Kumar Rai v. State of Bihar**, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Constitution of India, 1950; Article 14 - The differential treatment for different classes would not be hit by Article 14 of the Constitution of India. The only requirement would be, as to whether such a classification has a nexus with the object sought to be achieved by the Act. (Para 31) **Dental Council of India v. Biyani Shikshan Samiti**, [2022 LiveLaw \(SC\) 366](#) : AIR 2022 SC 1799 : (2022) 6 SCC 65

Constitution of India, 1950; Article 14 - There is a presumption of validity of the State action and the burden is on the person who alleges violation of Article 14 of the Constitution of India to prove the assertion - Where no plausible reason or principle is indicated nor is it discernible and the impugned State action appears to be arbitrary, the initial burden to prove the arbitrariness is discharged, thereby shifting onus on the State to justify its action as fair and reasonable. If the State is unable to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged. (Para 55) *Ms. X v. Registrar General*, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Constitution of India, 1950; Article 14 - There is no negative equality - If there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. (Para 24) *R. Muthukumar v. Chairman and Managing Director Tangedco*, [2022 LiveLaw \(SC\) 140](#) : 2022 (3) SCALE 241

Constitution of India, 1950; Article 14 and 16 - Service Law - An amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution. (Para 47) *Punjab State Co. Agri. Bank Ltd. v. Registrar*, [2022 LiveLaw \(SC\) 42](#) : AIR 2022 SC 1349 : (2022) 4 SCC 363

Constitution of India, 1950; Article 14, 15, 16 - Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial. (Para 71-72) *Pattali Makkal Katchi v. A. Mayilerumperumal*, [2022 LiveLaw \(SC\) 333](#) : AIR 2022 SC 1865

Constitution of India, 1950; Article 14, 15, 16 - While caste can be the starting point for providing internal reservation, it is incumbent on the State Government to justify the reasonableness of the decision and demonstrate that caste is not the sole basis. (Para 54) *Pattali Makkal Katchi v. A. Mayilerumperumal*, [2022 LiveLaw \(SC\) 333](#) : AIR 2022 SC 1865

Constitution of India, 1950; Article 14, 226 - Arbitrariness - When an act is to be treated as arbitrary? The court must carefully attend to the facts and the circumstances of the case. It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to state action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the

parties and public interest may be a clear indicator of arbitrary action. A wholly unreasonable decision which is little different from a perverse decision under the Wednesbury doctrine would qualify as an arbitrary decision under Article 14. Ordinarily visiting a party with the consequences of its breach under a contract may not be an arbitrary decision. (Para 48) **MP Power Management Company Ltd. v. Sky Power Southeast Solar India Pvt. Ltd.**, [2022 LiveLaw \(SC\) 966](#)

Constitution of India, 1950; Article 14 - 16 - Substantial Equality - Discrimination both direct and indirect is contrary to the vision of substantive equality -The true aim of achieving substantive equality must be fulfilled by the State in recognizing the persistent patterns of discrimination against women once they are in the work place. (Para 46-48) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Constitution of India, 1950; Articles 14, 15 - Appointment to the heirs of the employees on their retirement and/or superannuation shall be contrary to the object and purpose of appointment on compassionate grounds and is hit by Article 14 of the Constitution of India - Appointment on compassionate grounds cannot be extended to the heirs of the employees on their superannuation and/or retirement - Appointment on compassionate grounds cannot be extended to the heirs of the employees on their superannuation and/or retirement. If such an appointment is permitted, in that case, outsiders shall never get an appointment and only the heirs of the employees on their superannuation and/or retirement shall get an appointment and those who are the outsiders shall never get an opportunity to get an appointment though they may be more meritorious and/or well educated and/or more qualified. (Para 8) **Ahmednagar Mahanagar Palika v. Ahmednagar Mahanagar Palika Kamgar Union**, [2022 LiveLaw \(SC\) 739](#) : AIR 2022 SC 4101 : (2022) 10 SCC 172

Constitution of India, 1950; Articles 14, 15(1), 341 and 342 - Furthermore, the duty to provide clarity and protection, generally speaking has to be consistent - i.e., in the case of one states' reorganization, the protection should not be greater than in the case of reorganization of another state. That would defeat the command of Articles 14 and 15 (1) (i.e., in the latter case, there can possibly be discrimination on the ground of place of birth). In my opinion, this duty stems from a co-joint reading of Part I (Articles 1 to 4), Articles 14, 15(1), 341, and 342 of the Constitution, and the overarching concern that the individual should not be worse off, due to disruption not of her or his making. The duty of Parliament in such cases, is a Constitutional obligation, to ensure that no one individual or group is disadvantaged. (Justice Bhat, Para 10) **Akhilash Prasad v. Jharkhand Public Service Commission**, [2022 LiveLaw \(SC\) 434](#)

Constitution of India, 1950; Articles 14, 15, 16 - Constitution (103rd Amendment) Act, 2019 - Constitution validity of EWS Quota upheld - Reservation structured singularly on economic criteria does not violate any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India - Exclusion of the classes

covered by Articles 15(4), 15(5) and 16(4) from getting the benefit of reservation as economically weaker sections, being in the nature of balancing the requirements of non-discrimination and compensatory discrimination, does not violate Equality Code and does not in any manner cause damage to the basic structure of the Constitution of India. (Para 102) ***Janhit Abhiyan v. Union of India***, [2022 LiveLaw \(SC\) 922](#)

Constitution of India, 1950; Articles 14, 15, 16 - Constitution (103rd Amendment) Act, 2019 - The total and absolute exclusion of constitutionally recognised backward classes of citizens - and more acutely, SC and ST communities, is nothing but discrimination which reaches to the level of undermining, and destroying the equality code, and particularly the principle of nondiscrimination - The insertion of Article 15(6) and 16(6) is struck down, is held to be violative of the equality code, particularly the principle of nondiscrimination and non-exclusion which forms an inextricable part of the basic structure of the Constitution - While special provisions based on objective economic criteria (for the purpose of Article 15), is per se not violative of the basic structure the same is not true for Article 16, the goal of which is empowerment, through representation of the community. (Para 189-193) ***Janhit Abhiyan v. Union of India***, [2022 LiveLaw \(SC\) 922](#)

Constitution of India, 1950; Articles 14, 15, 16 - Reservation for economically weaker sections of citizens up to ten per cent. in addition to the existing reservations does not result in violation of any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India on account of breach of the ceiling limit of fifty per cent. because, that ceiling limit itself is not inflexible and in any case, applies only to the reservations envisaged by Articles 15(4), 15(5) and 16(4) of the Constitution of India. (Para 102) ***Janhit Abhiyan v. Union of India***, [2022 LiveLaw \(SC\) 922](#)

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Constitution of India, 1950; Article 15 - Articles 15(4) and 15 (5) are not an exception to Article 15 (1), which itself sets out the principle of substantive equality (including the recognition of existing inequalities). Thus, Articles 15 (4) and 15 (5) become a restatement of a particular facet of the rule of substantive equality that has been set out in Article 15 (1). (Para 59(i)) ***Neil Aurelio Nunes v. Union of India***, [2022 LiveLaw \(SC\) 73](#) : (2022) 4 SCC 1

Constitution of India, 1950; Article 15 - Practices or rules or norms are rooted in historical prejudice, gender stereotypes and paternalism - Such attitudes have no place in our society; recent developments have highlighted areas hitherto considered exclusive male "bastions" such as employment in the armed forces, are no longer so. (Para 48) ***Hotel Priya A Proprietorship v. State of Maharashtra***, [2022 LiveLaw \(SC\) 186](#) : 2022 (3) SCALE 663

Constitution of India, 1950; Article 15 (1) and Article 19 (1) (g) - Gender cap as to the number of women or men, who can perform in orchestras and bands,

in licenced bars is void - This restriction directly transgresses Article 15 (1) and Article 19 (1) (g) - the latter provision both in its effect to the performers as well as the license owners. While the overall limit of performers in any given performance cannot exceed eight, the composition (i.e., all female, majority female or male, or vice versa) can be of any combination. (Para 47, 49) ***Hotel Priya A Proprietorship v. State of Maharashtra***, [2022 LiveLaw \(SC\) 186](#) : 2022 (3) SCALE 663

Constitution of India, 1950; Article 15 (1) and Article 19 (1) (g) - Gender-cap (i.e. four females and four males, in any performance) appears to be the product of a stereotypical view that women who perform in bars and establishments, belong to a certain class of society Such measures – which claim protection, in reality are destructive of Article 15 (3) as they masquerade as special provisions and operate to limit or exclude altogether women's choice of their avocation. (Para 42, 46) ***Hotel Priya A Proprietorship v. State of Maharashtra***, [2022 LiveLaw \(SC\) 186](#) : 2022 (3) SCALE 663

Constitution of India, 1950; Article 15(6) - Unaided private educational institutions would be bound under Article 15(6) to provide for EWS reservations. (Para 194) ***Janhit Abhiyan v. Union of India***, [2022 LiveLaw \(SC\) 922](#)

Article 16 - Equality of opportunity in matters of public employment

Constitution of India 1950; Article 16(3), 35 - Under Article 16(3) of the Constitution of India, it is the Parliament alone, which is authorized to make any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within the State or Union territory prior to such employment or appointment. As per Article 35 of the Constitution of India, notwithstanding anything contained in the Constitution, the Parliament shall have and the Legislature of a State shall not have the power to make laws with respect to any of the matters which, under clause (3) of Article 16 may be provided for law made by Parliament. Therefore, impugned Notification/Order making 100% reservation for the local resident of the concerned Scheduled Area/Districts (reservation on the basis of resident) is ultra vires to Article 35 r/w Article 16(3) of the Constitution of India. (Para 24) ***Satyajit Kumar v. State of Jharkhand***, [2022 LiveLaw \(SC\) 651](#)

Constitution of India, 1950; Article 16 - 100% reservation is discriminatory and impermissible -quashes Jharkhand Govt notification providing 100% reservation for local residents in Scheduled Districts for Govt Posts in Class III & Class IV. ***Satyajit Kumar v. State of Jharkhand***, [2022 LiveLaw \(SC\) 651](#)

Constitution of India, 1950; Article 16 - Railways LARGESS Scheme - Scheme provided an avenue for backdoor entry into service and was contrary to the mandate of Article 16 which guarantees equal opportunity in matters of public employment. ***Chief Personnel Officer v. A. Nishanth George***, [2022 LiveLaw \(SC\) 277](#) : 2022 (2) SCALE 357

Constitution of India, 1950; Article 16 - Railways LARGESS Scheme - Appeal against High Court judgment which held that though the LARGESS Scheme was terminated, since the respondent's father superannuated on 1 January 2015 prior to 27 January 2017, the benefit of the scheme could be extended to him in terms of the notification dated 28 September 2018- Allowed - The impugned judgment issuing a mandamus for the appointment of the respondent cannot be sustained. **Chief Personnel Officer v. A. Nishanth George**, [2022 LiveLaw \(SC\) 277](#) : 2022 (2) SCALE 357

Constitution of India, 1950; Article 16 - Reservation in Promotion - No yardstick can be laid down by the Court for determining the adequacy of representation of SCs and STs in promotional posts for the purpose of providing reservation. (Para 16) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Constitution of India, 1950; Article 16 - Reservation in Promotion - The judgment of M. Nagaraj & Ors. v. Union of India (2006) 8 SCC 212 should be declared to have prospective effect- Making the principles laid down in M. Nagaraj (supra) effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long period of time. (Para 42) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Constitution of India, 1950; Article 16 - Reservation in Promotion - Before providing for reservation in promotions to a cadre, the State is obligated to collect quantifiable data regarding inadequacy of representation of SCs and STs. Collection of information regarding inadequacy of representation of SCs and STs cannot be with reference to the entire service or 'class'/ 'group' but it should be relatable to the grade/category of posts to which promotion is sought. Cadre, which should be the unit for the purpose of collection of quantifiable data in relation to the promotional post(s), would be meaningless if data pertaining to representation of SCs and STs is with reference to the entire service. (Para 29) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Constitution of India, 1950; Article 16 - Reservation in Promotion - It is for the State to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors. (Para 30) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Constitution of India, 1950; Article 16 - Reservation in Promotion - We are not inclined to express any view on discontinuation of reservations in totality, which is completely within the domain of the legislature and the executive. As regards review, we are of the opinion that data collected to determine inadequacy of representation for the purpose of providing reservation in promotions needs to be reviewed periodically. The period for review should be reasonable and is left to the Government to set out. (Para 31) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Constitution of India, 1950; Article 16 - Reservation in Promotion - The conclusion in *B.K. Pavitra & Ors. v. Union of India* (2019) 16 SCC 129 approving the collection of data on the basis of 'groups' and not cadres is contrary to the law laid down by this Court in *M. Nagaraj & Ors. v. Union of India* (2006) 8 SCC 212 and *Jarnail Singh & Ors. v. Lachhmi Narain Gupta & Ors.*(2018) 10 SCC 396 – The State should justify reservation in promotions with respect to the cadre to which promotion is made. Taking into account the data pertaining to a 'group', which would be an amalgamation of certain cadres in a service, would not give the correct picture of the inadequacy of representation of SCs and STs in the cadre in relation to which reservation in promotions is sought to be made. Rosters are prepared cadre-wise and not group-wise. Sampling method which was adopted by the Ratna Prabha Committee might be a statistical formula appropriate for collection of data. However, for the purpose of collection of quantifiable data to assess representation of SCs and STs for the purpose of providing reservation in promotions, cadre, which is a part of a 'group', is the unit and the data has to be collected with respect to each cadre. (Para 47) ***Jarnail Singh v. Lachhmi Narain Gupta*, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494**

Constitution of India, 1950; Article 16(2) - 100% reservation provided for the local residents of the concerned Scheduled Districts / Areas only would be violative of Article 16(2) of the Constitution of India and affecting rights of the other candidates / citizens of non-scheduled areas / Districts guaranteed under Part III of the Constitution of India. (Para 20, 23) ***Satyajit Kumar v. State of Jharkhand*, [2022 LiveLaw \(SC\) 651](#)**

Constitution of India, 1950; Article 16(2) - Compassionate Appointment Policy - Descent cannot be a ground for denying employment under the scheme of compassionate appointments - A policy for compassionate appointment, which has the force of law, must not discriminate on any of the grounds mentioned in Article 16(2), including that of descent by classifying children of the deceased employee as legitimate and illegitimate and recognizing only the right of legitimate descendant. (Para 9, 10) ***Mukesh Kumar v. Union of India*, [2022 LiveLaw \(SC\) 205](#) : 2022 (4) SCALE 103**

Constitution of India, 1950; Article 16(2) - Descent - 'Descent' must be understood to encompass the familial origins of a person. Familial origins include the validity of the marriage of the parents of a claimant of compassionate appointment and the claimant's legitimacy as their child. (Para 9) ***Mukesh Kumar v. Union of India*, [2022 LiveLaw \(SC\) 205](#) : 2022 (4) SCALE 103**

Constitution of India, 1950; Article 16(2) - Hindu Marriage Act, 1955 - Section 16 - Compassionate Appointment - The condition imposed by the Railway Board circular that compassionate appointment cannot be granted to children born from the second wife of a deceased employee - Rules of compassionate appointment cannot violate the mandate of Article 14 of the Constitution. Once Section 16 of the Hindu Marriage Act regards a child born

from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would violate Article 14 if the policy or rule excludes such a child from seeking the benefit of compassionate appointment. The circular creates two categories between one class, and it has no nexus to the objects sought to be achieved. Once the law has deemed them legitimate, it would be impermissible to exclude them from being considered under the policy. Exclusion of one class of legitimate children would fail to meet the test of nexus with the object, and it would defeat the purpose of ensuring the dignity of the family of the deceased employee. (Para 2,7) **Mukesh Kumar v. Union of India**, [2022 LiveLaw \(SC\) 205](#) : 2022 (4) SCALE 103

Article 19 - Protection of certain rights regarding freedom of speech

Constitution of India, 1950; Article 19 - Fundamental rights under Article 19 cannot be restricted through executive instructions -citizen cannot be deprived of the said right except in accordance with law. It has further been held that the requirement of law for the purpose of clause (6) of Article 19 of the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution or otherwise. [Para 43] **Pharmacy Council of India v. Rajeev College of Pharmacy**, [2022 LiveLaw \(SC\) 768](#) : AIR 2022 SC 4321

Constitution of India, 1950; Article 19 - Supreme dismissed a batch of appeals filed by the Pharmacy Council of India against the judgments of certain High Courts which set aside the moratorium imposed on starting new Pharmacy colleges for 5 years. **Pharmacy Council of India v. Rajeev College of Pharmacy**, [2022 LiveLaw \(SC\) 768](#) : AIR 2022 SC 4321

Constitution of India, 1950; Article 19(1)(a) - Freedom of speech and expression - Mohammed Zubair Case- Blanket bail orders to prevent the petitioner from tweeting cannot be imposed, merely because the case is based on tweets- Gag orders have a chilling effect on the freedom of speech. According to the petitioner, he is a journalist who is the co-founder of a fact checking website and he uses Twitter as a medium of communication to dispel false news and misinformation in this age of morphed images, clickbait, and tailored videos. Passing an order restricting him from posting on social media would amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession. [Para 30] **Mohammed Zubair v. State of NCT of Delhi**, [2022 LiveLaw \(SC\) 629](#) : AIR 2022 SC 3649

Constitution of India, 1950; Article 19(1)(d), 21 - When a convict is detained beyond the actual release date it would be imprisonment or detention sans sanction of law and would thus, violate not only Article 19(1) (d) but also Article 21 of the Constitution of India. (Para 17) **Bhola Kumhar v. State of Chhattisgarh**, [2022 LiveLaw \(SC\) 589](#)

Constitution of India, 1950; Article 19(1)(g) - Right to establish an educational institution can be regulated. However, such regulatory measures must, in general, be to ensure the maintenance of proper academic standards,

atmosphere and infrastructure and the prevention of maladministration. (Para 40-41) **Dental Council of India v. Biyani Shikshan Samiti**, [2022 LiveLaw \(SC\) 366](#) : AIR 2022 SC 1799 : (2022) 6 SCC 65

Constitution of India, 1950; Article 19(1)(g) - The right to establish an educational institution is a fundamental right under Article 19(1)(g) of the Constitution of India and reasonable restrictions on such a right can be imposed only by a law and not by an execution instruction. [Para 54, 55] **Pharmacy Council of India v. Rajeev College of Pharmacy**, [2022 LiveLaw \(SC\) 768](#) : AIR 2022 SC 4321

Article 20 - Protection in respect of conviction for offences

Constitution of India, 1950; Article 20 (2) - Code of Criminal Procedure, 1973; Section 300 - Principle of Double Jeopardy - The accused-respondent No. 2 having gone through the trial in relation to offences under Sections 504 and 506 IPC and having been acquitted, cannot be subjected to another trial for the same charges on the same facts. Any such process would be in blatant disregard of the settled principles which disapprove double jeopardy and are precisely contained in Article 20(2) of the Constitution of India as also Section 300 of the Code of Criminal Procedure, 1973. **Ms. P XXX v. State of Uttarakhand**, [2022 LiveLaw \(SC\) 554](#) : AIR 2022 SC 2885

Constitution of India, 1950; Article 20(2) - Articles 20 to 22 deal with personal liberty of citizens and others. Article 20(2) expressly provides that no person shall be prosecuted or punished for the same offence, more than once. The protection against double jeopardy is also supplemented by statutory provisions contained in Section 300 of the CrPC, Section 40 of the Indian Evidence Act, 1872, Section 71 of the IPC and Section 26 of the General Clauses Act, 1897. **T.P. Gopalakrishnan v. State of Kerala**, [2022 LiveLaw \(SC\) 1039](#)

Article 21 - Protection of life and personal liberty

Constitution of India, 1950; Article 21 - Bodily integrity is protected under Article 21 of the Constitution of India and no individual can be forced to be vaccinated - Persons who are keen to not be vaccinated on account of personal beliefs or preferences, can avoid vaccination, without anyone physically compelling them to be vaccinated. However, if there is a likelihood of such individuals spreading the infection to other people or contributing to mutation of the virus or burdening of the public health infrastructure, thereby affecting communitarian health at large, protection of which is undoubtedly a legitimate State aim of paramount significance in this collective battle against the pandemic, the Government can regulate such public health concerns by imposing certain limitations on individual rights that are reasonable and proportionate to the object sought to be fulfilled. (Para 49, 89(iii)) **Jacob Puliyel v. Union of India**, [2022 LiveLaw \(SC\) 439](#) : 2022 (7) SCALE 256

Constitution of India, 1950; Article 21 - By following the procedure established by law, the personal liberty of the citizens can be dealt with. (Para

8) *Devadassan v. Second Class Executive Magistrate*, [2022 LiveLaw \(SC\) 260](#) : AIR 2022 SC 1406

Constitution of India, 1950; Article 21 - Code of Criminal Procedure, 1973; Section 313 - Section 313 CrPC confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right, as a constitutional right to a fair trial under Article 21. (Para 19) *Jai Prakash Tiwari v. State of Madhya Pradesh*, [2022 LiveLaw \(SC\) 658](#) : AIR 2022 SC 3601

Constitution of India, 1950; Article 21 - Exhumation - Once buried, a body should not be disturbed - the Union Government should consider enacting an appropriate legislation on exhumation. The right to dignity and fair treatment under Article 21 of the Constitution is not only available to a living man but also to his body after his death - Family members also have a right to perform the last rites in accordance with the religious traditions. *Mohammed Latif Magrey v. Union Territory of Jammu and Kashmir*, [2022 LiveLaw \(SC\) 756](#)

Constitution of India, 1950; Article 21 - Failure of State to maintain law and order led to riots- victims have right to seek compensation - If the citizens are forced to live in an atmosphere of communal tension, it affects their right to life guaranteed by Article 21. The violence witnessed by Mumbai in December 1992 and January 1993 adversely affected the right of the residents of the affected areas to lead dignified and meaningful life. There was a failure on the part of the State Government to maintain law and order and to protect the rights of the people guaranteed under Article 21 of the Constitution of India. Therefore, the affected persons had a right to seek compensation from the State Government. (Para 10) *Shakeel Ahmed vs Union of India*, [2022 LiveLaw \(SC\) 910](#)

Constitution of India, 1950; Article 21- Fair Trial - An accused is entitled for a fair trial which is guaranteed under Article 21 of the Constitution of India. (Para 13) *Bhagwani v. State of Madhya Pradesh*, [2022 LiveLaw \(SC\) 60](#) : AIR 2022 SC 527

Constitution of India, 1950; Article 21 - Justice is not to be done but the justice is seen to have been done also - Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. (Para 14) *Suneetha Narreddy v. Central Bureau of Investigation*, [2022 LiveLaw \(SC\) 996](#)

Constitution of India, 1950; Article 21 - Personal autonomy of an individual involves the right of an individual to determine how they should live their own life, which consequently encompasses the right to refuse to undergo any medical treatment in the sphere of individual health. (Para 49, 89(iii)) *Jacob Puliyeel v. Union of India*, [2022 LiveLaw \(SC\) 439](#) : 2022 (7) SCALE 256

Constitution of India, 1950; Article 21 - Personal Liberty and power of arrest - Arrest is not meant to be and must not be used as a punitive tool because it results in one of the gravest possible consequences emanating from criminal law: the loss of personal liberty. Individuals must not be punished solely

on the basis of allegations, and without a fair trial. When the power to arrest is exercised without application of mind and without due regard to the law, it amounts to an abuse of power. The criminal law and its processes ought not to be instrumentalized as a tool of harassment. Section 41 of the CrPC as well as the safeguards in criminal law exist in recognition of the reality that any criminal proceeding almost inevitably involves the might of the state, with unlimited resources at its disposal, against a lone individual. [Para 27, 28] **Mohammed Zubair v. State of NCT of Delhi**, [2022 LiveLaw \(SC\) 629](#) : AIR 2022 SC 3649

Constitution of India, 1950; Article 21 - Preservation of family life is an incident of Article 21. (Para 51) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Constitution of India, 1950; Article 21 - Right of Privacy - Right to be Forgotten - Right of Eraser - SC Registry directed to examine the issue and to work out how the name of both the petitioner and respondent No.1 along with address details can be masked so that they do not appear visible for any search engine. **X v. Y**, [2022 LiveLaw \(SC\) 618](#)

Constitution of India, 1950; Article 21 - Right to reproduction and child rearing important facets of one's right to privacy and dignity (Para 21) **Deepika Singh v. Central Administrative Tribunal**, [2022 LiveLaw \(SC\) 718](#) : AIR 2022 SC 4108

Constitution of India, 1950; Article 21 - Rights of Sex Workers - Basic Protection of human decency and dignity extends to sex workers and their children - Directions issued to States/UTs for conditions conducive to sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution of India - Police should not abuse them physically or verbally - Press Council of India to issue guidelines to media to protect their anonymity during raid and rescue operations - Various other directions issued. **Budhadev Karmaskar v. State of West Bengal**, [2022 LiveLaw \(SC\) 525](#)

Constitution of India, 1950; Article 21 - Supreme Court's duty to protect personal liberty - No case is too small for the Court -The history of this Court indicates that it is in the seemingly small and routine matters involving grievances of citizens that issues of moment, both in jurisprudential and constitutional terms, emerge. The intervention by this Court to protect the liberty of citizens is hence founded on sound constitutional principles embodied in Part III of the Constitution. The Court is entrusted with judicial powers under Article 32 and Article 136 of the Constitution of India. The right to personal liberty is a precious and inalienable right recognised by the Constitution. In attending to such grievances, the Supreme Court performs a plain constitutional duty, obligation and function; no more and no less. **Iqram v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 1032](#)

Constitution of India, 1950; Article 21 - The dignity of person, which is an intrinsic element of Article 21 of the Constitution, cannot be left to the vagaries of insensitive procedures and a hostile environment. Access to justice

mandates that positive steps have to be adopted to create a barrier free environment. These barriers are not only those which exist within the physical spaces of conventional courts but those which operate on the minds and personality of vulnerable witnesses. (Para 3) ***Smruti Tukaram Badade v. State of Maharashtra***, [2022 LiveLaw \(SC\) 80](#)

Constitution of India, 1950; Article 21 - The right to health is an integral part of the right to life under Article 21 of the Constitution. Without health, the faculties of living have little meaning. (Para 5) ***Baiju K.G. v. Dr. V.P. Joy***, [2022 LiveLaw \(SC\) 517](#) : 2022 (8) SCALE 275

Constitution of India, 1950; Article 21 - The sweep of Article 21 is expansive enough to govern the action of dismembering a member from the House of the Legislative Assembly in the form of expulsion or be it a case of suspension by directing withdrawal from the meeting of the Assembly for the remainder of the Session. (Para 49) ***Ashish Shelar v. Maharashtra Leg. Assembly***, [2022 LiveLaw \(SC\) 91](#) : AIR 2022 SC 721

Constitution of India, 1950; Article 21 - Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21 - Right to a fair and speedy trial is a facet of Article 21. (Para 40 -41) ***Satender Kumar Antil v. Central Bureau of Investigation***, [2022 LiveLaw \(SC\) 577](#) : AIR 2022 SC 3386 : (2022) 10 SCC 51

Constitution of India, 1950; Article 21 - Where life and personal liberty have been violated, the absence of any statutory provision for compensation in the statute is of no consequence. Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high. (Para 21) ***Sanjay Gupta v. State of Uttar Pradesh***, [2022 LiveLaw \(SC\) 368](#) : (2022) 7 SCC 203

Constitution of India, 1950; Article 21 - While liberty is a dynamic concept capable of encompassing within it a variety of Rights, the irreducible minimum and at the very core of liberty, is freedom from unjustifiable custody. (Para 8) ***Sunil Kumar Rai v. State of Bihar***, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Constitution of India, 1950; Article 21 - Fair Trial - It must be emphasized that prosecution by the State ought to be carried out in a manner consistent with the right to fair trial, as enshrined under Article 21 of the Constitution. (Para 27) ***S.P. Velumani v. Arappor Iyakkam***, [2022 LiveLaw \(SC\) 507](#)

Constitution of India, 1950; Article 21, 32, 226 - Infringement of Article 21 may be an individual case such as by the State or its functionaries; or by the

Organizers and the State; or by the Organizers themselves have been subject matter of consideration before this Court in a writ petition under Article 32 or before the High Court under Article 226. (Para 22) **Sanjay Gupta v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 368](#) : (2022) 7 SCC 203

Constitution of India, 1950; Article 21, 39A - Code of Criminal Procedure, 1973; Section 304 - Right to a fair trial - Right to fair and speedy trial applies as much to the victim as the accused - While expediting the trial, it is imperative on the Court to see that the due procedure is followed during the course of trial. (Para 33) **Mohd Firoz v. State of Madhya Pradesh**, [2022 LiveLaw \(SC\) 390](#) : AIR 2022 SC 1967 : (2022) 7 SCC 443

Constitution of India, 1950; Articles 21 and 300-A - Right to property had ceased to be a fundamental right. True that it is a human right as also constitutional right. Hence, compulsory acquisition by scrupulous adherence to the procedures authorised by law would not violate Article 300-A. (Para 26) **Haryana State Industrial and Infrastructure Development Corporation v. Deepak Aggarwal**, [2022 LiveLaw \(SC\) 644](#)

Constitution of India, 1950; Article 21 - A woman's right to reproductive choice is an inseparable part of her personal liberty under Article 21 of Constitution. She has a sacrosanct right to bodily integrity. [Para 19] **X v. Principal Secretary, Health & Family Welfare Department**, [2022 LiveLaw \(SC\) 621](#)

Article 22 - Protection against arrest and detention in certain cases

Constitution of India, 1950; Article 22 - Preventive Detention - the powers to be exercised under this law are exceptional powers which have been given to the government for its exercise in an exceptional situation -A law and order situation can be dealt with under the ordinary law of land. (Para 12 & 13) **Shaik Nazneen v. State of Telangana**, [2022 LiveLaw \(SC\) 559](#)

Constitution of India, 1950; Article 22(5) - Right to make representation is a fundamental right of the detenu under Article 22(5) - Refusal to supply the documents requested by the detenu or supply of illegible or blurred copies of the documents relied upon by the detaining authority amounts to violation of Article 22(5) of the Constitution - Whether an opportunity has been afforded to make an effective representation always depends on the facts and circumstances of each case. (Para 17-21) **State of Manipur v. Buyamayum Abdul Hanan @ Anand**, [2022 LiveLaw \(SC\) 862](#)

Article 31B - Validation of certain Acts and Regulations

Constitution of India, 1950; Article 31B - No express prohibition stems from Article 31-B on the powers of the State Legislature to legislate on matters incidental to statutes placed within the Ninth Schedule - State has the power to amend or repeal a statute which has been placed under the Ninth Schedule - Any amendment made to a statute placed under the Ninth Schedule does not get protection under Article 31-B, unless the said amendment is also included

in the Ninth Schedule. (Para 44) ***Pattali Makkal Katchi v. A. Mayilerumperumal***, [2022 LiveLaw \(SC\) 333](#) : AIR 2022 SC 1865

Constitution of India, 1950; Article 31B - Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 - Placing of the 1994 Act under the Ninth Schedule cannot operate as a hurdle for the State to enact legislations on matters ancillary to the 1994 Act. Legislative competence of the State Legislature can only be circumscribed by express prohibition contained in the Constitution itself and Article 31-B does not stipulate any such express prohibition on the legislative powers of the State. (Para 75) ***Pattali Makkal Katchi v. A. Mayilerumperumal***, [2022 LiveLaw \(SC\) 333](#) : AIR 2022 SC 1865

Article 32 - Remedies for enforcement of rights conferred by this Part

Constitution of India, 1950; Article 32 - Clubbing of FIRs - Plea of accused seeking consolidating of all existing and future cases or FIRs/chargesheets to a particular Court or police station - Such direction, if given, would override the provisions of the Code of Criminal Procedure on jurisdictional provisions without notifying the existing as also potential complainants in any manner whatsoever - The alleged cheating and connected offences have occurred at different parts of the country and each victim under the existing provisions of law has a right to prosecute his complaints against the accused through the law enforcement agency under normal circumstances having power to conduct investigation in the particular territory where complaint is lodged - A person who has lost money in, for instance, the State of Telangana cannot be compelled to lodge an F.I.R. only in the Surajpur police station in Uttar Pradesh. We have to consider his inconvenience as well. It is not our opinion that consolidation of F.I.Rs. or cases cannot be directed at all, but such exercise can be undertaken in a given case depending upon the facts and circumstances of such case. Present case does not warrant invoking such powers. ***Anubhav Mittal v. State of Uttar Pradesh***, [2022 LiveLaw \(SC\) 980](#)

Constitution of India, 1950; Article 32 - Bail - Writ petition challenging the order of the Magistrate granting bail - Judge granting bail and Addl. District Judge who refused to interfere with said order impleaded by name - Conduct of the petitioner deprecated - No reason why the petitioner should have filed this writ petition directly in this court. ***Balakram @ Bhura v. State of Uttar Pradesh***, [2022 LiveLaw \(SC\) 215](#)

Constitution of India, 1950; Article 32 - Code of Criminal Procedure, 1973 - Section 482 - Writ Petition, under Article 32 of the Constitution of India, for the relief(s) prayed to quash and set aside the criminal proceedings/FIR ought not to have been filed - It is not expected that the relief which can be considered by the High Court under Section 482 Cr.P.C. to be considered in exercise of powers under Article 32 of the Constitution of India. ***Gayatri Prasad Prajapati v. State of Uttar Pradesh***, [2022 LiveLaw \(SC\) 201](#)

Constitution of India, 1950; Article 32 - Delay by itself cannot be used as a weapon to Veto an action under Article 32 when violation of Fundamental Rights is clearly at stake. (Para 9) ***Sunil Kumar Rai v. State of Bihar***, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Constitution of India, 1950; Article 32 - In a given case, the Court may refuse to entertain a petition under Article 32 of the Constitution is solely a part of self-restraint which is exercised by the Court having regard to various considerations which are germane to the interest of justice as also the appropriateness of the Court to interfere in a particular case. The right under Article 32 of the Constitution remains a Fundamental Right and it is always open to a person complaining of violation of Fundamental Rights to approach this Court. This is subject to the power of the Court to relegate the party to other proceedings. (Para 7) ***Sunil Kumar Rai v. State of Bihar***, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Constitution of India, 1950; Article 32 - Mandamus - A mandamus cannot be issued to the legislature to enact or amend legislation - Writ petition seeking direction to amend the Hindu Succession Act 1956 as recommended by the Law Commission of India in its 204th report - Dismissed. ***S. Venkatesh v. Union of India***, [2022 LiveLaw \(SC\) 752](#)

Constitution of India, 1950; Article 32 - Ordinarily, the Court may insist on a cause of action and therefore, a person must be an aggrieved party to maintain a challenge - A person cannot be said to be aggrieved merely upon the issuance of an instrument or of a law by itself. In fact, the Court may refuse to examine the legality or the validity of a law or order on the basis that he may have no locus standi or that he is not an aggrieved person. No doubt, the Courts have recognized challenge to even a legislation at the hands of a public interest litigant. (Para 9) ***Sunil Kumar Rai v. State of Bihar***, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Constitution of India, 1950; Article 32 - The court has power of grant of compensation in the case of violation of Fundamental Rights. (Para 29) ***Sunil Kumar Rai v. State of Bihar***, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Constitution of India, 1950; Article 32 - Writ petition maintainable on the ground that earlier judgment does not lay down the correct law-though the concept of finality of judgment has to be preserved, at the same time, the principle of *ex debito justitiae* cannot be given a go-bye. If the Court finds that the earlier judgment does not lay down a correct position of law, it is always permissible for this Court to reconsider the same and if necessary, to refer it to a larger Bench. (Para 41) ***HDFC Bank v. Union of India***, [2022 LiveLaw \(SC\) 811](#)

Constitution of India, 1950; Article 32 - Writ Petition seeking directions for expeditious hearing of a petition which is already pending before the High Court - Dismissed - Ignorance of law is no defence - Such kind of petitions seem to

be leading the litigant up the garden path. ***Nepal Das v. High Court of Calcutta***, [2022 LiveLaw \(SC\) 946](#)

Constitution of India, 1950; Article 32 - Writ petition seeking transfer of criminal trial - Murder of former AP Minister YS Vivekananda Reddy from Andhra Pradesh - For transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice may not be done - However the Court has to see whether the apprehension alleged is reasonable or not. The apprehension must not only be imaginary, but must appear to the court to be a reasonable apprehension - Petitioners being daughter and wife of the deceased have a fundamental right to get justice as victim and they have a legitimate expectation that criminal trial is being conducted in a fair and impartial manner and uninfluenced by any extraneous considerations - This is a fit case to transfer the trial and further investigation on larger conspiracy and destruction of evidence to the State other than the State of Andhra Pradesh - Trial Transferred to CBI Special Court at Hyderabad. ***Suneetha Narreddy v. Central Bureau of Investigation***, [2022 LiveLaw \(SC\) 996](#)

Constitution of India, 1950; Article 32 & 226 - An order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency. [Para 45] ***Himanshu Kumar v. State of Chhattisgarh***, [2022 LiveLaw \(SC\) 598](#)

Constitution of India, 1950; Article 32 & 226 - The accused "does not have a say in the matter of appointment of investigating agency". [Para 51, 52] ***Himanshu Kumar v. State of Chhattisgarh***, [2022 LiveLaw \(SC\) 598](#)

Constitution of India, 1950; Article 32 & 226 - The extraordinary power of the Constitutional Courts under Articles 32 and 226 respectively of the Constitution of India qua the issuance of directions to the CBI to conduct investigation must be exercised with great caution although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in the investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights - mere allegations against the police do not constitute a sufficient basis to transfer the investigation [Para 44, 47, 50] ***Himanshu Kumar v. State of Chhattisgarh***, [2022 LiveLaw \(SC\) 598](#)

Constitution of India, 1950; Article 32 & 226 - When CBI enquiry can be directed - CBI inquiry can be directed only in rare and exceptional cases -such prayer should not be granted on mere asking - though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or re-investigation, submission of the charge sheet ipso facto or the pendency of the

trial can, by no means, be a prohibitive impediment - the contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties - one factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies". [Para 44, 47, 50] ***Himanshu Kumar v. State of Chhattisgarh***, [2022 LiveLaw \(SC\) 598](#)

Constitution of India, 1950; Article 32 and 226 - Judicial Review - The scope of judicial review of a decision of the Full Court of a High Court is extremely narrow and we cannot sit in an appeal over the decision of the Full Court of a High Court. (Para 29) ***Ms. X v. Registrar General***, [2022 LiveLaw \(SC\) 150](#) : **2022 (3) SCALE 99**

Constitution of India, 1950; Article 32 and 226 - Judicial Review - The principle of fairness has an important place in the law of judicial review and that unfairness in the purported exercise of power can be such that it is abuse or excess of power. The court should interfere where discretionary power is not exercised reasonably and in good faith. (Para 40) ***Ms. X v. Registrar General***, [2022 LiveLaw \(SC\) 150](#) : **2022 (3) SCALE 99**

Constitution of India, 1950; Article 32, 142 - Clubbing of FIRs - FIRs lodged against accused under various provisions of the Indian Penal Code (Section 420 IPC etc) and other State enactments in various states - Directs clubbing of all the FIRs State-wise, which can proceed together for one trial as far as possible - Multiplicity of the proceedings will not be in the larger public interest. ***Abhishek Singh Chauhan v. Union of India***, [2022 LiveLaw \(SC\) 608](#)

Constitution of India, 1950; Article 32, 226 - Administrative Law - Judicial Review - The action based on the subjective opinion or satisfaction can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion - Scope discussed. (Para 28-37) ***Amarendra Kumar Pandey v. Union of India***, [2022 LiveLaw \(SC\) 600](#) : **2022 (10) SCALE 42**

Constitution of India, 1950; Article 32, 226 - Appeal against High Court Judgment allowing PIL in the matter of a title claim between a private party and the State - Allowed - The State clearly indicated that they do not have any interest in pursuing the ownership of the land in question and have admitted to the title of the appellants - Institution of the public interest litigation was nothing more than an abuse of the process. ***Esteem Properties Pvt. Ltd. v. Chetan Kamble***, [2022 LiveLaw \(SC\) 226](#) : **2022 (4) SCALE 284**

Constitution of India, 1950; Article 32, 226 - Code of Criminal Procedure, 1973; Section 432 - Judicial Review - Remission - The Court has the power to review the decision of the government regarding the acceptance or rejection of an application for remission under Section 432 of the CrPC to determine whether the decision is arbitrary in nature. The Court is empowered to direct the

government to reconsider its decision. (Para 14) **Ram Chander v. State of Chhattisgarh**, [2022 LiveLaw \(SC\) 401](#) : AIR 2022 SC 2017

Constitution of India, 1950; Article 32, 226 - In judicial review proceedings, the Courts are concerned with the decision-making process and not the decision itself. (Para 8.4) **Sushil Kumar v. State of Haryana**, [2022 LiveLaw \(SC\) 64](#) : (2022) 3 SCC 203

Constitution of India, 1950; Article 32, 226 - Judicial Review - The dialogic process of judicial review can provide effective solutions which provide acceptable outcomes which promote harmony. (Para 9) **Surat Parsi Panchayat Board v. Union of India**, [2022 LiveLaw \(SC\) 149](#) : (2022) 4 SCC 534

Constitution of India, 1950; Article 32, 226 - Judicial Review - Policy Matters - Court in the exercise of judicial review cannot direct the executive to frame a particular policy. Yet, the legitimacy of a policy can be assessed on the touchstone of constitutional parameters. Moreover, short of testing the validity of a policy on constitutional parameters, judicial review can certainly extend to requiring the State to take into consideration constitutional values when it frames policies. The State, consistent with the mandate of Part III of the Constitution, must take into consideration constitutional values while designing its policy in a manner which enforces and implement those values. (Para 43) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Constitution of India, 1950; Article 32, 226 - Judicial Review - Unless the Court is satisfied that the decision which has been taken by the authorities is without application of mind to relevant circumstances or was manifestly arbitrary, there would be no reason for the Court to interfere. (Para 13) **Dr. R. Dinesh Kumar Reddy v. Medical Counselling Committee**, [2022 LiveLaw \(SC\) 486](#) : AIR 2022 SC 2306

Constitution of India, 1950; Article 32, 226 - Judicial Review - Constitutional Courts can test constitutionality of legislative instruments (statute and delegated legislations) - The Courts are empowered to test both on procedure as well as substantive nature of these instruments - The test should be based on a combined reading of Articles 14, 19 and 21 of the Constitution - doctrine of manifest arbitrariness. (Para 15.7 -15.8) **Union of India v. Ganpati Dealcom Pvt. Ltd.**, [2022 LiveLaw \(SC\) 700](#) : AIR 2022 SC 4558

Constitution of India, 1950; Article 32, 226 - Judicial Review in Policy Matters - Most questions of policy involve complex considerations of not only technical and economic factors but also require balancing competing interests for which democratic reconciliation rather than adjudication is the best remedy. Further, an increased reliance on judges to solve matters of pure policy diminishes the role of other political organs in resolving contested issues of social and political policy, which require a democratic dialogue. This is not to say that this Court will shy away from setting aside policies that impinge on

constitutional rights. Rather it is to provide a clear-eyed role of the function that a court serves in a democracy. (Para 46) **Indian Ex Servicemen Movement v. Union of India**, [2022 LiveLaw \(SC\) 289](#) : (2022) 7 SCC 323

Constitution of India, 1950; Article 32, 226 - Judicial review of executive decisions based on expert opinion - Courts do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. (Para 21) **Jacob Puliye v. Union of India**, [2022 LiveLaw \(SC\) 439](#) : 2022 (7) SCALE 256

Constitution of India, 1950; Article 32, 226 - Policy decisions - Court would be slow in interfering with matters of policy, especially those connected to public health. There is also no doubt that wide latitude is given to executive opinion which is based on expert advice. However, it does not mean that this Court will not look into cases where violation of fundamental rights is involved and the decision of the executive is manifestly arbitrary or unreasonable. (Para 25) **Jacob Puliye v. Union of India**, [2022 LiveLaw \(SC\) 439](#) : 2022 (7) SCALE 256

Constitution of India, 1950; Article 32, 226 - Public Interest Litigation - Locus Standi - One of the measures to ensure that frivolous or private interests are not masqueraded as genuine claims, is to be cautious when examining locus standi. Generally, PIL, being a summary jurisdiction, has limited powers to examine the bonafides of parties. It is usually on the pleadings that the Court should take a prima facie view on the bonafides of the party. If the Court concludes that the litigation was initiated under the shadow of reasonable suspicion, then the Court may decline to entertain the claims on merits. In these cases, Courts have multiple options – such as dismissing the PIL or appointing an amicus curiae, if the cause espoused in the case requires the immediate attention of the Court. (Para 22) **Esteem Properties Pvt. Ltd. v. Chetan Kamble**, [2022 LiveLaw \(SC\) 226](#) : 2022 (4) SCALE 284

Constitution of India, 1950; Article 32, 226 - Public Interest Litigation - PIL litigation has had a beneficial effect on the Indian jurisprudence and has alleviated the conditions of the citizens in general - Thousands of frivolous petitions are filed, burdening the docket of both this Court and the High Courts - Many claims filed in the Courts are sometimes immature. Noble intentions behind expanding the Court's jurisdiction to accommodate socially relevant issues, in recent decades, have been critically analyzed. (Para 21) **Esteem Properties Pvt. Ltd. v. Chetan Kamble**, [2022 LiveLaw \(SC\) 226](#) : 2022 (4) SCALE 284

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Constitution of India, 1950; Article 32, 226 - Reservation - No mandamus can be issued by the Court directing the State Government to provide for reservation - Even no writ of mandamus can be issued directing the State to collect quantifiable data to justify their action not to provide for reservation- Even if the under-representation of Scheduled Castes and Scheduled Tribes in public services is brought to the notice of the Court, no mandamus can be issued by the Court to the State Government to provide for reservation. (Para 8) **State of Punjab v. Anshika Goyal**, [2022 LiveLaw \(SC\) 84](#) : AIR 2022 SC 918 : (2022) 3 SCC 633

Constitution of India, 1950; Article 32, 226 - Supreme Court allowed writ petition filed by a convict whose application for remission was rejected - Special Judge, Durg directed to provide an opinion on the application for remission afresh accompanied by adequate reasoning. **Ram Chander v. State of Chhattisgarh**, [2022 LiveLaw \(SC\) 401](#) : AIR 2022 SC 2017

Constitution of India, 1950; Article 32, 226 - Writ of Mandamus - Mandamus will not be issued to command Legislature to enact a law, which it is competent to enact - It cannot even issue a Mandamus to the Government for enforcement of a Cabinet decision - When an administrative order confers rights or creates estoppel against the Government, that Mandamus can be issued to enforce the circular. Similarly a Mandamus may be issued to cancel an administrative order, which violates the rules of fairness. **Vivek Krishna v. Union of India**, [2022 LiveLaw \(SC\) 436](#)

Constitution of India, 1950; Article 32, 226 - Writ Of Quo Warranto - The jurisdiction to issue a writ of quo warranto is a limited one, which can only be issued when a person is holding the public office does not fulfill the eligibility criteria prescribed to be appointed to such an office or when the appointment is contrary to the statutory rules. (Para 9, 9.1) **Gambhirdhan K Gadhvi v. State of Gujarat**, [2022 LiveLaw \(SC\) 242](#)

Constitution of India, 1950; Article 32, 226 and 14 - Judicial Review - Arbitrariness - The limited scope of judicial review is only to satisfy that the State action is not vitiated by the vice of arbitrariness and no more - It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate - The attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case. (Para 55) **Ms. X v. Registrar General**, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Constitution of India, 1950; Article 32, 226 and 14 - Policy matters - Policy matters are never interfered with, unless patently arbitrary, unreasonable or violative of Article 14 of the Constitution. **Vivek Krishna v. Union of India**, [2022 LiveLaw \(SC\) 436](#)

Constitution of India, 1950; Articles 32, 226 and 227 - The power of judicial review under Articles 226, 227, and 32 are part of the basic structure of our constitution and the same is inviolable. (Para 12) **Madhya Pradesh High Court Advocates Bar Association v. Union of India**, [2022 LiveLaw \(SC\) 495](#) : AIR 2022 SC 2713

Article 72 - Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

Constitution of India, 1950; Article 72 and 161 - Code of Criminal Procedure, 1973 - Section 432, 433 and 433A - Penal Code, 1860 - Section 45 and 53 - There can be imposition of life imprisonment without any remission till the last breath as a substitution of death sentence. (Para 3) **Ravindra v. Union of India**, [2022 LiveLaw \(SC\) 156](#)

Article 73 - Extent of executive power of the Union.

Constitution of India, 1950; Article 73, 162 - A policy decision taken in terms of the power conferred under Article 73 of the Constitution on the Union and Article 162 on the States is subservient to the recruitment rules that have been framed under a legislative enactment or the rules under the proviso to Article 309 of the Constitution. (Para 29) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Article 129 - Supreme Court to be a court of record

Constitution of India, 1950; Article 129 - Contempt of Courts Act, 1971 - Power of the Supreme Court to punish for contempt is not confined to the procedure under the Contempt of Courts Act - It is within the constitutional power of this Court to consider the contumacious acts of a contemnor and to

punish him/her for the same. (Para 11-14) *In Re Perry Kansangra*, [2022 LiveLaw \(SC\) 905](#)

Article 136 - Special leave to appeal by the Supreme Court

Constitution of India, 1950; Article 136 - A pure question of law may be permitted to be raised in an appeal generated by the grant of special leave. (Para 22) *Bhagyoday Cooperative Bank Ltd. v. Ravindra Balkrishna Patel*, [2022 LiveLaw \(SC\) 1020](#)

Constitution of India, 1950; Article 136 - An order granting bail to an accused, if passed in a casual and cryptic manner, de hors reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising jurisdiction under Article 136 of the Constitution of India. *Kamla Devi v. State of Rajasthan*, [2022 LiveLaw \(SC\) 272](#) : AIR 2022 SC 1524 : (2022) 6 SCC 725

Constitution of India, 1950; Article 136 - Appeal By Special Leave is not a regular appeal - The Court would not interfere with the concurrent findings of fact based on pure appreciation of evidence nor it is the scope of these appeals that this Court would enter into reappraisal of evidence so as to take a view different than that taken by the Trial Court and approved by the High Court. (Para 20) *Pappu v. State of Uttar Pradesh*, [2022 LiveLaw \(SC\) 144](#) : 2022 (3) SCALE 45

Constitution of India, 1950; Article 136 - Appeal by Special Leave - In an appeal by special leave, where the Trial Court and the High Court have concurrently returned the findings of fact after appreciation of evidence, each and every finding of fact cannot be contested nor such an appeal could be dealt with as if another forum for reappraisal of evidence - If the assessment by the Trial Court and the High Court could be said to be vitiated by any error of law or procedure or misreading of evidence or in disregard to the norms of judicial process leading to serious prejudice or injustice, the Court may, and in appropriate cases would, interfere in order to prevent grave or serious miscarriage of justice but, such a course is adopted only in rare and exceptional cases of manifest illegality. (Para 20) *Pappu v. State of Uttar Pradesh*, [2022 LiveLaw \(SC\) 144](#) : 2022 (3) SCALE 45

Constitution of India, 1950; Article 136 - Bail - The application filed by the petitioner having been dismissed as not pressed, the question of interference by this Court in exercise of power under Article 136 of the Constitution of India cannot and does not arise. *Santo Devi v. State of U.P.*, [2022 LiveLaw \(SC\) 133](#)

Constitution of India, 1950; Article 136 - Circumstances under which an appeal would be entertained by the Supreme Court from an order of acquittal passed by a High Court - Summarized. (Para 30) *Rajesh Prasad v. State of Bihar*, [2022 LiveLaw \(SC\) 33](#) : (2022) 3 SCC 471

Constitution of India, 1950; Article 136 - Code of Criminal Procedure, 1973; Section 438 - When an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. What has been observed and said in relation to Section 438 CrPC applies with more vigour to the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India. (Para 21) **Abhishek v. State of Maharashtra**, [2022 LiveLaw \(SC\) 516](#) : AIR 2022 SC 2488 : (2022) 8 SCC 282

Constitution of India, 1950; Article 136 - Code of Criminal Procedure, 1973; Section 394 - Principles of Section 394, Cr.P.C. would apply to appeals filed before the Supreme Court under Article 136 of the Constitution. (Para 14) **Gurmail Singh v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 854](#) : AIR 2022 SC 5258

Constitution of India, 1950; Article 136 - Criminal Appeal - Circumstances under which an appeal would be entertained by Supreme Court from an order of acquittal passed by a High Court summarised. (Para 45 - 46) **Subramanya v. State of Karnataka**, [2022 LiveLaw \(SC\) 887](#) : AIR 2022 SC 5110

Constitution of India, 1950; Article 136 - Criminal Appeal - In cases of concurrent findings of fact this Court will not ordinarily interfere with the said findings, in exceptional circumstances, this Court is empowered to do so. If this Court finds that the appreciation of evidence and findings is vitiated by any error of law or procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse, this Court would not be powerless to reappreciate the evidence. (Para 26) **Khema @ Khem Chandra v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 689](#) : AIR 2022 SC 3765

Constitution of India, 1950; Article 136 - Criminal appeal - The scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all. (Para 8) **State of Rajasthan v. Kistoora Ram**, [2022 LiveLaw \(SC\) 663](#)

Constitution of India, 1950; Article 136 - Criminal Appeal - Though in cases of concurrent findings of fact, this Court will ordinarily not interfere with the said findings, this Court is empowered to do so if in case it finds inter alia, misreading of the evidence or where the conclusions of the High Court are manifestly perverse. (Para 55) **Md. Jabbar Ali v. State of Assam**, [2022 LiveLaw \(SC\) 856](#) : AIR 2022 SC 5420

Constitution of India, 1950; Article 136 - Criminal Appeals - (i) The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances. (ii) It is open to this Court to interfere with the

findings of fact recorded by the High Court if the High Court has acted perversely or otherwise improperly. (iii) It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court. (iv) When the evidence adduced by the prosecution falls short of the test of reliability and acceptability and as such it is highly unsafe to act upon it. (v) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record. (Para 23) **Shahaja @ Shahajan Ismail Mohd. Shaikh v. State of Maharashtra**, [2022 LiveLaw \(SC\) 596](#)

Constitution of India, 1950; Article 136 - Industrial Disputes Act, 1947; Section 25F - Whether a workman was gainfully employed or not is again a question of fact, and the finding of the Tribunal as upheld by the High Court, cannot be interfered with by the Supreme Court in exercising its power under Article 136 of the Constitution of India. (Para 18) **Armed Forces Ex Officers Multi Services Cooperative Society Ltd. v. Rashtriya Mazdoor Sangh (INTUC)**, [2022 LiveLaw \(SC\) 674](#) : AIR 2022 SC 3783 : (2022) 9 SCC 586

Constitution of India, 1950; Article 136 - Principles governing interference in a criminal appeal by special leave. (Para 7) **Bhagwani v. State of Madhya Pradesh**, [2022 LiveLaw \(SC\) 60](#) : AIR 2022 SC 527

Constitution of India, 1950; Article 136 - Scope of interference in criminal appeals by special leave discussed. **Mekala Sivaiah v. State of Andhra Pradesh**, [2022 LiveLaw \(SC\) 604](#) : AIR 2022 SC 3378 : (2022) 8 SCC 253

Constitution of India, 1950; Article 136 - Special Leave Petition against a review order alone is not maintainable. (Para 3) **R.K. Singh vs General Manager**, [2022 LiveLaw \(SC\) 119](#)

Constitution of India, 1950; Article 136 - Special Leave Petition - A mere dismissal of the Special Leave Petition would not mean that the view of the High Court has been approved by this Court. (Para 37) **State of Odisha v. Sulekh Chandra Pradhan**, [2022 LiveLaw \(SC\) 393](#) : AIR 2022 SC 2030 : (2022) 7 SCC 482

Constitution of India, 1950; Article 136 - Special Leave to appeal - Unless it is shown that exceptional and special circumstances exist; that substantial and grave injustice have been done and the case and question present features of sufficient gravity to warrant a review of the decision appealed against, this Court would not exercise its overriding powers under Article 136(1) of the Constitution. The wide discretionary power with which this Court is invested under Article 136 is to be exercised sparingly and in exceptional cases only. (Para 75) **Satish Chandra Yadav v. Union of India**, [2022 LiveLaw \(SC\) 798](#) : 2022 (14) SCALE 270

Constitution of India, 1950; Article 136 - Supreme Court exercising power under Article 136 of the Constitution may not refuse to interfere in a case where three Courts have gone completely wrong. The jurisdiction generated in an appeal under Article 136 is undoubtedly rare and extraordinary. Article 136 of the Constitution only confers a right to obtain special leave in rare and extraordinary cases. (Para 11) **Tedhi Singh v. Narayan Dass Mahant**, [2022 LiveLaw \(SC\) 275](#) : (2022) 6 SCC 735

Constitution of India, 1950; Article 136 - The discretionary jurisdiction under Article 136 should not ordinarily be exercised to interfere with an otherwise just and reasonable order by recourse to hyper technicality upon a narrow, rigid and pedantic interpretation of the guidelines. (Para 55) **State of Telangana v. B. Subba Rayadu**, [2022 LiveLaw \(SC\) 767](#) : AIR 2022 SC 4373

Constitution of India, 1950; Articles 136, 225 and 227 - Even when a direct appeal to the Supreme Court is provided by a statute against the decision of a tribunal, the remedy under Article 226 or 227 before the High Court remains unextinguished. (Para 24) **Madhya Pradesh High Court Advocates Bar Association v. Union of India**, [2022 LiveLaw \(SC\) 495](#) : AIR 2022 SC 2713

Article 139A - Transfer of certain cases

Constitution of India, 1950; Article 139A - Transfer - The likelihood of divergence of views cannot be a ground for transfer - Decision to transfer or not, to the Supreme Court or to one High Court, has to be taken with reference to the given set of facts and circumstances - No hard and fast rule or any structured formula is provided nor appears desirable. (Para 16) **Union of India v. United Planters Association of Southern India**, [2022 LiveLaw \(SC\) 573](#)

Constitution of India, 1950; Article 139A - Transfer Petitions seeking transfer of various writ petitions, pending before different High Courts challenging the constitutional validity of the Payment of Bonus (Amendment) Act, 2015 to the Supreme Court - Dismissed - It appears just and proper that the petitions in the jurisdictional High Courts are decided with reference to their own factual background and the law applicable. **Union of India v. United Planters Association of Southern India**, [2022 LiveLaw \(SC\) 573](#)

Article 141 - Law declared by Supreme Court to be binding on all courts

Constitution of India, 1950; Article 141 - Executive Decisions - When it comes to taking decisions which affect the rights of the citizens, it is the paramount duty of the Executive to enquire carefully about the implications of its decisions. At the very minimum, it must equip itself with the law which is laid down by the Courts and find out whether the decision will occasion a breach of law declared by the highest Court of the land - Respect for the decisions of the Courts holding the field are the very core of Rule of Law. Disregard or neglecting the position at law expounded by the Courts would spell doom for a country which is governed by the Rule of Law. (Para 22, 23) **Sunil Kumar Rai v. State of Bihar**, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Constitution of India, 1950; Article 141 - High Court is not a Court to subordinate to the Supreme Court. However, when the High Court deals with judgments of this Court, which are binding on everyone under Article 141 of the Constitution of India, it is expected that the judgments have to be dealt with due respect. **Ramachandra Barathi @ Sathish Sharma V.K. v. State of Telangana**, [2022 LiveLaw \(SC\) 986](#)

Constitution of India, 1950; Article 141 - Precedent - A subsequent decision, in which the earlier decisions were considered and distinguished by this Court, the subsequent decision of this Court was binding upon the High Court - Not following the binding precedents of this Court by the High Court is contrary to Article 141 of the Constitution of India. (Para 7.3) **Gregory Patrao v. Mangalore Refinery and Petrochemicals Ltd.**, [2022 LiveLaw \(SC\) 602](#) : (2022) 10 SCC 461

Article 142 - Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

Constitution of India, 1950; Article 142 - Affirmed the judgment of the High Court but refused to grant a decree of dissolution on the ground of cruelty - Invoking Article 142 of the Constitution the marriage declared as dissolved. **N. Rajendran v. S. Valli**, [2022 LiveLaw \(SC\) 224](#) : 2022 (3) SCALE 275

Constitution of India, 1950; Article 142 - Court can grant appropriate relief when there is some manifest illegality or where some palpable injustice is shown to have resulted. Such a power can be traced either to Article 142 of the Constitution of India or powers inherent as guardian of the Constitution. (Para 19) **Bhola Kumhar v. State of Chhattisgarh**, [2022 LiveLaw \(SC\) 589](#)

Constitution of India, 1950; Article 142 - In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. **Budhadev Karmaskar v. State of West Bengal**, [2022 LiveLaw \(SC\) 525](#)

Constitution of India, 1950; Article 142 - Irretrievable breakdown of marriage - Consent of the parties is not necessary to declare a marriage dissolved. (Para 29-31) **N. Rajendran v. S. Valli**, [2022 LiveLaw \(SC\) 224](#) : 2022 (3) SCALE 275

Constitution of India, 1950; Article 142 - Irretrievable breakdown of marriage - Affirmed the judgment of the High Court but refused to grant a decree of dissolution on the ground of cruelty - Invoking Article 142 of the Constitution the marriage declared as dissolved. **N. Rajendran v. S. Valli**, [2022 LiveLaw \(SC\) 224](#) : 2022 (3) SCALE 275

Constitution of India, 1950; Article 142 - Powers under Article 142 can be exercised to reduce the amount of interest awarded. [Para 18] **Executive Engineer (R and B) v. Gokul Chandra Kanungo**, [2022 LiveLaw \(SC\) 824](#) : AIR 2022 SC 4857

Constitution of India, 1950; Article 142 - Relief can be moulded by this Court in exercise of its power under Article 142 of the Constitution, notwithstanding the declaration of a statute as unconstitutional. (Para 23) **State of Manipur v. Surjakumar Okram**, [2022 LiveLaw \(SC\) 113](#)

Constitution of India, 1950; Article 142 - The issue whether a Judge sitting singly can pass an order granting decree of divorce to the parties on the basis of the Settlement Agreement in exercise of powers conferred under Article 142 of the Constitution of India referred for adjudication by a larger Bench. (Para 2) **Anamika Varun Rathore v. Varun Pratap Singh Rathore**, [2022 LiveLaw \(SC\) 125](#)

Article 145 - Rules of Court, etc

Constitution of India, 1950; Article 145(3), 239AA(3)(a) and Entry 41 of List II of Seventh Schedule - interpretation of the phrases: "in so far as any such matter is applicable to Union Territories" and "Subject to the provisions of this Constitution" as contained in Article 239AA(3)(a) of the Constitution - Referred for an authoritative pronouncement by a Constitution Bench in terms of Article 145(3) of the Constitution. (Para 8-10) **Govt of NCT Delhi v. Union of India**, [2022 LiveLaw \(SC\) 459](#) : 2022 (7) SCALE 507

Article 161 - Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

Constitution of India, 1950; Article 161 - Grant of Remission - Governor, in the matter of remission of an appellant convicted under Section 302, was bound by the advice of the State Cabinet. **R.P. Ravichandran v. State of Tamil Nadu**, [2022 LiveLaw \(SC\) 954](#)

Constitution of India, 1950; Article 161 - Non-exercise of the power by Governor under Article 161 is not immune from judicial review -Given petitions under Article 161 pertain to the liberty of individuals, inexplicable delay not on account of the prisoners is inexcusable as it contributes to adverse physical conditions and mental distress faced by a prisoner, especially when the State Cabinet has taken a decision to release the prisoner by granting him the benefit of remission / commutation of his sentence. (Para 20) **A.G. Perarivalan v. State**, [2022 LiveLaw \(SC\) 494](#) : AIR 2022 SC 2608

Constitution of India, 1950; Article 161 - The advice of the State Cabinet is binding on the Governor in matters relating to commutation / remission of sentences under Article 161. (Para 19) **A.G. Perarivalan v. State**, [2022 LiveLaw \(SC\) 494](#) : AIR 2022 SC 2608

Article 173 - Qualification for membership of the State Legislature

Constitution of India, 1950; Article 173 (b) - Supreme Court upholds decision of Allahabad High Court to disqualify Azam Khan's son for not meeting age criteria. **Mohd. Abdullah Azam Khan v. Nawab Kazim Ali Khan**, [2022 LiveLaw \(SC\) 925](#)

Article 194 - Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.

Constitution of India, 1950; Article 194 (3), 246 - Schedule VII List II Entry 39 and 40 - Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004 - In *Bimolangshu Roy v. State of Assam* (2018) 14 SCC 408, it was declared that the Legislature of Assam lacked competence to enact it - Need no reconsideration - Entry 40 which relates to salaries and allowances of the Ministers of the State cannot be resorted to, for the purpose of justifying the legislative competence in enacting the Assam Act, 2004. (Para 14) ***State of Manipur v. Surjakumar Okram*, [2022 LiveLaw \(SC\) 113](#)**

Article 226 - Power of High Courts to issue certain writs

Constitution of India, 1950; Article 226 - "Person aggrieved" - Despite adequate opportunity, if a person has not lodged any objection at an appropriate stage and time, he could not be said to have been in fact, grieved. (Para 8.1) ***K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple*, [2022 LiveLaw \(SC\) 182](#) : AIR 2022 SC 1220 : (2022) 5 SCC 710**

Constitution of India, 1950; Article 226 - An order of the Registrar directing the registration of a document is amenable to a challenge under Article 226 of the Constitution - The mere existence of the remedy available before a civil court, under Section 9 of the CPC to avoid the document or to seek a declaration in regard to its invalidity, will not divest a person, who complains that the order passed by Registrar for the registration of the document was contrary to statutory provisions, of the remedy which is available in the exercise of a court's writ jurisdiction under Article 226 of the Constitution. (Para 30) ***Veena Singh v. District Registrar / Additional Collector*, [2022 LiveLaw \(SC\) 462](#) : (2022) 7 SCC 1**

Constitution of India, 1950; Article 226 - Appeal against Bombay HC judgments dismissing writ petitions reopening of the assessment/re-assessment proceedings under Section 148 of the Income Tax Act - Allowed - Orders are bereft of reasoning as diverse grounds were urged/raised by the parties which ought to have been examined by the High Court in the first place and a clear finding was required to be recorded upon analysing the relevant documents - Remanded. ***Vishal Ashwin Patel v. Assistant Commissioner*, [2022 LiveLaw \(SC\) 322](#) : 2022 (5) SCALE 392**

Constitution of India, 1950; Article 226 - Appeal against high Court set aside the orders passed by authorities refusing to confirm auction in favour of highest bidder - Allowed - The High Court was not supposed to interfere in the opinion of the executive who were dealing on the subject, unless the decision is totally arbitrary or unreasonable, and it was not open for the High Court to sit like a Court of Appeal over the decision of the competent authority and particularly in the matters where the authority competent of floating the tender is the best judge of its requirements, therefore, the interference otherwise has to be very

minimal. ***State of Punjab v. Mehar Din***, [2022 LiveLaw \(SC\) 235](#) : AIR 2022 SC 1413 : (2022) 5 SCC 648

Constitution of India, 1950; Article 226 - Appeal against Karnataka High Court judgment which set aside the judgment of the Karnataka Administrative Tribunal directing the compulsory retirement of the respondent employee from service following a disciplinary enquiry on charges of bribery - Allowed - High Court exceeded its jurisdiction under Article 226 and trespassed upon a domain which falls within the disciplinary jurisdiction of the employee - The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding. ***State of Karnataka v. Umesh***, [2022 LiveLaw \(SC\) 304](#) : (2022) 6 SCC 563

Constitution of India, 1950; Article 226 - Appeal against Uttarakhand HC order which disposed a writ petition filed without deciding it on merits - Allowed and remanded - The order is bereft of reasoning as diverse grounds were urged/raised by the parties which ought to have been examined by the High Court in the first place and a clear finding was required to be recorded upon analysing the relevant documents. ***State of Uttarakhand v. Mayan Pal Singh Verma***, [2022 LiveLaw \(SC\) 388](#) : AIR 2022 SC 1916

Constitution of India, 1950; Article 226 - CISF Rules, 2001; Rule 52 - Appellate power under Rule 52 of the CISF Rules, 2001, cannot be equated with power of judicial review exercised by constitutional courts. (Para 9) ***Union of India v. Managobinda Samantaray***, [2022 LiveLaw \(SC\) 244](#) : 2022 (4) SCALE 667

Constitution of India, 1950; Article 226 - CISF Rules, 2001; Rule 52 - Appellate power under Rule 52 of the CISF Rules, 2001, cannot be equated with power of judicial review exercised by constitutional courts. (Para 9) ***Union of India v. Managobinda Samantaray***, [2022 LiveLaw \(SC\) 244](#) : 2022 (4) SCALE 667

Constitution of India, 1950; Article 226 - Code of Criminal Procedure, 1973; Section 432 - Judicial Review - Appeal against the High Court judgment which allowed the request for remission itself on the premise that it is covered by the policy - It was not within the domain of judicial review for the learned judge to have himself exercised the power of remission - Though we do not find the exercise of power in the impugned judgment in accordance with law, we would not like to interfere under Article 136 of the Constitution of India insofar as now the respondent having been given the benefit of remission, it would not be appropriate to put him back in custody. ***State of Haryana v. Daya Nand***, [2022 LiveLaw \(SC\) 948](#)

Constitution of India, 1950; Article 226 - Company Secretaries Regulations, 1982; Regulation 114(4) - Calcutta High Court set aside election of office bearers of EIRC of ICSI allowing a writ petition filed by a person who did not contest the election - In view of Regulation 114(4) of the Regulations,

the High Court ought not to have entertained the writ petition challenging the validity of the election. Even otherwise, even as per Regulation 114(4), the election can be challenged by the candidate concerned - The High Court erred in entertaining the writ petition challenging the election at the instance of the respondent no.1 who even did not contest the election of the office bearers. ***Institute of Company Secretaries of India v. Biman Debnath*, [2022 LiveLaw \(SC\) 945](#)**

Constitution of India, 1950; Article 226 - Disciplinary Proceedings - Scope of judicial review and interference of the courts in the matter of disciplinary proceedings and on the test of proportionality discussed. ***Anil Kumar Upadhyay v. Director General, SSB*, [2022 LiveLaw \(SC\) 392](#) : AIR 2022 SC 2008**

Constitution of India, 1950; Article 226 - Disciplinary Proceedings - Courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere - Being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in *Union of India vs. P. Gunasekaran* ((2015) 2 SCC 610). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor. (Para 15-22) ***Union of India v. Subrata Nath*, [2022 LiveLaw \(SC\) 998](#)**

Constitution of India, 1950; Article 226 - Examining Constitutional validity of legislation - There is a presumption about the constitutionality of the law made by the Parliament/State Legislature - High Court should not deal with the question of validity in a cryptic/casual manner. (Para 14-16) ***State of Karnataka v. B.R. Muralidhar*, [2022 LiveLaw \(SC\) 637](#)**

Constitution of India, 1950; Article 226 - Execution of Arbitration awards against NHA1 - If the High Courts convert itself to the Executing Court and

entertain the writ petitions under Article 226 of the Constitution of India to execute the award passed by the Arbitral Tribunal/Court, the High Courts would be flooded with the writ petitions to execute awards passed by the learned Arbitrator/Arbitral Tribunal/Arbitral Court - We disapprove the entertaining of such writ petitions under Article 226 of the Constitution of India to execute the award passed by the learned Arbitral Tribunal/Court, without relegating the judgment creditor in whose favour the award is passed to file an execution proceeding before the competent Executing Court. (Para 6-7) **National Highways Authority of India v. Sheetal Jaidev Vade**, [2022 LiveLaw \(SC\) 705](#) : AIR 2022 SC 3980

Constitution of India, 1950; Article 226 - Habeas Corpus - Child Custody - Parens patriae jurisdiction - Even while considering Habeas Corpus writ petition qua a minor, in a given case, the High Courts may direct for return of the child or decline to change the custody of the child taking into account the attending facts and circumstances. (Para 9) **Rohith Thamma Gowda v. State of Karnataka**, [2022 LiveLaw \(SC\) 643](#) : AIR 2022 SC 3511

Constitution of India, 1950; Article 226 - Habeas Corpus Petition - Custody Petition - The issue of custody of a minor, whether in a petition seeking habeas corpus or in a custody petition, has to be decided on the touchstone of the principle that the welfare of a minor is of paramount consideration. The Courts, in such proceedings, cannot decide where the parents should reside as it will affect the right to privacy of the parents - A writ Court while dealing with the issue of habeas corpus cannot direct a parent to leave India and to go abroad with the child. If such orders are passed against the wishes of a parent, it will offend her/his right to privacy. A parent has to be given an option to go abroad with the child. It ultimately depends on the parent concerned to decide and opt for giving a company to the minor child for the sake of the welfare of the child. It will all depend on the priorities of the concerned parent. (Para 33) **Vasudha Sethi v. Kiran V. Bhaskar**, [2022 LiveLaw \(SC\) 48](#) : AIR 2022 SC 476

Constitution of India, 1950; Article 226 - High Court cannot issue direction to the State to form a new policy. **Krishan Lal v. Vini Mahajan Secretary**, [2022 LiveLaw \(SC\) 68](#)

Constitution of India, 1950; Article 226 - High Court has exceeded its jurisdiction while issuing a writ of mandamus directing the State to provide a particular percentage of reservation for sports persons, namely, in the present case, 3% reservation instead of 1% provided by the State Government, while exercising powers under Article 226 of the Constitution of India. (Para 9) **State of Punjab v. Anshika Goyal**, [2022 LiveLaw \(SC\) 84](#) : AIR 2022 SC 918 : (2022) 3 SCC 633

Constitution of India, 1950; Article 226 - High Court ought not to have granted further extension de hors the sanctioned OTS Scheme exercising the powers under Article 226 of the Constitution of India - Directing the Bank to reschedule the payment under OTS would tantamount to modification of the contract which can be done by mutual consent under Section 62 of the Indian Contract Act.

State Bank of India v. Arvindra Electronics Pvt. Ltd., [2022 LiveLaw \(SC\) 908](#) : AIR 2022 SC 5517

Constitution of India, 1950; Article 226 - Income Tax Act, 1961; Section 132 - Principles in exercising the writ jurisdiction in the matter of search and seizure under Section 132 restated. (Para 33) **Principal Director of Income Tax (Investigation) v. Laljibhai KanjiBhai Mandalia, [2022 LiveLaw \(SC\) 592](#) : AIR 2022 SC 3304**

Constitution of India, 1950; Article 226 - Judicial interference in tender conditions - As per the settled position of law, the terms and conditions of the Invitation to Tender are within the domain of the tenderer/tender making authority and are not open to judicial scrutiny, unless they are arbitrary, discriminatory or mala fide. As per the settled position of law, the terms of the Invitation to Tender are not open to judicial scrutiny, the same being in the realm of contract. The Government/tenderer/tender making authority must have a free hand in setting the terms of the tender. (Para 6) **Airports Authority of India v. Centre for Aviation Policy, [2022 LiveLaw \(SC\) 814](#) : AIR 2022 SC 4749**

Constitution of India, 1950; Article 226 - Judicial review is not akin to adjudication of the case on merits, and adequacy or inadequacy of evidence, unless the court finds that the findings recorded are based on no evidence, perverse or are legally untenable in the sense that it fails to pass the muster of the Wednesbury principles. Power of the High Court under Articles 226 and 227 of the Constitution of India enables exercise of judicial review to correct errors of law, including procedural law, leading to manifest injustice or violation of principles of fairness, without normally venturing into reappreciation of evidence. **CISF v. Santosh Kumar Pandey, [2022 LiveLaw \(SC\) 1036](#)**

Constitution of India, 1950; Article 226 - Judicial Review - Contractual Matters - The scope of judicial review in such foreign funded contracts should be far much less than the ordinary Government funded contracts funded from Consolidated Fund of India. The scope of judicial review in such foreign funded contracts/projects would be restricted and minimal. In such foreign funded contracts, the only ground for judicial review ought to be on a limited aspect, i.e., the action of the executing authority does not suffer from favouritism or nepotism and based on the grounds which have been concealed from the foreign financing authority, if disclosed, would have persuaded the financing authority to cancel the contract. (Para 11) **National High Speed Rail Corporation Ltd. v. Montecarlo Ltd; [2022 LiveLaw \(SC\) 108](#) : AIR 2022 SC 866 : (2022) 6 SCC 401**

Constitution of India, 1950; Article 226 - Judicial Review - Contractual Matters - Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, the High Courts should be extremely careful and circumspect in exercise of its discretion

while entertaining such petitions and/or while granting stay in such matters. Even in a case where the High Court is of the prima facie opinion that the decision is as such perverse and/or arbitrary and/or suffers from mala fides and/or favouritism, while entertaining such writ petition and/or pass any appropriate interim order, High Court may put to the writ petitioner's notice that in case the petitioner loses and there is a delay in execution of the project due to such proceedings initiated by him/it, he/they may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him/it. (Para 15) **National High Speed Rail Corporation Ltd. v. Montecarlo Ltd;** [2022 LiveLaw \(SC\) 108](#) : AIR 2022 SC 866 : (2022) 6 SCC 401

Constitution of India, 1950; Article 226 - Judicial Review - Contractual Matters - Whether the Bid submitted by a Bidder suffers from any material deviation and/or any substantial deviation should be left to the author of the Bid document and normally, the High Courts, in exercise of the powers under Article 226 of the Constitution of India, should not interfere with the same unless such a decision is found to be mala fide and/or there are allegations of favouritism and/or such a decision is arbitrary. (Para 10) **National High Speed Rail Corporation Ltd. v. Montecarlo Ltd;** [2022 LiveLaw \(SC\) 108](#) : AIR 2022 SC 866 : (2022) 6 SCC 401

Constitution of India, 1950; Article 226 - Judicial Review - Disciplinary Proceedings - The power of judicial review in the matter of disciplinary proceedings is extremely limited. It is circumscribed by the limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. The power of judicial review is an evaluation of the decision-making process and not of the merits of the decision itself. (Para 11) **Col. Anil Kumar Gupta v. Union of India,** [2022 LiveLaw \(SC\) 931](#) : AIR 2022 SC 5626

Constitution of India, 1950; Article 226 - Judicial Review - Interpretation of Tender- The author of the tender document is taken to be the best person to understand and appreciate its requirements- If its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint- The technical evaluation or comparison by the Court is impermissible. (Para 17) **Agmatel India Pvt. Ltd. v. Resoursys Telecom,** [2022 LiveLaw \(SC\) 105](#) : AIR 2022 SC 1103 : (2022) 5 SCC 362

Constitution of India, 1950; Article 226 - Judicial Review - Interpretation of Tender- Even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the Constitutional Court, that, by itself, would not be a reason for interfering with the interpretation given. (Para 17, 20) **Agmatel India Pvt. Ltd. v. Resoursys Telecom,** [2022 LiveLaw \(SC\) 105](#) : AIR 2022 SC 1103 : (2022) 5 SCC 362

Constitution of India, 1950; Article 226 - Judicial Review - Interpretation of Tender - The process of interpretation of terms and conditions of contract is

essentially left to the author of the tender document and the occasion for interference by the Court would arise only if the questioned decision fails on the salutary tests of irrationality or unreasonableness or bias or procedural impropriety. (Para 24) **Agmatel India Pvt. Ltd. v. Resoursys Telecom**, [2022 LiveLaw \(SC\) 105](#) : AIR 2022 SC 1103 : (2022) 5 SCC 362

Constitution of India, 1950; Article 226 - Judicial Review- Disciplinary Proceedings - Where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are mala fide, or where the findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances, the remedies under Article 226 of the Constitution are available, and intervention, warranted. (Para 19) **United Bank of India V. Biswanath Bhattacharjee**, [2022 LiveLaw \(SC\) 109](#) : 2022 (2) SCALE 644

Constitution of India, 1950; Article 226 - Judicial Review- Disciplinary Proceedings - For any court to ascertain if any findings were beyond the record (i.e., no evidence) or based on any irrelevant or extraneous factors, or by ignoring material evidence, necessarily some amount of scrutiny is necessary. A finding of “no evidence” or perversity, cannot be rendered sans such basic scrutiny of the materials, and the findings of the disciplinary authority. However, the margin of appreciation of the court under Article 226 of the Constitution would be different; it is not appellate in character. (Para 19) **United Bank of India V. Biswanath Bhattacharjee**, [2022 LiveLaw \(SC\) 109](#) : 2022 (2) SCALE 644

Constitution of India, 1950; Article 226 - Judicial review in contractual / commercial / tenders / public auction matters - Superior Courts should not interfere in the matters of tenders, unless substantial public interest was involved or the transaction was malafide - Plausible decisions need not be overturned - Latitude ought to be granted to the State in exercise of its executive power. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for Courts to assume jurisdiction and remedy such ills - Opinion of the executive who were dealing on the subject, not to be interfered with unless the decision is totally arbitrary or unreasonable. (Para 19 -26) **State of Punjab v. Mehar Din**, [2022 LiveLaw \(SC\) 235](#) : AIR 2022 SC 1413 : (2022) 5 SCC 648

Constitution of India, 1950; Article 226 - Judicial Review in Contractual matters - Even if it is a non-statutory contract, there is no absolute bar in dealing with a cause of action based on acts or omission by the State or its instrumentalities even during the course of the working of a contract - A monetary claim arising from a contract may be successfully urged by a writ applicant but the premise would not be a mere breach of contract. Being part of public law, the case must proceed on the basis of there being arbitrariness vitiating the decision. The matter should not fall within a genuinely disputed question of facts scenario. The dispute which must be capable of being resolved on a proper understanding of documents which are not in dispute may furnish

a cause of action in a writ court. - Principles summarized. (Para 78, 54) **MP Power Management Company Ltd. v. Sky Power Southeast Solar India Pvt. Ltd.**, [2022 LiveLaw \(SC\) 966](#)

Constitution of India, 1950; Article 226 - Judicial Review of Disciplinary Proceedings - Limited jurisdiction - The High Court is not required to reappreciate the evidence and/or interfere with the findings recorded by the inquiry officer accepted by the disciplinary authority. (Para 4) **Umesh Kumar Pahwa v. Uttarakhand Gramin Bank**, [2022 LiveLaw \(SC\) 155](#) : AIR 2022 SC 1041 : (2022) 4 SCC 385

Constitution of India, 1950; Article 226 - Judicial Review Of Disciplinary Proceedings - Disciplinary Proceedings - The courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate - Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved - While exercising the power of judicial review, the court do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decision are also disturbed when it is found to be ailing with perversity. (Para 9) **Union of India v. Managobinda Samantaray**, [2022 LiveLaw \(SC\) 244](#) : 2022 (4) SCALE 667

Constitution of India, 1950; Article 226 - Judicial Review of Disciplinary Proceedings - The courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate - Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved - While exercising the power of judicial review, the court do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decision are also disturbed when it is found to be ailing with perversity. (Para 9) **Union of India v. Managobinda Samantaray**, [2022 LiveLaw \(SC\) 244](#) : 2022 (4) SCALE 667

Constitution of India, 1950; Article 226 - Judicial Review of Disciplinary Proceedings - In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is disproportionate to the proven misconduct. (Para 17) **State of Karnataka v.**

Umesh, [2022 LiveLaw \(SC\) 304](#) : (2022) 6 SCC 563

Constitution of India, 1950; Article 226 - Judicial review of policy decisions

- Courts would be slow in interfering in the policy matters, unless the policy is found to be palpably discriminatory and arbitrary. This court would not interfere with the policy decision when a State is in a position to point out that there is intelligible differentia in application of policy and that such intelligible differentia has a nexus with the object sought to be achieved. (Para 16) **Satya Dev Bhagaur v. State of Rajasthan, [2022 LiveLaw \(SC\) 177](#) : (2022) 5 SCC 314**

Constitution of India, 1950; Article 226 - Maharashtra Value Added Tax, 2002 - Central Sales Tax Act, 1956 - The Statute provide for the right of appeal against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision before the Tribunal - The High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act - The question is not about the maintainability of the writ petition under Article 226 of the Constitution, but about the entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. (Para 6-8) **State of Maharashtra v. Greatship (India) Ltd., [2022 LiveLaw \(SC\) 784](#) : AIR 2022 SC 4408**

Constitution of India, 1950; Article 226 - Mandamus - A writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion malafidely or on an irrelevant consideration. **Hero Motocorp Ltd. v. Union of India, [2022 LiveLaw \(SC\) 852](#) : AIR 2022 SC 5572**

Constitution of India, 1950; Article 226 - Natural justice - Natural justice is an important facet of a judicial review. Providing effective natural justice to affected parties, before a decision is taken, is necessary to maintain the Rule of law. Natural justice is usually discussed in the context of administrative actions, wherein procedural requirement of a fair hearing is read in to ensure that no injustice is caused. When it comes to judicial review, the natural justice principle is built into the rules and procedures of the Court, which are expected to be followed meticulously to ensure that highest standards of fairness are afforded to the parties. (Para 36) **Future Coupons Pvt. Ltd. v. Amazon.com NV Investment Holdings LLC, [2022 LiveLaw \(SC\) 114](#) : (2022) 6 SCC 121**

Constitution of India, 1950; Article 226 - Practice of calling for answer scripts/answer sheets and thereafter to order re-evaluation and that too in absence of any specific provision in the relevant rules for re-evaluation and that too while exercising powers under Article 226 of the Constitution of India is disapproved - In absence of any regulation for re-evaluation of the answer scripts, the High Court is not justified in ordering re-evaluation of the answer scripts - Sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation. (Para 9-10) **Dr. NTR University of Health Sciences v. Dr. Yerra Trinadh, [2022 LiveLaw \(SC\) 909](#) : AIR 2022 SC 5523**

Constitution of India, 1950; Article 226 - Practice of calling for answer scripts/answer sheets and thereafter to order re-evaluation and that too in absence of any specific provision in the relevant rules for re-evaluation and that too while exercising powers under Article 226 of the Constitution of India is disapproved - In absence of any regulation for re-evaluation of the answer scripts, the High Court is not justified in ordering re-evaluation of the answer scripts - Sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation. (Para 9-10) **Dr. NTR University of Health Sciences v. Dr. Yerra Trinadh, [2022 LiveLaw \(SC\) 909](#) : AIR 2022 SC 5523**

Constitution of India, 1950; Article 226 - Public Interest Litigation - High Courts to be more discerning / vigilant and/or cautious while entertaining writ petitions apparently filed in public interest - (1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations; (2) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL; (3) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL; (4) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition; (5) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation; and (6) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations. (Para 8.12) **K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple, 2022 LiveLaw (SC) 182 : AIR 2022 SC 1220 : (2022) 5 SCC 710**

Constitution of India, 1950; Article 226 - Public Interest Litigation - Bona fide of the petitioner who files the PIL is an extremely relevant consideration and must be examined by the Court at the very threshold itself and this has to be done irrespective of the seemingly high public cause being espoused. (Para 12) **State of Jharkhand v. Shiv Shankar Sharma, 2022 LiveLaw (SC) 924**

Constitution of India, 1950; Article 226 - Public Interest Litigation - Mandamus - The fundamental requirement for the issuance of a writ of mandamus is that the petitioner must have sought such a relief before the appropriate authority and only when it is denied the Court can be approached for a writ a mandamus. This principle cannot be ignored merely because this Court is dealing with a Public Interest Litigation. (Para 10) **State of Jharkhand v. Shiv Shankar Sharma, 2022 LiveLaw (SC) 924**

Constitution of India, 1950; Article 226 - Public Interest Litigation - PILs filed in the Jharkhand HC seeking probe against Chief Minister of Jharkhand Hemant Soren - Appeal against HC order that held PILs maintainable - Allowed - We are not for a moment saying that people who occupy high offices should not be investigated, but for a High Court to take cognizance of the matter on these generalized submissions which do not even make prima facie satisfaction of the Court, is nothing but an abuse of the process of the Court - It was not proper for the High Court to entertain a PIL which is based on mere allegations and half baked truth that too at the hands of a person who has not been able to fully satisfy his credentials and has come to the Court with unclean hands. **State of Jharkhand v. Shiv Shankar Sharma, 2022 LiveLaw (SC) 924**

Constitution of India, 1950; Article 226 - Quo Warranto - SLP against Madras HC judgment dismissing petition seeking a writ of quo warranto against Vice Presidents of ITAT appointed in January 2020 alleging that procedure for

selection was contrary to the decision in *Roger Mathew vs South Indian Bank Limited* (2020) 6 SCC 1 - Dismissed - No recourse to the writ jurisdiction of the High Court to seek a writ of quo warranto could have been taken - There is no challenge to the eligibility - We have not entered upon the correctness of the reasoning of the High Court - Petitioner granted liberty to intervene in the pending proceedings in the petition instituted by the Madras Bar Association. ***Aniruthan v. Union of India*, [2022 LiveLaw \(SC\) 960](#)**

Constitution of India, 1950; Article 226 - Quo Warranto - The writ of quo warranto can be issued where an appointment has not been made in accordance with the law. (Para 28) ***State of West Bengal v. Anindya Sundar Das*, [2022 LiveLaw \(SC\) 831](#) : AIR 2022 SC 4902**

Constitution of India, 1950; Article 226 - Regularization - High Court directed the State to consider the cases of some temporary employees for regularisation sympathetically and if necessary, by creating supernumerary posts - Such a direction is wholly without jurisdiction - No such order of absorption and/or regularisation even if required for creating supernumerary posts and not to treat the same as precedent could have been passed by the High Court in exercise of powers under Article 226 of the Constitution of India. (Para 6, 10) ***State of Gujarat v. R.J. Pathan*, [2022 LiveLaw \(SC\) 313](#) : (2022) 5 SCC 394**

Constitution of India, 1950; Article 226 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Section 18 - Without exhausting the statutory remedy of appeal under Section 18 of SARFAESI Act, the borrowers approached the High Court by filing the writ application - Practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy deprecated. (Para 34) ***Varimadugu Obi Reddy v. B. Sreenivasulu*, [2022 LiveLaw \(SC\) 967](#)**

Constitution of India, 1950; Article 226 - Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ; Section 13(2) - A writ petition against the private financial institution – ARC – against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable - The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. (Para 12) ***Phoenix ARC v. Vishwa Bharati Vidya Mandir*, [2022 LiveLaw \(SC\) 45](#) : AIR 2022 SC 1045 : (2022) 5 SCC 345**

Constitution of India, 1950; Article 226 - Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ; Section 13(2) - The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers- The High Court to be extremely careful and circumspect in exercising its discretion while granting stay in such matters. (Para 13.2) **Phoenix ARC v. Vishwa Bharati Vidya Mandir, 2022 LiveLaw (SC) 45 : AIR 2022 SC 1045 : (2022) 5 SCC 345**

Constitution of India, 1950; Article 226 - SLP challenging High Court order dismissing the writ petition challenging a tender condition - Dismissed - The clause cannot be said to be arbitrary, mala fide and/or tailor made and the same shall be applicable to all the bidders/tenderers and there is justification also shown providing such a clause. **Balaji Ventures Pvt. Ltd. v. Maharashtra State Power Generation Company Ltd., 2022 LiveLaw (SC) 295**

Constitution of India, 1950; Article 226 - Specific Performance - No writ of mandamus could have been issued virtually granting the writ for specific performance of the contract/work order in a writ petition under Article 226 of the Constitution of India. (Para 8) **Municipal Corporation Gondia v. Divi Works & Suppliers HUF, 2022 LiveLaw (SC) 225 : 2022 (4) SCALE 262**

Constitution of India, 1950; Article 226 - Specific Relief Act, 1963; Section 41(ha) - In view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court. (Para 19-21) **N.G. Projects Ltd. v. Vinod Kumar Jain, 2022 LiveLaw (SC) 302 : AIR 2022 SC 1531 : (2022) 6 SCC 127**

Constitution of India, 1950; Article 226 - Tender - High Court dismissed WPs challenging acceptance of tender following observations made in M/s N. G. Projects Ltd. Vs. M/s Vinod Kumar Jain and others, **2022 LiveLaw (SC) 302** - Appeal allowed - High court has totally misread the Judgment - Respondent was declared eligible in a flagrant violation of principles of natural justice and all fairness in the process of determining the eligibility of the tenderers. **Jai Bholenath Construction v. Chief Executive Officer, Zilla Parishad Nanded, 2022 LiveLaw (SC) 542**

Constitution of India, 1950; Article 226 - Tender condition of Airport Authority of India challenged by NGO - Supreme Court says NGO had no locus standi to challenge as none of the bidders challenged the conditions. (Para 5) **Airports Authority of India v. Centre for Aviation Policy, 2022 LiveLaw (SC) 814 : AIR 2022 SC 4749**

Constitution of India, 1950; Article 226 - Tender Jurisdiction - Interim order - disapprove and deprecate the grant of interim relief virtually allowing the writ petitions at an interim stage - If by way of interim relief, a tenderer/petitioner is permitted to participate in the tender process without insisting upon the tender clause which was under challenge and subsequently the writ petition is dismissed what would be the consequences. **Balaji Ventures Pvt. Ltd. v.**

Maharashtra State Power Generation Company Ltd., [2022 LiveLaw \(SC\) 295](#)

Constitution of India, 1950; Article 226 - Tender Jurisdiction - Interim order - disapprove and deprecate the grant of interim relief virtually allowing the writ petitions at an interim stage - If by way of interim relief, a tenderer/petitioner is permitted to participate in the tender process without insisting upon the tender clause which was under challenge and subsequently the writ petition is dismissed what would be the consequences. **Balaji Ventures Pvt. Ltd. v. Maharashtra State Power Generation Company Ltd., [2022 LiveLaw \(SC\) 295](#)**

Constitution of India, 1950; Article 226 - The appellant was serving as a Branch Officer of a Bank. A complaint was made against him by one borrower of the Bank alleging that he had sanctioned the limit of loan of Rs.1,50,000/- which was later on reduced to Rs.75,000/- when the borrower refused to give bribe demanded by him. The disciplinary proceedings were initiated against him. The inquiry officer held that most of the charges were proved. The disciplinary authority/Chairman of the Bank passed an order of removal of the appellant from service. The Appellate Authority dismissed the appeal filed by him. The Uttarakhand High Court also dismissed the writ petition confirming the order of removal from service. Partly allowing the appeal, the Supreme Court held that removal of service can be said to be disproportionate to the charges and misconduct held to be proved. Therefore, the High Court order was modified to the extent substituting the punishment from that of removal of service to that of compulsory retirement. **Umesh Kumar Pahwa v. Uttarakhand Gramin Bank, [2022 LiveLaw \(SC\) 155](#) : AIR 2022 SC 1041 : (2022) 4 SCC 385**

Constitution of India, 1950; Article 226 - The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser, or logical. (Para 7) **Airports Authority of India v. Centre for Aviation Policy, [2022 LiveLaw \(SC\) 814](#) : AIR 2022 SC 4749**

Constitution of India, 1950; Article 226 - The High Court's writ jurisdiction under Article 226 extends to protecting the personal liberty persons who have demonstrated that the instrumentality of the State is being weaponized for using the force of criminal law. (Para 16) **Mallada K. Sri Ram v. State of Telangana, [2022 LiveLaw \(SC\) 358](#) : 2022 (6) SCALE 50**

Constitution of India, 1950; Article 226 - The laws of limitation do not apply to exercise of jurisdiction under Article 226 - Relief under Article 226 being discretionary, the Courts might in their discretion refuse to entertain the Writ Petition, where there is gross delay on the part of the Writ Petitioner, particularly, where the relief sought would, if granted, unsettle things, which are already settled. (Para 26) **State of Rajasthan v. O.P. Gupta, [2022 LiveLaw \(SC\) 785](#) : AIR 2022 SC 4538**

Constitution of India, 1950; Article 226 - The State Government, as a juristic entity, has a right to protect its property through the writ court, just as any individual could have invoked the jurisdiction of the High Court. (Para 125) **State of Andhra Pradesh v. A.P. State Wakf Board**, [2022 LiveLaw \(SC\) 136](#)

Constitution of India, 1950; Article 226 - The terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty. (Para 69) **St. Mary's Educational institute v. Rajendra Prasad Bhargava**, [2022 LiveLaw \(SC\) 708](#)

Constitution of India, 1950; Article 226 - When a number of issues/grounds were raised in the writ petitions, it is the duty cast upon the court to deal with the same and thereafter, to pass a reasoned order. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the Courts to give such relief in appropriate cases and the Courts would be failing to perform their duty if relief is refused without adequate reasons. (Para 2.1) **Vishal Ashwin Patel v. Assistant Commissioner**, [2022 LiveLaw \(SC\) 322](#) : **2022 (5) SCALE 392**

Constitution of India, 1950; Article 226 - When a number of issues/grounds were raised in the writ petition, there is a duty cast upon the High Court to deal with the same and thereafter, to pass a reasoned order. **State of Uttarakhand v. Mayan Pal Singh Verma**, [2022 LiveLaw \(SC\) 388](#) : **AIR 2022 SC 1916**

Constitution of India, 1950; Article 226 - When a remedy under the statute is available filing of a writ petition under Article 226 of the Constitution is to be discouraged by the High Court. **Kotak Mahindra Bank v Dilip Bhosale**, [2022 LiveLaw \(SC\) 545](#)

Constitution of India, 1950; Article 226 - Where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law. (Para 53) **Asset Reconstruction Company v. SP Velayutham**, [2022 LiveLaw \(SC\) 445](#) : **(2022) 8 SCC 210**

Constitution of India, 1950; Article 226 - Whether the dictum of automatic vacation of stay in Asian Resurfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation (2018) 16 SCC 299 applicable to an interim order of stay passed by High Court in writ proceedings (writ appeal) - The order of stay granted by the Division Bench in the High Court cannot be treated as having no force - This Court cannot be understood as having

intended to apply the principle to the fact situation which is presented in this case. ***Asian Resurfacing of Road Agency v. Central Bureau of Investigation***, [2022 LiveLaw \(SC\) 440](#)

Constitution of India, 1950; Article 226 - Writ Appeal - Appeal against High Court judgment which dismissed special (writ) appeal without independent reasoning - Allowed - This is not the manner in which the Division Bench should have decided and disposed of the writ appeal. Thus, the Division Bench of the High Court has not exercised the appellate jurisdiction vested in it - Remanded for fresh consideration. ***State of Uttar Pradesh v. Prem Kumar Shukla***, [2022 LiveLaw \(SC\) 249](#)

Constitution of India, 1950; Article 226 - Writ Appeal - Appeal against High Court judgment which dismissed special (writ) appeal without independent reasoning - Allowed - This is not the manner in which the Division Bench should have decided and disposed of the writ appeal. Thus, the Division Bench of the High Court has not exercised the appellate jurisdiction vested in it - Remanded for fresh consideration. ***State of Uttar Pradesh v. Prem Kumar Shukla***, [2022 LiveLaw \(SC\) 249](#)

Constitution of India, 1950; Article 226 - Writ Appeal - There must be an independent application of mind and at least some independent reasoning to be given by the appellate Court while deciding and disposing of the writ appeal. (Para 6) ***State of Uttar Pradesh v. Prem Kumar Shukla***, [2022 LiveLaw \(SC\) 249](#)

Constitution of India, 1950; Article 226 - Writ Appeal - There must be an independent application of mind and at least some independent reasoning to be given by the appellate Court while deciding and disposing of the writ appeal. (Para 6) ***State of Uttar Pradesh v. Prem Kumar Shukla***, [2022 LiveLaw \(SC\) 249](#)

Constitution of India, 1950; Article 226 - Writ Jurisdiction - Contractual Matters - Interim orders - Any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. (Para 26) ***N.G. Projects Ltd. v. Vinod Kumar Jain***, [2022 LiveLaw \(SC\) 302](#) : AIR 2022 SC 1531 : (2022) 6 SCC 127

Constitution of India, 1950; Article 226 - Writ Jurisdiction - Grant of Tender - If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. (Para 23) ***N.G. Projects Ltd. v. Vinod Kumar Jain***, [2022 LiveLaw \(SC\) 302](#) : AIR 2022 SC 1531 : (2022) 6 SCC 127

Constitution of India, 1950; Article 226 - Writ Jurisdiction - Grant of Tender - Multiple layers of exercise of jurisdiction also delay the final adjudication

challenging the grant of tender. It would be open to the High Courts or the Hon'ble Chief Justice to entrust these petitions to a Division Bench of the High Court, which would avoid at least hearing by one of the forums. (Para 27) **N.G. Projects Ltd. v. Vinod Kumar Jain**, [2022 LiveLaw \(SC\) 302](#) : AIR 2022 SC 1531 : (2022) 6 SCC 127

Constitution of India, 1950; Article 226 - Writ Jurisdiction - Grant of Tender - Interpretation of terms of the contract is that the question as to whether a term of the contract is essential or not is to be viewed from the perspective of the employer and by the employer - Satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids -The Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. (Para 17, 22, 23) **N.G. Projects Ltd. v. Vinod Kumar Jain**, [2022 LiveLaw \(SC\) 302](#) : AIR 2022 SC 1531 : (2022) 6 SCC 127

Constitution of India, 1950; Article 226 - Writ Jurisdiction - Nature of the function performed by a body may be relevant for Article 226, considering the language of Article 226 which encapsulates a wide scope of legal right. (Para 22) **Kishor Madhukar Pinglikar v. Automotive Research Association of India**, [2022 LiveLaw \(SC\) 189](#)

Constitution of India, 1950; Article 226 - Writ petition - An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service. (Para 69) **St. Mary's Educational institute v. Rajendra Prasad Bhargava**, [2022 LiveLaw \(SC\) 708](#)

Constitution of India, 1950; Article 226 - Writ Petition - High Court should apply its mind to the grounds of challenge and to the submissions made. **State of Orissa v. Prasanta Kumar Swain**, [2022 LiveLaw \(SC\) 51](#)

Constitution of India, 1950; Article 226 - Writ Petition - Locus Standi - Registered Society of Professional Architects who claim to be teaching faculty in institutions imparting education in Architecture, filed a writ petition on the file of the High Court of Judicature at Madras, praying for quashing the "Minimum

Standards of Architectural Education Regulations, 2017 - High Court quashed the Regulations - Allowing the appeal, the Supreme Court while setting aside the High Court judgment observed: Due to the nature of its membership, the society could have been aggrieved only by the prescriptions affecting the teaching faculty. It could not have challenged the prescriptions with which they are not in any way concerned. (Para 19) **Council of Architecture v. Academic Society of Architects (TASA)**, [2022 LiveLaw \(SC\) 172](#) : (2022) 5 SCC 161

Constitution of India, 1950; Article 226 - Writ petition is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public - While a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. (Para 69) **St. Mary's Educational institute v. Rajendra Prasad Bhargava**, [2022 LiveLaw \(SC\) 708](#)

Constitution of India, 1950; Article 226 - Writ Petitions - After a period of 10 years from the date of execution of the Sale Deed with NOIDA, the petitioner made a representation to it requesting to allot a plot as agreed in terms of the Sale Deed - High Court directed NOIDA to consider the representation - NOIDA rejected it - This was again challenged before High Court by the Petitioner - High Court dismissed writ petition - SLP challenging the said High Court judgment dismissed. **Surjeet Singh Sahni v. State of U.P.**, [2022 LiveLaw \(SC\) 232](#) : 2022 (4) SCALE 280

Constitution of India, 1950; Article 226 - Writ Petitions - Delay and Latches - High Courts directing the authorities to decide the representation though the representations are made belatedly - Mere representation does not extend the period of limitation - If it is found that the writ petitioner is guilty of delay and latches, the High Court should dismiss it at the threshold and ought not to dispose of the writ petition by relegating the writ petitioner to file a representation and/or directing the authority to decide the representation - Such order shall not give an opportunity to the petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action. (Para 4, 5) **Surjeet Singh Sahni v. State of U.P.**, [2022 LiveLaw \(SC\) 232](#) : 2022 (4) SCALE 280

Constitution of India, 1950; Article 226 - Writ Petitions - No writ under Article 226 of the Constitution of India shall be maintainable and/or entertainable for specific performance of the contract and that too after a period of 10 years by which time even the suit for specific performance would have been barred by

limitation. (Para 6) **Surjeet Singh Sahni v. State of U.P.**, [2022 LiveLaw \(SC\) 232](#) : 2022 (4) SCALE 280

Constitution of India, 1950; Articles 226 - Code of Criminal Procedure, 1973; Section 482 - High Court does not have the power even under Articles 226 or Section 482 CrPC to direct the investigation to be conducted in a particular manner. **State of West Bengal v. Sandip Biswas**, [2022 LiveLaw \(SC\) 1024](#)

Constitution of India, 1950; Article 226 - Writ Jurisdiction - Existence of an alternate remedy by itself cannot exclude the writ jurisdiction of the High Court -A constitutional remedy cannot be barred or excluded as when the High Court exercises its power under Article 226, it cannot be a case of lack of inherent jurisdiction - Statute may provide for an alternate forum to which the High Court may relegate the party in an appropriate case- It has been a self-imposed restraint which is fairly faithfully adhered to by the High Courts and it is largely a matter of discretion. **Maharashtra State Board of Waqfs v. Shaikh Yusuf Bhai Chawla**, [2022 LiveLaw \(SC\) 1003](#) (Para 179)

Article 227 - Power of superintendence over all courts by the High Court.

Constitution of India, 1950; Article 227 - Appeal against High Court order which set aside the eviction order of Appellate Tribunal High Court - Allowed - The High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible - There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. **Puri Investments v. Young Friends and Co.**, [2022 LiveLaw \(SC\) 279](#) : 2022 (4) SCALE 654

Constitution of India, 1950; Article 227 - Code of Civil Procedure, 1973; Order IX Rule 13 - High Court not to entertain a revision application challenging the ex-parte judgment and decree as there was a statutory alternative remedy by way of an appeal available. (Para 6-7) **Mohamed Ali v. V. Jaya**, [2022 LiveLaw \(SC\) 574](#) : (2022) 10 SCC 477

Constitution of India, 1950; Article 227 - Code of Civil Procedure, 1908; Section 115 - Appeal against HC order dismissing writ petition under Article 227 on the ground of availability of remedy of revision under Section 115 CPC - Allowed - Where there is availability of remedy under Section 115 CPC normally the petition under Article 227 would not lie - But that does not mean that writ petition under Article 227 shall not be maintainable at all - There is a difference and distinction between the entertainability and maintainability - The High Court ought to have converted the writ petition under Article 227 into revision petition under Section 115 CPC and ought to have considered the same in accordance with law and on its own merits, rather than permitting the writ petitioners to file a fresh revision application under Section 115 of the CPC. It would unnecessary increase the burden of the Court. (Para 3-4) **Raj Shri Agarwal @ Ram Shri Agarwal v. Sudheer Mohan**, [2022 LiveLaw \(SC\) 864](#)

Constitution of India, 1950; Article 227 - Consumer Protection Act, 2019; Section 58 (1)(a)(iii & iv) - Writ petition under Article 227 maintainable against the order passed by the National Commission in an appeal under Section 58 (1)(a)(iii) or Section 58(1)(a) (iv) of the 2019 Act - While granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India. (Para 11-14.1) **Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.**, [2022 LiveLaw \(SC\) 481](#) : AIR 2022 SC 2363

Constitution of India, 1950; Article 227 - Scope of interference by the supervisory Court on decisions of the fact-finding forum - Situations when a finding on facts or questions of law would be perverse: (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. (Para 10 -11) **Puri Investments v. Young Friends and Co.**, [2022 LiveLaw \(SC\) 279](#) : 2022 (4) SCALE 654

Constitution of India, 1950; Article 227 - Supervisory Jurisdiction - Scope of interference by the supervisory Court on decisions of the fact-finding forum is limited - Supreme Court was of the view that there was overstepping of this boundary by the High Court - in its exercise of scrutinising the evidence to find perversity in the order of the Appellate Tribunal, there was re-appreciation of evidence itself by the High Court - the High Court in exercise of its jurisdiction under Article 227 had gone deep into the factual arena to disagree with the final fact-finding forum - the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court exercising powers under Article 227 of the Constitution of India. **Puri Investments v. Young Friends and Co.**, [2022 LiveLaw \(SC\) 279](#) : 2022 (4) SCALE 654

Constitution of India, 1950; Article 227 - The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. (Para 18) **Garment Craft v. Prakash Chand Goel**, [2022 LiveLaw \(SC\) 39](#) : AIR 2022 SC 422 : (2022) 4 SCC 181

Constitution of India, 1950; Article 227 - The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of

keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. (*Para 15*) ***State of Madhya Pradesh v. R.D. Sharma***, [2022 LiveLaw \(SC\) 97](#) : 2022 (2) SCALE 398

Constitution of India, 1950; Article 227 - The remedy under Article 227 available is a constitutional remedy under the Constitution of India which cannot be taken away - In a given case the Court may not exercise the power under Article 227 if the Court is of the opinion that the aggrieved party has another efficacious remedy available under the CPC. However, to say that the writ petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable. (*Para 3*) ***Raj Shri Agarwal @ Ram Shri Agarwal v. Sudheer Mohan***, [2022 LiveLaw \(SC\) 864](#)

Constitution of India, 1950; Article 227- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - The High Court while exercising jurisdiction under Article 227 of the Constitution of India not justified in upsetting the finding of fact rendered by the Appellant Authority. ***Harish Kumar v. Pankaj Kumar Garg***, [2022 LiveLaw \(SC\) 239](#)

Constitution of India, 1950; Articles 227, 136 - NCDRC can be regarded as a 'Tribunal' within the meaning of Article 227 and/or 136 of the Constitution of India. (*Para 12*) ***Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd***; [2022 LiveLaw \(SC\) 481](#) : AIR 2022 SC 2363

Constitution of India, 1950; Articles 227, 136 - When the remedy under Article 227 of the Constitution of India before the concerned High Court is provided, in that case, it would be in furtherance of the right of access to justice of the aggrieved party, to approach the concerned High Court at a lower cost, rather than a Special Leave to Appeal under Article 136 of the Constitution. (*Para 13*) ***Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd***; [2022 LiveLaw \(SC\) 481](#) : AIR 2022 SC 2363

Article 233 - Appointment of District Judges

Constitution of India, 1950; Article 233, 235 - The High Courts are well within their domain in prescribing a requirement which ensures that candidates with sufficient maturity enter the fold of the higher judiciary. The requirement that a candidate should be at least 35 years of age is intended to sub-serve this - The Constitution does not preclude the exercise of the rule making power by the High Courts to regulate the conditions of service or appointment - Age is not extraneous to the acquisition of maturity and experience, especially in judicial institutions which handle real problems and confront challenges to liberty and justice. (*Para 26*) ***High Court of Delhi v. Devina Sharma***, [2022 LiveLaw \(SC\) 286](#) : (2022) 4 SCC 643

Article 243E - Duration of Panchayats, etc.

Constitution of India, 1950; Article 243E, 243U - Constitutional Mandate to hold local body elections in time inviolable- Neither the State Election Commission nor the State Government or for that matter the State Legislature,

including this Court in exercise of powers under Article 142 of the Constitution of India can countenance dispensation to the contrary. (Para 5) **Suresh Mahajan v. State of Madhya Pradesh**, [2022 LiveLaw \(SC\) 463](#) : AIR 2022 SC 2739

Article 243Q - Constitution of Municipalities

Constitution of India, 1950; Article 243-Q(1) Proviso; Entry 52 of List II of the Seventh Schedule - Whether the exclusion of an industrial area or areas from the limits of municipal councils or municipalities under the state laws in exercise of statutory power or by virtue of a declaration under proviso to Article 243-Q, would result in that area ceasing to be a "local area" within Entry 52 of List II ? - Industrial areas or estates are equally "local areas" - The application of state laws regarding industrial areas squarely falls within the expression "description of a body constituted for the purposes of local affairs of the State". (Para 45) **OCL India Ltd. v. State of Orissa**, [2022 LiveLaw \(SC\) 911](#) : AIR 2022 SC 5609

Constitution of India, 1950; Part IX A, Article 243-Q(1) Proviso - The proviso to Article 243-Q(1) has to be read in context, that industrial areas and estates, administered in terms of some legal regime, where some municipal services were provided, could be exempt from the requirements spelt out in Part IX-A of the Constitution - The focus of provisions of Part IX-A of the Constitution inserted through the 74th Amendment was on local self-governance and all provisions concerning it. It had no relevance to the issue of State taxation. (Para 44) **OCL India Ltd. v. State of Orissa**, [2022 LiveLaw \(SC\) 911](#) : AIR 2022 SC 5609

Article 243X - Power to impose taxes by, and Funds of, the Municipalities

Constitution of India, 1950; Articles 243X and 243Y - Whether any proposal for change or modification in the methodology adopted for levy of property tax ought to have been initiated through the Finance Commission alone? If the Legislature itself has taken into account certain prevailing situation, which according to the Legislature is causing some prejudice to the financial health and condition of the municipalities and, therefore, the method of imposition of property tax ought to be changed, it cannot then be said that the matter must necessarily and ought to have emanated from the Finance Commission or that in the absence of such recommendations by the Finance Commission, no steps could have been taken by the Legislature. (Para 25-27) **Municipal Corporation of Greater Mumbai v. Property Owners Association**, [2022 LiveLaw \(SC\) 927](#)

Article 246 - Subject-matter of laws made by Parliament and by the Legislatures of States

Constitution of India, 1950; Article 246 - Reserve Bank of India Act, 1934; Chapter III B - Kerala Money Lenders Act, 1958 - The moment the Parliament stepped in to codify the law relating to registration and regulation of NBFCs, by inserting certain provisions in Chapter III-B of the RBI Act, the same would cast

a shadow on the applicability (even assuming it is applicable) of the provisions of the Kerala Act to NBFCs registered under the RBI Act and regulated by RBI - In cases of this nature, Article 246(1) would squarely apply. (Para 8, 8.3) ***Nedumpilli Finance Company Ltd. v. State of Kerala*, [2022 LiveLaw \(SC\) 464](#) : (2022) 7 SCC 394**

Constitution of India, 1950; Article 246, 254 - Three important tests of inconsistency or repugnancy - (i) whether there is direct conflict between the two provisions; (ii) whether Parliament intended to lay down an exhaustive Code in respect of the subject matter replacing the Act of the State legislature; and (iii) whether the law made by Parliament and the law made by State legislature occupy the same field. (Para 7.9) ***Nedumpilli Finance Company Ltd. v. State of Kerala*, [2022 LiveLaw \(SC\) 464](#) : (2022) 7 SCC 394**

Article 254 - Inconsistency between laws made by Parliament and laws made by the Legislatures of States

Constitution of India, 1950; Article 254 - Repugnancy under Article 254 would arise only if both the Parliamentary law and the State law are referable to List-III. ***Nedumpilli Finance Company Ltd. v. State of Kerala*, [2022 LiveLaw \(SC\) 464](#) : (2022) 7 SCC 394**

Constitution of India, 1950; Article 254 - Tests of repugnancy - (1) Whether there is direct conflict between the two provisions; (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and (3) Whether the law made by Parliament and the law made by State Legislature occupy the same field. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. (Para 32-33) ***All Kerala Distributors Association v. State of Kerala*, [2022 LiveLaw \(SC\) 639](#)**

Constitution of India, 1950; Article 254 - The question of repugnancy arises only if both the Parliament and the State legislature have made law with respect to any one of the matters enumerated in the Concurrent list (List III). (Para 18) ***Har Naraini Devi v. Union of India*, [2022 LiveLaw \(SC\) 783](#) : AIR 2022 SC 4632**

Article 279A - GST Council

Constitution of India, 1950; Article 279A - GST Council is empowered to make recommendations to the States on any matter relating to GST. (Para 7) ***Pradeep Goyal v. Union of India*, [2022 LiveLaw \(SC\) 654](#)**

Article 298 - Power to carry on trade, etc.

Constitution of India, 1950; Articles 298, 162 - For the purpose of Article 298, the broader concept of State, as defined in Article 12 of the Constitution, which, no doubt, would include a fully owned Government Company, is inapposite and inapplicable - A Company, would not be entitled to exercise the executive power

contemplated in Article 162 of the Constitution, which is the power with the Union or the State Governments. (Para 17) **MP Power Management Company Ltd. v. Sky Power Southeast Solar India Pvt. Ltd.**, [2022 LiveLaw \(SC\) 966](#)

Article 300A - Persons not to be deprived of property save by authority of law

Constitution of India, 1950; Article 300A - Confiscation - By an order of confiscation, a person is deprived of the enjoyment of his property - Therefore, it is necessary for the State to establish that the property was illegally obtained or is part of the proceeds of crime or the deprivation is warranted for public purpose or public interest. (Para 17) **Abdul Vahab v. State of Madhya Pradesh**, [2022 LiveLaw \(SC\) 243](#) : 2022 (4) SCALE 401

Constitution of India, 1950; Article 300A - Forcible dispossession of a person of their private property without following due process of law, was violative of both their human right, and constitutional right under Article 300-A - High threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State. (Para 25, 15) **Sukh Dutt Ratra v. State of Himachal Pradesh**, [2022 LiveLaw \(SC\) 347](#) : (2022) 7 SCC 508

Constitution of India, 1950; Article 300A - Requirement of public purpose is a pre-condition and right to claim compensation is also inbuilt in Article 300-A. (Para 21) **Kalyani v. Sulthan Bathery Municipality**, [2022 LiveLaw \(SC\) 410](#) : AIR 2022 SC 2073

Constitution of India, 1950; Article 300A - Though the right in property is not a fundamental right, it is still a constitutional right under Article 300A of the Constitution of India. Thus, a person can be deprived of the rights of the property only in a manner known to law. (Para 30) **Jagan Singh & Co. v. Ludhiana Improvement Trust**, [2022 LiveLaw \(SC\) 733](#)

Article 309 - Recruitment and conditions of service of persons serving the Union or a State.

Constitution of India, 1950; Article 309 - Administrative instructions can supplement rules which are framed under the proviso to Article 309 of the Constitution in a manner which does not lead to any inconsistencies. Executive instructions may fill up the gaps in the rules. But supplementing the exercise of the rule making power with the aid of administrative or executive instructions is distinct from taking the aid of administrative instructions contrary to the express provision or the necessary intendment of the rules which have been framed under Article 309. (Para 32) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Constitution of India, 1950; Article 309 - Where there is a conflict between executive instructions and rules framed under Article 309, the rules must prevail. In the event of a conflict between the rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules

are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rule. (Para 28) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Constitution of India, 1950; Article 309 - which are framed under Article 309 of the Constitution of India which can be said to be subordinate legislation and cannot be said to be an Act or the Law made by the Parliament and / or State Legislature is beyond the scope and ambit of Governor's power under para 5(1) of the Fifth Schedule of the Constitution of India. (Para 20(3)) **Satyajit Kumar v. State of Jharkhand**, [2022 LiveLaw \(SC\) 651](#)

Article 311 - Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

Constitution of India, 1950; Article 311 - Civil Post - Holding a license to run the fair price shop cannot be said to be holding a civil post. **Manju Sharma v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 311](#)

Constitution of India, 1950; Article 311(2) - Judicial Service - When the Government had, on enquiry, come to the conclusion, rightly or wrongly, that the appellant was unsuitable for the post he held on probation, this was clearly by way of punishment and, hence, the appellant would be entitled to the protection of Article 311(2) of the Constitution. (Para 50) **Abhay Jain v. High Court of Judicature for Rajasthan**, [2022 LiveLaw \(SC\) 284](#) : 2022 (4) SCALE 784

Article 323A - Administrative Tribunals

Constitution of India, 1950; Articles 323A, 323B, 226, 227- Administrative Tribunals Act, 1985; Section 25 - Any decision of Tribunal, including the one passed under Section 25 of the Act could be subjected to scrutiny only before a Division Bench of a High Court within whose jurisdiction the Tribunal concerned falls. (Para 16) **Union of India v. Alapan Bandyopadhyay**, [2022 LiveLaw \(SC\) 12](#) : AIR 2022 SC 499 : (2022) 3 SCC 133

Article 324 - Superintendence, direction and control of elections to be vested in an Election Commission

Constitution of India, 1950; Article 324(1), 243-K and 243-ZA(1) - The Election Commission has wide powers under Article 324(1) to issue directions necessary for conducting free and fair elections, subject to the contours of law. The power of the Election Commission includes the power to issue directions where the law is silent. The State Election Commission has the same powers under Article 243-K and 243-ZA(1) as the Election Commission of India has under Article 324(1). (Para 68) **S. Rukmini Madegowda v. State Election Commission**, [2022 LiveLaw \(SC\) 766](#) : AIR 2022 SC 4347

Article 338B - National Commission for Backward Classes

Constitution of India, 1950; Article 338B - The requirement of consultation with an expert constitutional body is indeed mandatory and it would be fatal to disregard the provision - Article 338- B(9) does not stop the State from enacting

a legislation in furtherance of a major policy matter but states that the State Government shall consult the Commission on such matters - The consequence of disregarding a mandatory consultation provision would normally render the legislation void as it is in breach of an obligatory requirement to consult an expert constitutional body. (Para 75-76) ***Pattali Makkal Katchi v. A. Mayilerumperumal***, [2022 LiveLaw \(SC\) 333](#) : AIR 2022 SC 1865

Article 342 - Scheduled Tribes

Constitution of India, 1950; Article 342 - A person entitled to be treated as a member of Scheduled Tribe under Article 342, cannot be treated on par with a person who is brought in by an incompetent Body, viz., the State in the manner done. (Para 8) ***Sunil Kumar Rai v. State of Bihar***, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Constitution of India, 1950; Article 342 - Scheme - Manner in which the members of the Scheduled Tribe are to be recognised - Power with the President after consultation with the State to specify the Tribes which are to be treated as Scheduled Tribes in that State or the Union Territory as the case may be. Parliament is empowered to include or exclude from the list. (Para 12) ***Sunil Kumar Rai v. State of Bihar***, [2022 LiveLaw \(SC\) 219](#) : 2022 (4) SCALE 199

Article 356 - Provisions in case of failure of constitutional machinery in States

Constitution of India, 1950; Article 356 - Breakdown of Constitutional machinery - Law & Order - Gujarat Riots case - Breakdown of law-and-order situation if for short duration, cannot partake the colour of breakdown of rule of law or constitutional crisis. To put it differently, misgovernance or failure to maintain law-and-order during a brief period may not be a case of failure of constitutional machinery in the context of tenets embodied in Article 356 of the Constitution-There must be credible evidence regarding State sponsored breakdown of law-and-order situation; not spontaneous or isolated instances or events of failure of State administration to control the situation. (Para 45) ***Zakia Ahsan Jafri v. State of Gujarat***, [2022 LiveLaw \(SC\) 558](#) : 2022 (9) SCALE 385

Article 366 - Definitions

Constitution of India, 1950; Article 366 (29A) (d) - Transfer of right to use goods "deemed sale" - principles explained. (Para 52) ***Commissioner of Service Tax New Delhi v. Quick Heal Technologies Ltd***, [2022 LiveLaw \(SC\) 660](#) : AIR 2022 SC 3660

5th Schedule

Constitution of India, 1950 - Fifth Schedule - The power of the Governor is pari passu with the legislative power of Parliament and the State. The legislative power can be exercised by the Parliament or the State subject to the provisions of Part III of the Constitution. Thereafter, it is ultimately observed and held that the power of the Governor does not supersede the fundamental rights

guaranteed under Part III of the Constitution. It has to be exercised subject to Part III and other provisions of the Constitution. (Para 18.4) **Satyajit Kumar v. State of Jharkhand**, [2022 LiveLaw \(SC\) 651](#)

7th Schedule

Constitution of India, 1950; Entry 13 of List III of Seventh Schedule - The subject of arbitration is in the Concurrent List, the State can also make a law with regard to the same. The only requirement is that to validate such a law, it is necessary to reserve the same for consideration of the President of India and obtain his assent. When such an assent is obtained, the provisions of the State Law or Act so enacted would prevail in the State concerned, notwithstanding its repugnancy with an earlier Parliamentary enactment made on the subject. (Para 62, 127(i)) **Secretary of Govt. of Kerala Irrigation Department v. James Varghese**, [2022 LiveLaw \(SC\) 447](#) : (2022) 9 SCC 593

Constitution of India, 1950; Entry 34,62 List II & Entry 40 of List I of Seventh Schedule - 'Lotteries' is a species of gambling activity and hence within the ambit of 'betting and gambling' as appearing in Entry 34 List II - It is only lotteries organised by the Government of India or the Government of State in terms of Entry 40 of List I which are excluded from Entry 34 of List II - If lotteries are conducted by private parties or by instrumentalities or agencies authorized, by Government of India or the Government of State, it would come within the scope and ambit of Entry 34 of List II - The State Legislatures have the power to tax lotteries under Entry 62 of List II. (Para 124) **State of Karnataka v. State of Meghalaya**, [2022 LiveLaw \(SC\) 309](#) : 2022 (5) SCALE 262

10th Schedule

Constitution of India, 1950 - 10th Schedule - the Speaker was not within his jurisdiction to issue directions other than those pertaining to disqualification. **Gyanendra Kumar Singh v. Bihar Legislative Assembly Patna**, [2022 LiveLaw \(SC\) 808](#)

Constitution of India, 1950; 10th Schedule - Anti Defection Law - Post- Poll alliance subject to certain conditions is permissible. **Chandan Kumar v. Union of India**, [2022 LiveLaw \(SC\) 947](#)

Constitution of India - 10th Schedule - Anti-defection law - Supreme Court refers to Constitution Bench questions relating to Speaker's powers for disqualification proceedings- Questions referred in dispute between Uddhav Thackeray and Eknath Shinde over rift within Shiv Sena party - Prima facie doubts the law laid down in *Nabam Rebia & Bamang Felix versus Deputy Speaker, Arunachal Pradesh Legislative Assembly* (2016) 8 SCC 1. **Subhash Desai v. Principal Secretary, Governor of Maharashtra**, [2022 LiveLaw \(SC\) 697](#)

Part IXA

Constitution of India, 1950; Part IXA - Rajasthan Municipalities Act, 2009; Section 5, 329 - The scheme of Part IXA does not contemplate a separate notification under Article 243Q of the Constitution and thereafter under Section 5 of the Municipalities Act. As Section 5 of the Municipalities Act is not inconsistent with any provisions of Article 243Q of the Constitution, therefore, two notifications are not contemplated or warranted under the Scheme of Part IXA or the Municipalities Act - The State Government is competent to divide the Municipalities in the State into classes according to their income or other factors like population or importance of the local area and other circumstances as provided under Section 329 of the Municipalities Act. *(Para 16-17) State of Rajasthan v. Ashok Khetoliya, [2022 LiveLaw \(SC\) 263](#)*

Constitution of India, 1950; Part IXA - Rajasthan Municipalities Act, 2009; Section 5, 329 - Appeal against Rajasthan High Court set aside a notification declaring Gram Panchayat Roopbas, District Bharatpur as Municipal Board on the ground that no public notification as contemplated under Article 243Q(2) of the Constitution of India has been produced specifying Gram Panchayat Roopbas as a "transitional area" and thus, it cannot be declared as a Municipal Board - Allowed - State Government had exercised powers to establish Municipality in terms of Section 5 of the Municipalities Act. *State of Rajasthan v. Ashok Khetoliya, [2022 LiveLaw \(SC\) 263](#)*

74th Amendment

Constitution (Seventy-Fourth Amendment) Act, 1992 - The scheme of the Constitutional Amendment is not to take away legislative competence of the State Legislatures to legislate on the subject of local Government but it is more to ensure that the three tiers of governance are strengthened as part of democratic set up. *(Para 8) State of Rajasthan v. Ashok Khetoliya, [2022 LiveLaw \(SC\) 263](#)*

102nd Amendment

Constitution (102nd Amendment) Act, 2018 - What the 102nd Amendment prohibits the State from undertaking is identifying a caste as SEBC or including or excluding a community from the list notified by the President - Determining the extent of reservation for a community amongst the list of Most Backward Classes does not amount to identification. *(Para 31) Pattali Makkal Katchi v. A. Mayilerumperumal, [2022 LiveLaw \(SC\) 333](#) : AIR 2022 SC 1865*

103rd Amendment

Constitution (103rd Amendment) Act, 2019 - The 103rd Constitution Amendment cannot be said to breach the basic structure of the Constitution by (1) permitting the State to make special provisions, including reservation, based on economic criteria (2) permitting the State to make special provisions in relation to admission to private unaided institutions (3) in excluding the

SEBCs/OBCs/SCs/STs from the scope of EWS reservation. (Para 104) **Janhit Abhiyan v. Union of India**, [2022 LiveLaw \(SC\) 922](#)

105th Amendment

Constitution (105th Amendment) Act, 2021 - The 105th Amendment Act cannot be said to be a validating amendment- Prospective in operation - Identifying certain communities which are to be deemed as SEBCs for the purposes of the Central Government and the States, respectively, cannot be said to be a matter of procedure. The procedural aspect of the 102nd Amendment Act and the 105th Amendment Act is only the manner of publication of the lists of SEBCs, whereas the substantive element of the said amendments is identifying and recognising certain communities as SEBCs. (Para 29) **Pattali Makkal Katchi v. A. Mayilerumperumal**, [2022 LiveLaw \(SC\) 333](#) : AIR 2022 SC 1865

Constitution of Special Courts

Constitution of Special Courts - The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously. (Para 73 (g)) **Satender Kumar Antil v. Central Bureau of Investigation**, [2022 LiveLaw \(SC\) 577](#) : AIR 2022 SC 3386 : (2022) 10 SCC 51

Constitutional Validity - Mere plea of inconvenience is not enough to attract the constitutional inhibition - There is presumption that the Parliament understands and reacts to the needs of its own people as per the exigencies and experience gained in the implementation of the law. (Para 59) **Noel Harper v. Union of India**, [2022 LiveLaw \(SC\) 355](#) : 2022 (5) SCALE 775

Consumer Law

Consumer Law - Transfer Petition filed seeking transfer of consumer complaints pending before Consumer fora to Bombay High Court - Dismissed - The consumer complaints are filed under the Consumer Protection Act, therefore, such consumer complaints cannot be transferred to the High Court exercising the jurisdiction under Article 226 of the Constitution of India. **Yes bank v. 63 Moons Technologies Ltd.**, [2022 LiveLaw \(SC\) 135](#)

Consumer Protection Act, 1986

Consumer Protection Act, 1986 - The Act of 1986 is not a general law but a special law that has been enacted by Parliament specifically to protect the interest of consumers. [Overruled General Manager, Telecom v. M Krishnan, (2009) 8 SCC 481] (Para 18) **Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal**, [2022 LiveLaw \(SC\) 221](#) : (2022) 6 SCC 496

Consumer Protection Act, 1986 - The requirement of leading detailed evidence could not be a ground to shut the doors of any forum created under

the Act like the Consumer Protection Act. The anvil on which entertainability of a complaint by a forum under the Act is to be determined, is whether the questions, though complicated they may be, are capable of being determined by summary enquiry. (Para 11) **Sunil Kumar Maity v. State Bank of India, 2022 LiveLaw (SC) 77 : AIR 2022 SC 577**

Consumer Protection Act, 1986 - Appeal against NCDRC order refusing to condone delay of 67 days in filing the revision- Allowed and delay condoned- Delay in filing the revision was not huge, that should not have been condoned- The question of limitation is not to be examined with a view to decline the condonation, but to do substantial justice. **Manager, Indusind Bank v. Sanjay Ghosh, 2022 LiveLaw (SC) 550**

Consumer Protection Act, 1986 - Appeal by Developer against NCDRC order directing refund and compensation to Consumer for its failure to deliver possession of the apartment within the time stipulated as per the Apartment Buyers Agreement - Dismissed - Commission is correct in its approach in holding that the clauses of the agreement are one-sided and that the Consumer is not bound to accept the possession of the apartment and can seek refund of the amount deposited by her with interest - Commission has correctly exercised its power and jurisdiction in passing the directions for refund of the amount with interest. **Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor, 2022 LiveLaw (SC) 352 : AIR 2022 SC 1824**

Consumer Protection Act, 1986 - Consumer complaint alleging vehicle defect - The limitation will run from the day the defect surfaces in a case. (Para 7) **Hyundai Motor India Ltd. v. Shailendra Bhatnagar, 2022 LiveLaw (SC) 399 : 2022 (6) SCALE 587**

Consumer Protection Act, 1986 - Delivering a defective and old model car against a booking for a new car made by a customer who has paid full sale consideration is an "unfair trade practice" - Non delivery of a new car can be said to be an unfair trade practice and even it can be said to be dishonesty on the part of the dealer and against the morality and ethics - Once the new car was booked and the full sale consideration was paid, a duty was cast upon the dealer to deliver a new car which is not defective. (Para 7.2) **Rajiv Shukla v. Gold Rush Sales and Services Ltd., 2022 LiveLaw (SC) 750 : AIR 2022 SC 4184 : (2022) 9 SCC 31**

Consumer Protection Act, 1986 - If the NCDRC is of the opinion that the Surveyor was an unnecessary party or the pleadings are contradictory, it should have struck down the said party. The striking of surveyor from the array of parties would not make the complaint disjoined, as it was duty of the NCDRC to strike of an unnecessary party. (Para 3) **Brahmaputra Biochem Pvt. Ltd. v. New India Assurance Company, 2022 LiveLaw (SC) 211**

Consumer Protection Act, 1986 - In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on

appreciation of evidence on record (Para 7.1) **Rajiv Shukla v. Gold Rush Sales and Services Ltd.**, [2022 LiveLaw \(SC\) 750](#) : AIR 2022 SC 4184 : (2022) 9 SCC 31

Insurance Claims

Consumer Protection Act, 1986 - Insurance Claims - An insurance company cannot take a defense which did not form the basis of repudiation of the claim. (Para 13-15) **JSK Industries Pvt. Ltd. v. Oriental Insurance Company Ltd.**, [2022 LiveLaw \(SC\) 884](#)

Consumer Protection Act, 1986 - Insurance Claims - The delay in processing the claim and delay in repudiation could be one of the several factors for holding an insurer guilty of deficiency in service. But it cannot be the only factor. (Para 24) **New India Assurance Co. Ltd. v. Shashikala J. Ayachi**, [2022 LiveLaw \(SC\) 591](#) : AIR 2022 SC 3330

Medical Negligence

Consumer Protection Act, 1986 - Medical Negligence - The cause of action for claiming compensation in cases of failed sterilization operation arises on account of negligence of the surgeon and not on account of child birth. Failure due to natural causes would not provide any ground for claim. It is for the woman who has conceived the child to go or not to go for medical termination of pregnancy. Having gathered the knowledge of conception in spite of having undergone sterilization operation, if the couple opts for bearing the child, it ceases to be an unwanted child. Compensation for maintenance and upbringing of such a child cannot be claimed. **Civil Hospital v. Manjit Singh**, [2022 LiveLaw \(SC\) 781](#)

Consumer Protection Act, 1986 - Consumer Protection Act and the RERA Act neither exclude nor contradict each other - They are concurrent remedies operating independently and without primacy. (Para 14.1) **Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor**, [2022 LiveLaw \(SC\) 352](#) : AIR 2022 SC 1824

Section 2(1)(d) - "Consumer"

Consumer Protection Act, 1986 - Section 2(1)(d) - Legislative history discussed - The legislative intent is to keep the commercial transactions out of the purview of the Act and at the same time, to give benefit of the Act to a person who enters into such commercial transactions, when he uses such goods or avails such services exclusively for the purposes of earning his livelihood by means of self-employment. (Para 21 - 46) **Shrikant G. Mantri v. Punjab National Bank**, [2022 LiveLaw \(SC\) 197](#) : (2022) 5 SCC 42

Consumer Protection Act, 1986 - Section 2(1)(d) - The 'business to business' disputes cannot be construed as consumer disputes, thereby defeating the very purpose of providing speedy and simple redressal to consumer disputes. (Para 47) **Shrikant G. Mantri v. Punjab National Bank**, [2022 LiveLaw \(SC\) 197](#) : (2022) 5 SCC 42

Consumer Protection Act, 1986 - Section 2(1)(d) - The question, as to whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, "commercial purpose" is understood to include manufacturing/industrial activity or business -to -business transactions between commercial entities; that the purchase of the good or service should have a close and direct nexus with a profit- generating activity; that the identity of the person making the purchase or the value of the transaction is not conclusive for determining the question as to whether it is for a commercial purpose or not. What is relevant is the dominant intention or dominant purpose for the transaction and as to whether the same was to facilitate some kind of profit generation for the purchaser and/or their beneficiary. It has further been held that if the dominant purpose behind purchasing the good or service was for the personal use and the consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, then the question of whether such a purchase was for the purpose of "generating livelihood by means of self -employment" need not be looked into. (Para 42) **Shrikant G. Mantri v. Punjab National Bank**, [2022 LiveLaw \(SC\) 197](#) : (2022) 5 SCC 42

Consumer Protection Act, 1986 - Section 2(1)(d) - When a person avails a service for a commercial purpose, to come within the meaning of 'consumer' as defined in the said Act, he will have to establish that the services were availed exclusively for the purposes of earning his livelihood by means of self - employment. (Para 45) **Shrikant G. Mantri v. Punjab National Bank**, [2022 LiveLaw \(SC\) 197](#) : (2022) 5 SCC 42

Consumer Protection Act, 1986; Section 2(1)(d)(ii) - Consumer complaint alleging premature encashment of Joint Fixed Deposit by bank in contravention of the terms and conditions is maintainable - A person who avails of any service from a bank will fall under the purview of the definition of a 'consumer' under the 1986 Act. As a consequence, it would be open to such a consumer to seek recourse to the remedies provided under the 1986 Act. (Para 19) **Arun Bhatiya v. HDFC Bank**, [2022 LiveLaw \(SC\) 696](#)

Section 2(1)(g) - "Deficiency"

Consumer Protection Act, 1986; Section 2 (1) (g) - Failure to obtain an occupancy certificate or abide by contractual obligations amounts to a deficiency in service - Consumers 'consumers' has right to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from the lack of an occupancy certificate. (Para 21-22) **Samruddhi Co-operative Society v. Mumbai Mahalaxmi Construction**, [2022 LiveLaw \(SC\) 36](#) : AIR 2022 SC 428 : (2022) 4 SCC 103

Consumer Protection Act, 1986; Section 2 (1) (g) - Insurance - Deficiency in Service - When the insured had produced the photocopy of certificate of registration and the registration particulars as provided by the RTO, solely on the ground that the original certificate of registration (which has been stolen) is

not produced, non settlement of claim can be said to be deficiency in service. (Para 4) **Gurmel Singh v. National Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 506](#) : AIR 2022 SC 2486

Consumer Protection Act, 1986; Section 2 (1) (g), 14 - The power to direct refund of the amount and to compensate a consumer for the deficiency in not delivering the apartment as per the terms of Agreement is within the jurisdiction of the Consumer Courts - A consumer can pray for refund of the money with interest and compensation. The consumer could also ask for possession of the apartment with compensation. The consumer can also make a prayer for both in the alternative. If a consumer prays for refund of the amount, without an alternative prayer, the Commission will recognize such a right and grant it, of course subject to the merits of the case. If a consumer seeks alternative reliefs, the Commission will consider the matter in the facts and circumstances of the case and will pass appropriate orders as justice demands. (Para 15-16) **Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroom**, [2022 LiveLaw \(SC\) 352](#) : AIR 2022 SC 1824

Section 2(1)(o) - "Service"

Consumer Protection Act, 1986 - Section 2(1)(o) - Existence of an arbitral remedy under the Indian Telegraph Act, 1885, will not oust the jurisdiction of the consumer forum - It would be open to a consumer to opt for the remedy of arbitration, but there is no compulsion in law to do so and it would be open to a consumer to seek recourse to the remedies which are provided under the Act of 1986, now replaced by the Act of 2019. (Para 16, 20) **Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal**, [2022 LiveLaw \(SC\) 221](#) : (2022) 6 SCC 496

Consumer Protection Act, 1986; Section 2(1)(o) - Doctors and hospitals who render service without any charge whatsoever to every person availing of the service would not fall within the ambit of 'service' under Section 2(1)(o) of the Act. The payment of a token amount for registration purposes only would not alter the position in respect of such doctors and hospitals. **Civil Hospital v. Manjit Singh**, [2022 LiveLaw \(SC\) 781](#)

Consumer Protection Act, 1986 - Section 2(1)(o) - Scope of expression 'service' discussed - a service of every description would fall within the ambit of the statutory provision. (Para 9) **Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal**, [2022 LiveLaw \(SC\) 221](#) : (2022) 6 SCC 496

Section 14 - Finding of the District Forum

Consumer Protection Act, 1986; Section 14(1) - If the reliefs granted in a consumer complaint fits any of the statutory provision contained in sub clause (1) of Section 14 of the Act, it would be well within the power and jurisdiction of the Forum to pass directions irrespective of the fact as to whether specifically certain reliefs have been claimed or not, provided that facts make out foundations for granting such reliefs. In any event, it is within the jurisdiction of the said forum to mould the reliefs claimed to do effective justice, provided the relief comes within the stipulation of Section 14(1) of the Act. (Para 15) **Hyundai**

Motor India Ltd. v. Shailendra Bhatnagar, [2022 LiveLaw \(SC\) 399](#) : 2022 (6) SCALE 587

Consumer Protection Act, 1986; Section 14(1) - The failure to provide an airbag system which would meet the safety standards as perceived by a car-buyer of reasonable prudence should be subject to punitive damages which can have deterrent effect. And in computing such punitive damages, the capacity of the manufacturing enterprise should also be a factor - Such damages can be awarded in the event the defect is found to have the potential to cause serious injury or major loss to the consumer, particularly in respect of safety features of a vehicle. (Para 13) **Hyundai Motor India Ltd. v. Shailendra Bhatnagar, [2022 LiveLaw \(SC\) 399](#) : 2022 (6) SCALE 587**

Section 21 - Jurisdiction of the National Commission

Consumer Protection Act, 1986; Section 21 Section 21 (b) - Revisional jurisdiction of the National Commission is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. (Para 9) **Sunil Kumar Maity v. State Bank of India, [2022 LiveLaw \(SC\) 77](#) : AIR 2022 SC 577**

Consumer Protection Act, 2019

Consumer Protection Act, 2019 - Consumer Commission has power to issue directions for consequential relief if the terms of the contract are found to be unfair [Para 33 to 35] **Texco Marketing Pvt. Ltd. v. TATA AIG General Insurance Company Ltd., [2022 LiveLaw \(SC\) 937](#)**

Section 2 (42) - "Service"

Consumer Protection Act, 2019; Section 2(42) - Consumer Protection Act, 1986 - Section 2(o) - The insertion of the expression 'telecom services' in the definition which is contained in Section 2(42) of the Act of 2019 cannot, for the reasons which we have indicated be construed to mean that telecom services were excluded from the jurisdiction of the consumer forum under the Act of 1986 - Section 2(o) of the Act of 1986 wide enough to comprehend services of every description including telecom services. (Para 14, 20) **Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal, [2022 LiveLaw \(SC\) 221](#) : (2022) 6 SCC 496**

Section 38 - Procedure on admission of complaint

Consumer Protection Act, 2019; Section 38(2)(a) - The period of limitation for opposite party to file written version is 30 days which can be condoned up to 15 days only - The Tribunal has no jurisdiction to condone the delay beyond the prescribed period mentioned in the Statute. **Antriksh Developers and Promoters Pvt. Ltd. v. Kutumb Welfare Society, [2022 LiveLaw \(SC\) 930](#)**

Section 67 - Appeal against order of National Commission

Consumer Protection Act, 2019; Section 67 Proviso - Onerous condition of payment of 50% of the amount awarded will not be applicable to the complaints filed prior to the commencement of the 2019 Act. (Para 34) ***ECGC Ltd. v. Mokul Shriram EPC JV***, [2022 LiveLaw \(SC\) 168](#) : (2022) 6 SCC 704

Section 59 - Procedure applicable to National Commission

Consumer Protection Act, 2019; Section 59 (1) - The period of limitation for opposite party to file written version is 30 days which can be condoned up to 15 days only - The Tribunal has no jurisdiction to condone the delay beyond the prescribed period mentioned in the Statute. ***Antriksh Developers and Promoters Pvt. Ltd. v. Kutumb Welfare Society***, [2022 LiveLaw \(SC\) 930](#)

Contempt of Courts Act, 1971

Contempt of Courts Act, 1971 - A person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court - The Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court. ***In Re Perry Kansagra***, [2022 LiveLaw \(SC\) 576](#)

Contempt of Courts Act, 1971 - Appeal against Madras High Court's order holding advocate guilty of Contempt and sentencing him to 2 weeks imprisonment as well as debaring him from practicing for a period of 1 year for obstructing the execution of a non-bailable warrant issued by the HC against him - Upheld - Appellant has no respect for the administration of justice. The finding of contempt, as well as the sentence cannot be regarded as disproportionate. ***P.R. Adikesavan v. Registrar General, High Court of Madras***, [2022 LiveLaw \(SC\) 530](#) : AIR 2022 SC 2779

Contempt of Courts Act, 1971 - Contempt petition filed alleging non-compliance of direction issued to the respondents to comply with and deposit the award amount - Respondents held guilty of contempt - Not only have the contemnors unreasonably delayed and defaulted in compliance of the orders of this Court without explaining the cause for such default, or seeking extension of time for compliance; but they have also sought to avoid compliance of the order, even after taking benefit of the extended time period granted for compliance of the same - Respondents shall be heard on sentence. ***Urban Infrastructure Real Estate Fund v. Dharmesh S. Jain***, [2022 LiveLaw \(SC\) 264](#) : 2022 (4) SCALE 590

Contempt of Courts Act, 1971 - Contempt petition filed by RIL alleging non compliance of directions issued to SEBI in *Reliance Industries Ltd vs Securities and Exchange Board of India* 2022 LiveLaw (SC) 659 - Notice Issued to respondent - Merely because the stay application is pending in review petition cannot be a ground to grant stay by the respondent on its own and not to comply

with the directions issued by this Court. ***Reliance Industries Ltd. v. Vijayan A.***, [2022 LiveLaw \(SC\) 950](#)

Contempt of Courts Act, 1971 - Even a lawyer who subscribes his signatures to such derogatory and contemptuous averments is guilty for committing contempt of the Court. ***Mohan Chandra P. v. State of Karnataka***, [2022 LiveLaw \(SC\) 952](#)

Contempt of Courts Act, 1971 - It is not open to the Court in contempt jurisdiction to enlarge the scope of relief claimed in the main proceedings. ***Kangaro Industries v. Jaininder Jain***, [2022 LiveLaw \(SC\) 437](#)

Contempt of Courts Act, 1971 - Jurisdiction of a Court under the Act, would not cease, merely because the order or decree of which contempt is alleged, is executable under law, even without having recourse to contempt proceedings - Irrespective of whether or not a decree is executable, the question to be considered by this Court in determining whether a case for contempt has been made out was, whether, the conduct of the contemnor was such as would make a fit case for awarding punishment for contempt of Court. (Para 13.2, 13.3, 15.1) ***Urban Infrastructure Real Estate Fund v. Dharmesh S. Jain***, [2022 LiveLaw \(SC\) 264](#) : 2022 (4) SCALE 590

Contempt of Courts Act, 1971 - Supreme Court issues show-cause notice for contempt of courts action against Advocate on Record for signing a petition with derogatory remarks against High Court. ***Mohan Chandra P. v. State of Karnataka***, [2022 LiveLaw \(SC\) 952](#)

Contempt of Courts Act, 1971 - Vijay Mallya sentenced to 4 months imprisonment and Rs 2000 fine for contempt of court for disobedience of court orders- It is, well settled that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. The approach may require the court to pass directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the concerned authorities to see that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him- In a given case, to meet the ends of justice, the concept of purging of the contempt would call for complete disgorging of all the benefits secured as a result of actions which are found by the court to be contumacious. (Para 13) ***State Bank of India v. Dr. Vijay Mallya***, [2022 LiveLaw \(SC\) 575](#)

Contempt of Courts Act, 1971 - When a party which is required to comply with the terms or directions in an order has not done so within such time as stipulated in the order, two options are available to the party which was required to comply with such order: (a) give an explanation to the Court as to the circumstances due to which the party could not comply with the order of the Court; (b) seek for further time to comply with the order of the Court. If a delay has occurred in

complying with the terms of an order and the party which was to comply with the order has not resorted to either of the two aforesaid options, then, the party responsible for delay in compliance, may be held to have committed contempt. (Para 15) **Urban Infrastructure Real Estate Fund v. Dharmesh S. Jain**, [2022 LiveLaw \(SC\) 264](#) : 2022 (4) SCALE 590

Section 14 - Procedure where contempt is in the face of the Supreme Court or a High Court

Contempt of Courts Act, 1971; Section 14 - Procedure where contempt is in the face of the Supreme Court or a High Court - contemplates opportunity is provided to contemnor to make his defence - evidence to be taken as may be necessary. (Para 10) **Mehmood Pracha v. Central Administrative Tribunal**, [2022 LiveLaw \(SC\) 692](#) : AIR 2022 SC 3933

Contract Act, 1872

Abandonment

Contract Act, 1872 - Abandonment - The refusal of a contractor to continue to execute the work, unless the reciprocal promises are performed by the other party, cannot be termed as abandonment of contract. A refusal by one party to a contract, may entitle the other party either to sue for breach or to rescind the contract and sue on a quantum meruit for the work already done. (Para 22) **Shripati Lakhu Mane v. Member Secretary**, [2022 LiveLaw \(SC\) 331](#) : AIR 2022 SC 1574

Contract Act, 1872 - Abandonment - Whenever a material alteration takes place in the terms of the original contract, on account of any act of omission or commission on the part of one of the parties to the contract, it is open to the other party not to perform the original contract. This will not amount to abandonment. Moreover, abandonment is normally understood, in the context of a right and not in the context of a liability or obligation. A party to a contract may abandon his rights under the contract leading to a plea of waiver by the other party, but there is no question of abandoning an obligation. (Para 19) **Shripati Lakhu Mane v. Member Secretary**, [2022 LiveLaw \(SC\) 331](#) : AIR 2022 SC 1574

Contract of indemnity, contract of guarantee and pledge

Contract Act, 1872 - Contract of indemnity, contract of guarantee and pledge - The contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person. In a contract of indemnity, a promisee acting within the scope of his authority is entitled to recover from the promisor all damages and all costs which he may incur. A contract of guarantee, on the other hand, is a promise whereby the promisor promises to discharge the liability of a third person in case of his default. The person who gives the guarantee is called the surety. The person in respect of whose default, the guarantee is given is the principal debtor and the person to whom the guarantee

is given is the creditor. Anything done or any promise made for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee. On the other hand, the bailment of goods as security for payment of a debt or performance of a promise is a pledge. (Para 35) **Maitreya Doshi v. Anand Rathi Global Finance Ltd.**, [2022 LiveLaw \(SC\) 789](#) : AIR 2022 SC 4595

Doctrine of Blue Pencil

Contract Act, 1872 - Doctrine of Blue Pencil -The said doctrine strikes off the offending clause as void ab initio. An exclusion clause repugnant to the main contract ought to be effaced. [Para 22] **Texco Marketing Pvt. Ltd. v. TATA AIG General Insurance Company Ltd.**, [2022 LiveLaw \(SC\) 937](#)

Section 2 - Interpretation-clause

Contract Act, 1872; Sections 2, 10 - Concluded Contract - In order that there must be a contract concluded, undoubtedly, there must be a proposal made, which must be accepted. There must be consideration for the promise. The proposal must be accepted, which must be communicated - The acceptance must be unqualified - The parties can be said to have entered into a contract or a contract would be said to be concluded only when they are ad idem on all the essential terms of the contract - If the proposals containing the essential terms have been accepted, and the acceptance is communicated and, if the other conditions in Section 2 are complied with, viz. , that is there is consideration and the contract is enforceable in law, within the meaning of Section 10, it would lead to the creation of a concluded contract. (Para 78) **Karnataka Power Transmission Corporation Ltd. v. JSW Energy Ltd.**, [2022 LiveLaw \(SC\) 981](#)

Section 10 - What agreements are contracts

Contract Act, 1872; Section 10 - It is not essential to form a contract, that it should be in writing - If a law stipulates that a contract be in writing in which case a contract must be reduced to writing. (Para 56) **Karnataka Power Transmission Corporation Ltd. v. JSW Energy Ltd.**, [2022 LiveLaw \(SC\) 981](#)

Contract Act, 1872; Section 2 - Concluded Contract - In order that there must be a contract concluded, undoubtedly, there must be a proposal made, which must be accepted. There must be consideration for the promise. The proposal must be accepted, which must be communicated - The acceptance must be unqualified - The parties can be said to have entered into a contract or a contract would be said to be concluded only when they are ad idem on all the essential terms of the contract - If the proposals containing the essential terms have been accepted, and the acceptance is communicated and, if the other conditions in Section 2 are complied with, viz. , that is there is consideration and the contract is enforceable in law, within the meaning of Section 10, it would lead to the creation of a concluded contract. (Para 78) **Karnataka Power Transmission Corporation Ltd. v. JSW Energy Ltd.**, [2022 LiveLaw \(SC\) 981](#)

Section 23 - What considerations and objects are lawful, and what not.

Contract Act, 1872; Section 23 - An unconscionable term in a contract is void under Section 23 of the Indian Contract Act. (Para 23) ***B.B. Patel v. DLF Universal Ltd;*** [2022 LiveLaw \(SC\) 90](#) : AIR 2022 SC 683 : (2022) 6 SCC 742

Contract Act, 1872; Section 23 - What is contemplated under Section 23 of the Indian Contract Act is law, in all its forms, being immunised from encroachment and infringement by a contract, being enforced. Not only would a Statutory Rule be law within the meaning of Article 13 of the Constitution of India but it would also be law under Section 23 of the Indian Contract Act. (Para 69) ***G.T. Girish v. Y. Subba Raju,*** [2022 LiveLaw \(SC\) 61](#) : 2022 (2) SCALE 151

Section 25 - Agreement without consideration

Contract Act 1872; Section 25(3) - It is clear that any agreement to pay a time barred debt, would be enforceable in law, within three years from the due date of payment, in terms of such agreement. ***Kotak Mahindra Bank Limited v. Kew Precision Parts Pvt. Ltd.,*** [2022 LiveLaw \(SC\) 673](#) : (2022) 9 SCC 364

Section 28 - Agreements in restraint of legal proceeding void

Contract Act, 1872; Section 28 - Insurance - Condition of lodging Insurance claim within a period of one month, extendable by another one month is contrary to Section 28 of the Act and thus void. ***Oriental Insurance Company Ltd. v. Sanjesh,*** [2022 LiveLaw \(SC\) 303](#)

Section 56 - Agreement to do impossible act

Contract Act, 1872 - Section 56 - Doctrine of Frustration discussed - The applicability of Section 56 of the Indian Contract Act is not limited to cases of physical impossibility. (Para 41) ***Loop Telecom and Trading Ltd. v. Union of India,*** [2022 LiveLaw \(SC\) 238](#) : AIR 2022 SC 1441 : (2022) 6 SCC 762

Section 65 - Obligation of person who has received advantage under void agreement, or contract that becomes void

Contract Act, 1872 - Section 65 - Appeal against TDSAT order dismissing appellant's refund claim - Dismissed - In Centre for Public Interest Litigation v. Union of India (2012) 3 SCC 1, the 2G licences which were granted by the Union of India, including to the appellant, were quashed - The appellant was the beneficiary of the "First Come First Serve" policy which was intended to favour a group of private bidding entities at the cost of the public exchequer. The contention of the appellant that it was exculpated from any wrongdoing by the judgment of this Court in CPIL (supra) is patently erroneous. ***Loop Telecom and Trading Ltd. v. Union of India,*** [2022 LiveLaw \(SC\) 238](#) : AIR 2022 SC 1441 : (2022) 6 SCC 762

Contract Act, 1872 - Section 65 - Restitution - In adjudicating a claim of restitution, the court must determine the illegality which caused the contract to become void and the role the party claiming restitution has played in it. If the

party claiming restitution was equally or more responsible for the illegality (in comparison to the defendant), there shall be no cause for restitution. (*Para 52*) ***Loop Telecom and Trading Ltd. v. Union of India*, [2022 LiveLaw \(SC\) 238](#) : AIR 2022 SC 1441 : (2022) 6 SCC 762**

Section 74 - Compensation for breach of contract where penalty stipulated for

Contract Act, 1872; Section 74 - All pre-estimated amounts which are specified to be paid on account of breach by any party under a contract are covered by Section 74 of Contract Act - In a scenario where the contractual terms clearly provide the factum of the pre estimate amount being in the nature of 'earnest money', the onus to prove that the same was 'penal' in nature squarely lies on the party seeking refund of the same. Failure to discharge such burden would treat any pre-estimated amount stipulated in the contract as a 'genuine pre-estimate of loss'. (*Para 35*) ***Desh Raj v. Rohtash Singh*, [2022 LiveLaw \(SC\) 1026](#)**

Sections 176 – Pawnee’s right where pawnor makes default

Contract Act, 1872; Section 176 - Pledge, Pawnee & Pawnor -Contract Act does not conceive of sale of the pawn to self and consequently, the pawnor's right to redemption in terms of Section 177 of the Contract Act survives till 'actual sale' (*Para 8.2*) ***PTC India Financial Services Ltd v. Venkateswarlu Kari*, [2022 LiveLaw \(SC\) 475](#) : (2022) 9 SCC 704**

Sections 177 – Defaulting pawnor’s right to redeem

Contract Act, 1872; Section 177 - Pledge, Pawnee & Pawnor -Contract Act does not conceive of sale of the pawn to self and consequently, the pawnor's right to redemption in terms of Section 177 of the Contract Act survives till 'actual sale' (*Para 8.2*) ***PTC India Financial Services Ltd v. Venkateswarlu Kari*, [2022 LiveLaw \(SC\) 475](#) : (2022) 9 SCC 704**

Contract of Service or Contract for Service

Contract of Service or Contract for Service - Sushilaben Indravadan Gandhi v. New India Assurance Co. Ltd. - flexibility in regard to deciding the question of whether a contract is one for service or one of service - no one test of universal application can ever yield the correct result - it is a conglomerate of all applicable tests taken on the totality of the fact situation in a given case that would ultimately yield, particularly in a complex hybrid situation, whether the contract to be construed is a contract of service or a contract for service - depending on the fact situation of each case, all the aforesaid factors would not necessarily be relevant, or, if relevant, be given the same weight. [*Para 41 & 56*] ***C.C. C.E. & S.T., Bangalore (Adjudication) Etc. v. M/s. Northern Operating Systems Pvt. Ltd.*, [2022 LiveLaw \(SC\) 526](#) : AIR 2022 SC 2450**

Co-operative Societies

Co-operative Societies - Once a person becomes a member of the Co-operative Society, he loses his individuality with the Society and he has no

independent rights except those given to him by the statute and bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body. (Para 53) **Bengal Secretariat Cooperative Land Mortgage Bank and Housing Society Ltd. v. Alope Kumar**, [2022 LiveLaw \(SC\) 849](#)

Kerala Cooperative Societies Act, 1969

Kerala Cooperative Societies Act, 1969; Section 40(1)(a) - A member of the society executing the document in his own capacity or in the capacity of a Guardian or a minor shall not be entitled to the benefit of remission of stamp duty - The benefit is available only in respect of instruments executed by or on behalf of a society or by an officer or member thereof and instrument so executed should be relating to the business of the society. (Para 8-9) **Kerala Land Reforms & Development Co-operative Society Ltd. v. District Registrar (General)**, [2022 LiveLaw \(SC\) 882](#)

Maharashtra Co-operative Societies Rules, 1961

Maharashtra Co-operative Societies Rules, 1961 - Rule 107(14) - Once the borrower failed to apply to the Recovery Officer to set aside the auction sale on the grounds of material irregularity, mistake or fraud in publishing or conducting the auction sale within a period of thirty days from the date of sale of immovable property, thereafter it was not open for the borrower to challenge the sale on the ground of material irregularity. (Para 7.1) **Deenadayal Nagari Sahakari Bank Ltd. v. Munjaji**, [2022 LiveLaw \(SC\) 183](#) : AIR 2022 SC 1140 : (2022) 7 SCC 594

West Bengal Co-operative Societies Act, 1940

Co-operative Societies - West Bengal Co-operative Societies Act, 1940 - It is not open to the Court to sit over the commercial wisdom of the General Body as an Appellate Authority. Merely because one single member in minority disapproves of the decision, that cannot be the basis to negate the decision of the General Body, unless it is shown that the decision was the product of fraud or misrepresentation or was opposed to some statutory prohibition -Co-operative Society is to function democratically and the internal democracy of a society, including resolutions passed in accordance with the Act, the Rules, and the bye-laws have to be respected and implemented. (Para 54) **Bengal Secretariat Cooperative Land Mortgage Bank and Housing Society Ltd. v. Alope Kumar**, [2022 LiveLaw \(SC\) 849](#)

Court Fees Act, 1870

Section 7 - Computation of fees payable in certain suits

Court Fees Act, 1870; Section 7 - Appeal against High Court judgment which set aside Trial Court order to file the Court-fees on the amount of Rs.20 Lakhs as claimed by him in the Money suit for compensation- Allowed - A reading of the relief clause would make it abundantly clear that this was a money suit for compensation/damages and not falling under any of the categories mentioned

in clause (iv) of Section 7 of the Act. Therefore, there would be no question at all for the applicability of Section 7(iv) of the Act. It would be a simple case of applicability of Section 7(i) of the Act and ad valorem Court-fees would have to be paid as per Schedule 1 entry. ***State of Punjab v. Dev Brat Sharma*, [2022 LiveLaw \(SC\) 292](#) : 2022 (5) SCALE 90**

Court Fees Act, 1870; Section 7 - Once the suit in question is a money suit for compensation and damages falling under clause (i) of Section 7 of the Act, ad valorem Court-fees would be payable on the amount claimed - It is only with respect to the category of suits specified in clause (iv) of Section 7 of the Act that the plaintiff has the liberty of stating in the plaint the amount at which relief is valued and Court-fees would be payable on the said amount. (Para 21) ***State of Punjab v. Dev Brat Sharma*, [2022 LiveLaw \(SC\) 292](#) : 2022 (5) SCALE 90**

Court-fees Act, 1870; Section 7(iv)(d) - the market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation - the market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed - It is unquestionable principle of law that a suit for mandatory and prohibitory injunction is not required to be valued at the market value of the property. [Para 9.1 & 10] ***Bharat Bhushan Gupta v. Pratap Narain Verma*, [2022 LiveLaw \(SC\) 552](#) : AIR 2022 SC 2867 : (2022) 8 SCC 333**

Courts Act, 1918 (Punjab)

Courts Act, 1918 (Punjab); Section 41 - Code of Civil Procedure, 1908; Section 100 - In the State of Haryana a court in second appeal is not required to formulate a substantial question of law, as what is applicable in Haryana is Section 41 of the Punjab Courts Act, 1918 and not Section 100 of CPC - But only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law - Second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court. (Para 10-15) ***Satyender v. Saroj*, [2022 LiveLaw \(SC\) 679](#) : AIR 2022 SC 4732**

Courts Act, 1918 (Punjab); Section 41 - Second appeal is not a forum where the court is to re-examine or re-appreciate the question of fact settled by the trial court or the Appellate Court - Though in view of Section 41 of the Punjab Act, it is not necessary to frame a substantial question of law, the jurisdiction of the High Court under second appeal cannot be exercised for re-appreciation of evidence. (Para 16-17) ***Shivali Enterprises v. Godawari (D)*, [2022 LiveLaw \(SC\) 762](#) : AIR 2022 SC 4388**

Covid - 19

Death Compensation Claims

COVID Death Compensation Claims - Apprehension about Fake Claims - Nobody can be permitted to avail the ex-gratia compensation by making a false claim and/or submitting the false certificate- National Disaster Management Authority /Union of India, through Ministry of Health and Family Welfare, permitted to carry out the random scrutiny of 5% of the claim applications by the States of Andhra Pradesh, Gujarat, Kerala and Maharashtra at the first instance - The concerned States directed to assist in carrying out the scrutiny of the claim applications as ordered above and submit all the necessary particulars of the respective claims that have been attended/processed to the Ministry of Health and Family Welfare, who shall carry out the scrutiny within a period of three months from today and submit the report before this Court. If it is found that anybody has made a fake claim, the same shall be considered under Section 52 of the Disaster Management Act, 2005 and liable to be punished accordingly. (Para 6, 6.1) ***Gaurav Kumar Bansal v. Union of India, [2022 LiveLaw \(SC\) 312](#) : 2022 (5) SCALE 252***

COVID Death Compensation Claims - Fixed outer limit of sixty days from today to file the claims for compensation in case the death occurred due to COVID-19 prior to 20.03.2022 - For future deaths, ninety days' time is provided from the date of death due to COVID-19 to file the claim for compensation. The earlier order to process the claims and to make the actual payment of compensation within a period of thirty days from the date of receipt of claim is ordered to be continued - In case of extreme hardship any claimant could not make an application within the time prescribed, it will be open for the claimant to approach the Grievance Redressal Committee and make the claim through Grievance Redressal Committee which shall be considered by the Grievance Redressal Committee on case to case basis and if it is found by the Grievance Redressal Committee that a particular claimant could not make the claim within the stipulated time which was beyond their control his/her case may be considered on merits - Ministry of Health and Family Welfare and Ministry of Home Affairs – Union of India and all the concerned States are directed to give wide publicity to the present order through print and electronic media so that the claimants can know the time limit fixed by this Court for making claims. (Para 3-5) ***Gaurav Kumar Bansal v. Union of India, [2022 LiveLaw \(SC\) 312](#) : 2022 (5) SCALE 252***

Ex Gratia Compensation

Covid -19 - Ex Gratia Compensation - States directed to reach out to children who were orphaned due to COVID-19 for paying them ex-gratia compensation of Rs 50,000 - Issued directions - Applications/claims of the kin/family members of persons who have succumbed to COVID-19 shall not be rejected on technical grounds. ***Gaurav Bansal v. Union of India, [2022 LiveLaw \(SC\) 70](#)***

Covid -19 - Performance of Dokhmenashini or funeral rights in the Dokhmas belonging to the Parsi Zoroastrian community - Agreed Protocol & Standard Operating Procedure For Handling Dead Bodies Of Parsi Zoroastrian Covid -19 Victims - Protocol and the Standard Operating Procedure comports with the tenets of the Zoroastrian faith, while according with the need expressed by the Union government for the maintenance of safety and hygiene in the context of the Covid -19 pandemic. **Surat Parsi Panchayat Board v. Union of India, 2022 LiveLaw (SC) 149 : (2022) 4 SCC 534**

Extension of Limitation

Covid-19 - Extension of Limitation - Arbitration and Conciliation Act, 1996; Section 23(4), 29A - Commercial Courts Act, 2015; Section 12A - Negotiable Instruments Act, 1881; Section 138 - The period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. (Para 5) **In Re Cognizance for extension of Limitation, 2022 LiveLaw (SC) 31 : (2022) 3 SCC 117**

Covid-19 - Extension of Limitation - Period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or *quasi-judicial* proceedings - The balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022 - In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply. (Para 5) **In Re Cognizance for extension of Limitation, 2022 LiveLaw (SC) 31 : (2022) 3 SCC 117**

Vaccination

Covid -19 - Vaccination - Centre's affidavit to the effect that production of an Aadhar card is not a mandatory pre -condition for availing of vaccination facilities - All concerned authorities shall act in pursuance of the stated policy. (Para 6) **Siddharthshankar Sharma v. Union of India, 2022 LiveLaw (SC) 147**

Covid-19 - Vaccination - Adverse effects following immunization is crucial for creating awareness around vaccines and their efficacy, apart from being instrumental in further scientific studies around the pandemic- Union of India directed to facilitate the reporting of suspected adverse events by individuals and private doctors on a virtual platform and the reports so made shall be publicly accessible after being given unique identification numbers, without

listing any personal or confidential data of the persons reporting. (Para 84, 89(viii)) **Jacob Puliye v. Union of India**, [2022 LiveLaw \(SC\) 439](#) : 2022 (7) SCALE 256

Covid-19 - Vaccination - Cannot conclude that restricted emergency use approvals had been granted to COVISHIELD and COVAXIN in haste, without thorough review of the relevant data - Subject to the protection of privacy of individual subjects, with respect to ongoing clinical trials and trials that may be conducted subsequently for COVID-19 vaccines, all relevant data required to be published under the extant statutory regime must be made available to the public without undue delay. (Para 76, 89(vi)) **Jacob Puliye v. Union of India**, [2022 LiveLaw \(SC\) 439](#) : 2022 (7) SCALE 256

Covid-19 - Vaccination policy - Current vaccination policy of the Union of India is informed by relevant considerations and cannot be said to be unreasonable or manifestly arbitrary - Contrasting scientific opinion coming forth from certain quarters to the effect that natural immunity offers better protection against COVID-19 is not pertinent for determination of the issue before us. (Para 56,89(iv)) **Jacob Puliye v. Union of India**, [2022 LiveLaw \(SC\) 439](#) : 2022 (7) SCALE 256

COVID-19 - Vaccine mandates - Not proportionate - No data has been placed by the Union of India or the States appearing before us, controverting the material placed by the Petitioner in the form of emerging scientific opinion which appears to indicate that the risk of transmission of the virus from unvaccinated individuals is almost on par with that from vaccinated persons. In light of this, restrictions on unvaccinated individuals imposed through various vaccine mandates by State Governments / Union Territories cannot be said to be proportionate. Till the infection rate remains low and any new development or research finding emerges which provides due justification to impose reasonable and proportionate restrictions on the rights of unvaccinated individuals, we suggest that all authorities in this country, including private organizations and educational institutions, review the relevant orders and instructions imposing restrictions on unvaccinated individuals in terms of access to public places, services and resources, if not already recalled. (Para 89(v)). **Jacob Puliye v. Union of India**, [2022 LiveLaw \(SC\) 439](#) : 2022 (7) SCALE 256

CRZ violations

CRZ violations - Maradu Flats Demolition - The owners of the flats in the four buildings in Maradu, Kochi, which were demolished in 2020 for CRZ violations, are not entitled to interest on the refund payable to them by the builders. Kerala Coastal **Zone Management Authority v. Maradu Municipality**, [2022 LiveLaw \(SC\) 485](#) : AIR 2022 SC 2377 : (2022) 8 SCC 240

Customary Law

Customary Law - Mizo Customary Law - Inheritance - Inheritance depends upon the responsibility carried out by a legal heir to look after the elders in the

family - It depends upon the question as to whether a person supports the deceased in his old age or not - Even if a natural heir does not support his parents, he would not be entitled to inheritance - Even if there is a natural heir, a person who supports the person until his death could inherit the properties of that person. ***Kaithuami v. Ralliani***, [2022 LiveLaw \(SC\) 412](#) : AIR 2022 SC 2824

Customs Act, 1962

Section 129E - Deposit of certain percentage of duty demanded or penalty imposed before filing appeal

Customs Act, 1962; Section 129E - High Court which upheld the order passed by CESTAT finding that the appellant has not made pre-deposit - Dismissed - Rejected the contention of appellant that in view of the fact that the act relates to the year 2013, he must be governed by Section 129E prior to the substitution - When the appellant is not being called upon to pay the full amount but is only asked to pay the amount which is fixed under the substituted provision, we do not find any merit in the contention of the appellant. ***Chandra Sekhar Jha v. Union of India***, [2022 LiveLaw \(SC\) 256](#)

Customs Act, 1962; Section 129E - Under the new regime, the amount to be deposited to maintain the appeal has been reduced from 100% to 7.5% - The discretion which was made available to the appellate body to scale down the pre-deposit has been taken away - In regard to stay applications and appeals which were pending before any Appellate Authority prior to commencement of The Finance (No.2) Act 2014, Section 129E as substituted would not apply. (Para 8) ***Chandra Sekhar Jha v. Union of India***, [2022 LiveLaw \(SC\) 256](#)

Sections 87 - Imported stores may be consumed on board a foreign-going vessel or aircraft

Customs Act, 1962; Sections 87, 130(2), 130E(b) - Dispute concerning an exemption cannot be equated with a dispute in relation to the rate of duty - Whether the assessee is entitled to exemption as claimed or not, such an issue cannot be said to be an issue relating, amongst other things, to the determination of any question having relation to the rate of duty. (Para 4) ***Asean Cableship Pte. Ltd. v. Commissioner of Customs***, [2022 LiveLaw \(SC\) 293](#) : 2022 (5) SCALE 234

Section 130 - Appeal to High Court & Supreme Court

Customs Act, 1962; Sections 87, 130(2), 130E(b) - SLP against High Court order which rejected preliminary objection to the appeal filed by Revenue holding that the principal question in the present case is, not in relation to the rate of duty but determining whether, vessel AE, is a foreign-going vessel or not and if the vessel AE is a foreign -going vessel, whether Section 87 of the Act would be applicable or not - Dismissed - With respect to such an issue, against the order passed by the CESTAT, the appeal would be maintainable

before the High Court under Section 130 of the Act. ***Asean Cables Pte. Ltd. v. Commissioner of Customs***, [2022 LiveLaw \(SC\) 293](#) : 2022 (5) SCALE 234

D

Dam Safety Act, 2021

Dam Safety Act, 2021 - Mullaperiyar Dam Dispute between Kerala and Tamil Nadu - Supreme Court reconstitutes Supervisory Committee- Confers it powers of the National Dam Safety Authority under the Dam Safety Act - Chief Secretaries of States liable for violation of committee directions- The reconstituted Supervisory Committee will decide all outstanding matters related to Mullaperiyar Dam's safety and conduct a safety review afresh- the Supervisory Committee, in terms of this order, is deemed to be discharging all the functions and powers of the NDSA until a regular NDSA becomes functional under the 2021 Act and more so, orders of this Court in that regard. ***Dr. Joe Joseph v. State of Tamil Nadu***, [2022 LiveLaw \(SC\) 356](#) : (2022) 6 SCC 384

Dam Safety Act, 2021 - We express a sanguine hope that the competent authority may take appropriate steps to ensure that the regular NDSA under the 2021 Act is established at the earliest, as it cannot brook delay. ***Dr. Joe Joseph v. State of Tamil Nadu***, [2022 LiveLaw \(SC\) 356](#) : (2022) 6 SCC 384

Delegated Legislation

Delegated Legislation - Delegated legislation must be in conformity with the enactment of the legislature which authorises its making. A rule cannot rise above the source of power. (Para 12) ***Talli Gram Panchayat v. Union of India***, [2022 LiveLaw \(SC\) 614](#)

Delegated Legislation - Delegated legislation should not travel beyond the purview of the parent Act. If it does, it is ultra vires and cannot be given any effect -Rules or regulation cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinating legislative functions, or, what is fictionally called, a power to fill up details - Fine distinction between a rule and regulation and also the power of the delegate authority to frame such rules or regulation - (Para 64-81) ***Kerala State Electricity Board v. Thomas Joseph @ Thomas M.J.***, [2022 LiveLaw \(SC\) 1034](#)

Dental Council of India

Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Studies or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006; Regulation 6(2)(h) - Amended Regulation 6(2)(h) has a direct nexus with the object to be achieved,

i.e., providing adequate teaching and training facilities to the students - It is made in order to ensure the maintenance of proper academic standards and infrastructure. (Para 33, 41) **Dental Council of India v. Biyani Shikshan Samiti**, [2022 LiveLaw \(SC\) 366](#) : AIR 2022 SC 1799 : (2022) 6 SCC 65

Dentists Act, 1948

Dentists Act, 1948 - Appeal against Rajasthan HC judgment which struck down notification amending Regulation 6(2)(h) of the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Studies or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 - Allowed. **Dental Council of India v. Biyani Shikshan Samiti**, [2022 LiveLaw \(SC\) 366](#) : AIR 2022 SC 1799 : (2022) 6 SCC 65

Section 10A - Permission for establishment of new dental college, new courses of study, etc.

Dentists Act, 1948; Section 10A - It is within the competence of the Council to make Regulations prescribing any other conditions, which are otherwise not found in clauses (a) to (f) of sub-section (7) of Section 10A of the Act. (Para 29-30) **Dental Council of India v. Biyani Shikshan Samiti**, [2022 LiveLaw \(SC\) 366](#) : AIR 2022 SC 1799 : (2022) 6 SCC 65

Depositories Act, 1996

Depositories Act, 1996 - Exercise of right on the part of the pawnee and consequent action on the part of the 'depository' recording the pawnee as the 'beneficial owner' is not 'actual sale'-Right to redemption under Section 177 of the Contract Act continues and can be exercised even after the pawnee has been registered and has acquired the status of 'beneficial owner'. The right of redemption would cease on the 'actual sale', that is, when the 'beneficial owner' sells the dematerialised securities to a third person. Once the 'actual sale' has been affected by the pawnee, the pawnor forfeits his right under Section 177 of the Contract Act to ask for redemption of the pawned goods. (10.4) **PTC India Financial Services Ltd v. Venkateswarlu Kari**, [2022 LiveLaw \(SC\) 475](#) : (2022) 9 SCC 704

Depositories Act, 1996 - Principle that pawner has right to redeem on failure of reasonable notice will not apply to pledge of shares - We, however, accept that the Depositories Act, by-laws and rules relating to sale of dematerialised securities would be gravely undermined in case the pawnor is entitled to redeem the dematerialised shares from the third party on the ground that reasonable notice, as postulated under Section 176 of the Contract Act, was not given to the pawnor. (10.5) **PTC India Financial Services Ltd v. Venkateswarlu Kari**, [2022 LiveLaw \(SC\) 475](#) : (2022) 9 SCC 704

Section 12 - Pledge or hypothecation of securities held in a depository

Depositories Act, 1996 - Section 12 of the Depositories Act is not ex-facie inconsistent with pawnee and pawnor's contractual rights and obligations under the Contract Act and the common law. (Para 10.2) **PTC India Financial**

Services Ltd v. Venkateswarlu Kari, [2022 LiveLaw \(SC\) 475](#) : (2022) 9 SCC 704

Disability Pension

Disability Pension - Army - the question of entitlement of soldiers to disability pension cannot be determined on the basis of medical examination conducted 20 years after his discharge. (Para 15) **Union of India v. Ex Sep. R. Munusamy, [2022 LiveLaw \(SC\) 619](#) : AIR 2022 SC 3449**

DNA Test

DNA Test for paternity – Supreme Court sets aside HC direction for DNA test of children in a matrimonial disputes - SC cites Right to Privacy – Merely because something is permissible under the law cannot be directed as a matter of course, to be performed particularly when a direction to that effect would be invasive to the physical autonomy of a person – Important question is not only whether it would amount to testimonial compulsion – Also encompasses right to privacy – Test could be prejudicial to the privacy rights of persons subjected to it – May also be prejudicial to future of children subjected to the test. (Para 9) **Inayath Ali & Anr. v. State of Telengana, [2022 LiveLaw \(SC\) 869](#)**

Doctrine of Legitimate Expectation

Doctrine of Legitimate Expectation - Abuse of power is one of the criteria for testing whether a public body could resile from a prima facie legitimate expectation - If the government authority induced an expectation which was substantive, the upsetting of that expectation, through departure from the expected course of action in the absence of compelling public interest, would be so unfair, that it would amount to abuse of power. [Para 33] **State of Bihar v. Shyama Nandan Mishra, [2022 LiveLaw \(SC\) 449](#) : 2022 (7) SCALE 432**

Doctrine of Legitimate Expectation - Mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right - The failure to consider and give due weight to it may render the decision arbitrary - The requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, which is a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh, what would otherwise have been the legitimate expectation of the claimant - A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. (Para 40) **Ms. X v. Registrar General, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99**

Doctrine of Legitimate Expectation - The doctrine of legitimate expectation ordinarily would not have any application when the legislature has enacted the

statute. Further, the legitimate expectation cannot prevail over a policy introduced by the Government, which does not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other enforceable rights vested in the respondent. When the decision of public body is in conformity with law or is in public interest, the plea of legitimate expectation cannot be sustained. (Para 10-13) **State of West Bengal v. Gitashree Dutta (Dey)**, [2022 LiveLaw \(SC\) 527](#)

Doctrine of Legitimate Expectation - Where the substantive legitimate expectation is not ultra vires the power of the authority and the court is in a position to protect it, the State cannot be allowed to change course and belie the legitimate expectation - Regularity, Predictability, Certainty and Fairness are necessary concomitants of Government's action - Failure to keep commitment would permit the State's action to be interdicted. [Para 34] **State of Bihar v. Shyama Nandan Mishra**, [2022 LiveLaw \(SC\) 449](#) : 2022 (7) SCALE 432

Doctrine of Pith and Substance

Doctrine of Pith and Substance - When the legislative competence of a State Legislature is questioned on the ground that it encroaches upon the legislative competence of the Parliament, since some entries are bound to be overlapping, in such a situation, the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate to. Once it is so determined, any incidental trenching on the field reserved to the other legislature is of no consequence. The court has to look at the substance of the matter. The true character of the legislation has to be ascertained. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provision - Incidental and superficial encroachments are to be disregarded - The predominance of the Union List would not prevent the State Legislature from dealing with any matter with. (Para 71) **Secretary of Govt. of Kerala Irrigation Department v. James Varghese**, [2022 LiveLaw \(SC\) 447](#) : (2022) 9 SCC 593

Doctrine of Promissory Estoppel

Doctrine of promissory estoppel - In taxing matters, the doctrine of promissory estoppel as such is not applicable and the Revenue can take a position different from its earlier stand in a case with established distinguishing features. (Para 20.3) **State of Gujarat v. ArcelorMittal Nippon Steel**, [2022 LiveLaw \(SC\) 79](#) : (2022) 6 SCC 459

Doctrine of promissory estoppel - The doctrine of promissory estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straitjacketed into pigeonholes. In other words, there cannot be any hard and fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties. (Para 20.2) **State of Gujarat v. ArcelorMittal Nippon Steel**, [2022 LiveLaw \(SC\) 79](#) : (2022) 6 SCC 459

Doctrine of Prospective Overruling

Doctrine of Prospective Overruling - In declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transactions under earlier decisions superseded or statutes held unconstitutional. (Para 23) ***State of Manipur v. Surjakumar Okram*, [2022 LiveLaw \(SC\) 113](#)**

Doctrine of Prospective Overruling - The law declared by the Supreme Court is the law of the land and in so declaring, the operation of the law can be restricted to the future, thereby saving past transactions. The doctrine of prospective overruling is in essence a recognition of the principle that the Court moulds the reliefs claimed to meet the justice of the case- Court can apply its decision prospectively, i.e., from the date of its judgment to save past transactions. (Para 34) ***Jarnail Singh v. Lachhmi Narain Gupta*, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494**

Doctrine of Prospective Overruling - The observation made in *M.A. Murthy v. State of Karnataka* (2003) 7 SCC 517 that there shall be no prospective overruling unless indicated in the particular decision is obiter – The casual and unnecessary observation in *M.A. Murthy* (supra) that there shall be no prospective overruling unless it is so indicated in a particular decision is obiter and not binding. (Para 41) ***Jarnail Singh v. Lachhmi Narain Gupta*, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494**

Doctrine of Ultra Vires

Doctrine of Ultra Vires - Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act or statute law or the general law; there may be noncompliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires. (Para 65) ***Kerala State Electricity Board v. Thomas Joseph @ Thomas M.J.*, [2022 LiveLaw \(SC\) 1034](#)**

Drugs & Cosmetics Act, 1940

Drugs & Cosmetics Act, 1940; Section 34 - Offences by companies - Merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not ipso facto make the director vicariously liable. (Para 18) ***Lalankumar Singh v. State of Maharashtra*, [2022 LiveLaw \(SC\) 833](#) : AIR 2022 SC 5151**

Duomatic Principle

Duomatic Principle - Duomatic Principle applicable even in the Indian context - Strict adherence to a statutory requirement may be dispensed with if it is demonstrated otherwise on facts, if the same is consented by all members - Principle is only applicable in those cases wherein bona fide transactions are

involved - Fraud is a clear exception. (Para 26-29) **Mahima Datla v. Renuka Datla**, [2022 LiveLaw \(SC\) 479](#) : (2022) 10 SCC 258



Easements Act, 1882

Easements Act, 1882; Section 52 - Licence - The inmates in the old age home are licensees and are expected to maintain a minimum level of discipline and good behaviour and not to cause disturbance to the fellow inmates who are also senior citizen - They have a legal right to stay in the room of the old age home only so long as they comply with the terms and conditions of such license - As a licensee, the plaintiffs have no right to stay in the accommodation allotted which is purely an approach to a human problem faced by the people in old age. (Para 23-26) **Samarpan Varishtha Jan Parisar v. Rajendra Prasad Agarwal**, [2022 LiveLaw \(SC\) 460](#) : AIR 2022 SC 2209

Education

Central Board of Secondary Education (CBSE)

Education - Central Board of Secondary Education - CBSE shall provide an option to the candidate to accept the better of the two marks obtained in the subject for final declaration of his/her results - Clause 28 to the extent – “As per this policy, marks secured in later examination will be considered final”. This condition stands effaced from the policy. **Sukriti v. Central Board of Secondary Education**, [2022 LiveLaw \(SC\) 27](#)

Education - NIOS shall endeavor to fix the examination centres, within a distance of 10 kilometers from the Accredited Institutions with which they are connected - It has duty to fix examination centres in a manner to enable students to appear in the examination with certainty and ease. **Pragya Higher Secondary School v. National Institute of Open Schooling**, [2022 LiveLaw \(SC\) 535](#)

Capitation Fee

Education - Punjab (Regulations of Fees of Unaided Educational Institutions) Act, 2016 - Government Order/Notification stipulation that unaided Educational Institution shall upload income, expenditure account and balance sheet on its website - Ultra vires- It is clearly outside the scope of the authority bestowed on the competent authority. **Independent Schools' Association Chandigarh (Regd.) v. Union of India**, [2022 LiveLaw \(SC\) 518](#) : 2022 (8) SCALE 401

Education - Punjab (Regulations of Fees of Unaided Educational Institutions) Act, 2016 - Government Order/Notification stipulation that prohibits the unaided institutions from charging any kind of cost from the parents - Consistent with the legislative intent and mandate of the 2016 Act - The unaided institutions can charge only the disclosed fee structure amount from its students and no further. *Independent Schools' Association Chandigarh (Regd.) v. Union of India*, [2022 LiveLaw \(SC\) 518](#) : 2022 (8) SCALE 401

Education - Punjab (Regulations of Fees of Unaided Educational Institutions) Act, 2016 - Government Order/Notification provision whereby penalty amount is enhanced in respect of unaided institutions - Unconstitutional and ultra vires - What should be the quantum of penalty amount or punishment, is a legislative policy. It must be left to the concerned legislature. It cannot be provided by way of an executive order. *Independent Schools' Association Chandigarh (Regd.) v. Union of India*, [2022 LiveLaw \(SC\) 518](#) : 2022 (8) SCALE 401

Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Andhra Pradesh) - Admission and Fee Regulatory Committee (for Professional Courses offered in Private Un-Aided Professional Institutions) Rules, 2006 (Andhra Pradesh); Rule 4 - Government order issued by State of Andhra Pradesh that enhanced the tuition fee of Private Medical Colleges by seven times, to Rs. 24 lakhs per annum - State Government could not have enhanced the fee during the review pending with the AFRC. To enhance the fee unilaterally would be contrary to the objects and purpose of the 1983 Act as well as the 2006 Rules, 2006 and the decision in *P.A. Inamdar and Ors. Vs. State of Maharashtra and Ors.*; (2005) 6 SCC 537. (Para 3.1, 5) *Narayana Medical College v. State of Andhra Pradesh*, [2022 LiveLaw \(SC\) 929](#) : AIR 2022 SC 5686

Private Medical Colleges

Education - Private Medical Colleges - Capitation Fee - The management of private medical colleges are strictly prohibited from accepting payment of fees in cash, in order to avoid charging of capitation fee - Directions to curb capitation fee menace issued - A web-portal under the aegis of Supreme Court has to be set-up wherein any information about the private medical colleges charging capitation fees can be furnished by the students - While fixing fee, the Fee Fixation Committees of the States should take into account all the components of fee, leaving no scope for managements to charge any additional amounts apart from what has been prescribed by the fee fixation committee from time to time. (Para 13-15) *Rashtreeya Sikshana Samithi Trust v. Committee for Fixation of Fee Structure Of Private Professional Colleges*, [2022 LiveLaw \(SC\) 501](#) : AIR 2022 SC 2434

Recognised Private Schools

Education - Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 - Government Order fixing 50% marks for eligibility to undergo Teachers'

Training Certificate Course for appointment in the State of Tamil Nadu - Upheld.
Director of Teacher's Training Research Education v. OM Jessymol, 2022 LiveLaw (SC) 759

Reservation in Admission

Education - Reservation in Admission - Appeal against Manipur High Court's order upholding the decision of Manipur University to reduce reservation in admission for Scheduled Caste candidates from 15% to 2%, OBC quota from 27% to 17% and increase for Scheduled Tribes candidates from 7.5% to 31%, in terms of amendment to the Central Educational Institutions (Reservation in Admission) Act 2006 - Dismissed - After amendment of the Reservation Act, the respondent No. 1 – University had to follow the reservation norms of 2% for SC candidates, 31% for ST candidates and 17% for OBC candidates which is in consonance with the second proviso to Section 3 of the Reservation Act inserted by virtue of the Amendment Act. ***Kshetrimayum Mahesh v. Manipur University, 2022 LiveLaw (SC) 46 : AIR 2022 SC 376 : (2022) 2 SCC 704***

Election

Election - A false declaration with regard to the assets of a candidate, his/her spouse or dependents, constitutes corrupt practice irrespective of the impact of such a false declaration on the election of the candidate. It may be presumed that a false declaration impacts the election. (Para 38) ***S. Rukmini Madegowda v. State Election Commission, 2022 LiveLaw (SC) 766 : AIR 2022 SC 4347***

Freebies Issue

Election Laws - Freebies Issue - Supreme Court refers to 3-judge bench - Identifies 3 issues - Petitioners prayed for reconsideration of SC judgment in *S. Subramaniam Balaji v. State of Tamil Nadu, (2013) 9 SCC 659*. ***Ashwini Upadhyay v. Union of India, 2022 LiveLaw (SC) 717 : 2022 (12) SCALE 436***

Electricity

Electricity - A basic amenity of which a person cannot be deprived - Electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. All that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question. ***Dilip v. Satish, 2022 LiveLaw (SC) 570***

Electricity - Appeal against High Court judgment which quashed FIR lodged by landlord against tenant alleging that he forged signature in a No objection certificate submitted before Electricity Board - Allowed - Completely overlooked the definition of cheating in Section 415 IPC- It cannot be said that fabrication and/or creation of records and/or forging a signature does not constitute an offence under the Indian Penal Code. ***Dilip v. Satish, 2022 LiveLaw (SC) 570***

Electricity Act, 2003

Electricity Act, 2003 - The Appropriate State Commissions possess the power to determine and regulate tariff. The Electricity Act 2003 seeks to distance the

State Governments from the determination and regulation of tariff, placing such power completely within the ambit of the Appropriate Commissions - States have sufficient flexibility to regulate the intra-state transmission systems. (Para 128) **TATA Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 987](#)

Section 2(8) - "Captive generating plant"

Electricity Act, 2003; Section 2(8), 2(49), 9, 42 - Even an association of corporate bodies can establish a captive power plant. The only requirement would be that the said plant must be established primarily for their own use. (Para 16) **Chhattisgarh State Power Distribution Company Ltd. v. Chhattisgarh State Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 478](#) : AIR 2022 SC 2904

Section 9 - Captive Generation

Electricity Act, 2003; Section 9 - National Electricity Policy, 2005 - The provision with respect to establishing captive power plant has been made with a view to not only securing reliable, quality and cost-effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry - A liberal provision has been made in Section 9 of the said Act so as to promote establishment of captive power plants. (Para 21-23) **Chhattisgarh State Power Distribution Company Ltd. v. Chhattisgarh State Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 478](#) : AIR 2022 SC 2904

Section 64 - Procedure for tariff order

Electricity Act, 2003; Section 64 - It is not permissible to amend the tariff order made under Section 64 during the 'truing up' exercise - 'Truing up' exercise cannot be done to retrospectively change the methodology/principles of tariff determination and re-opening the original tariff determination order thereby setting the tariff determination process to a naught at 'trueup' stage - A tariff order is quasi-judicial in nature which becomes final and binding on the parties unless it is amended or revoked under Section 64(6) or set aside by the Appellate Authority - At the stage of 'truing up', the DERC cannot change the rules/methodology used in the initial tariff determination by changing the basic principles, premises and issues involved in the initial projection of ARR. (Para 51-54) **BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 857](#) : 2022 (15) SCALE 588

Section 61 - Tariff Regulations

Electricity Act, 2003; Sections 61 - 63 - Electricity Act do not prescribe one dominant method to determine tariff. Section 63 operates after the bidding process has been conducted. Where the tariff has already been determined through bidding, the Appropriate Commission has to adopt such tariff that has been determined. The Appropriate Commission cannot negate such tariff determined through bidding by using its powers under Section 62. The tariff

determined through the bidding process may not be adopted by the Appropriate Commission only if the bidding process was not transparent (undertaking a substantive review) or the procedure prescribed by the Central Government guidelines under Section 63 was not followed (undertaking a procedural review)- Sections 62 and 63 stipulate the modalities of tariff determination. The non-obstante clause in Section 63 cannot be interpreted to mean that Section 63 would take precedence over Section 62 at the stage of choosing the modality to determine tariff. The criteria or guidelines for the determination of the modality of tariff determination ought to be notified by the Appropriate State Commission either through regulations under Section 181 of the Act or guidelines under Section 61 of the Act. *(Para 128) TATA Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission, [2022 LiveLaw \(SC\) 987](#)*

Section 86 - Functions of State Commission

Electricity Act, 2003; Section 86(1)(a) - MERC while exercising its general regulatory powers under Section 86(1)(a) shall be guided by the NTP 2016, which shall be a material consideration. Accordingly, while NTP 2016 requires intra-state transmission projects above the threshold limit to be allotted through TBCB route, this constitutes a material consideration to be taken into account. *(Para 128) TATA Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission, [2022 LiveLaw \(SC\) 987](#)*

Section 126 - Assessment

Electricity Act, 2013; Section 126 - Electricity Supply Code, 2014 (Kerala); Regulation 153(15) - Regulation 153(15) of the Code 2014 is declared to be invalid being inconsistent with the provision of Section 126. *(Para 82, 89) Kerala State Electricity Board v. Thomas Joseph @ Thomas M.J., [2022 LiveLaw \(SC\) 1034](#)*

Electricity Act, 2013; Section 126(6) - Consumption of electricity in excess of the connected load/contracted load would amount to 'unauthorised use of electricity' under explanation (b) to Section 126(6). *(Para 54-58) Kerala State Electricity Board v. Thomas Joseph @ Thomas M.J., [2022 LiveLaw \(SC\) 1034](#)*

Section 125 - Appeal to Supreme Court

Electricity Act, 2003; Section 125 - For determining whether a case involves substantial question of law, the test is not merely the importance of the question, but its importance to the case itself necessitating the decision of the question. The appropriate test for determining whether the question of law raised in the case is substantial would be to see whether it directly and substantially affects the rights of the parties. If it is established that the decision is contrary to law or the decision has failed to determine some material issue of law or if there is substantial error or defect in the decision of the case on merits, the court can interfere with the conclusion of the lower court or tribunal. The stakes involved in the case are immaterial as long as the impact or effect of the question of law

has a bearing on the lis between the parties - In a second appeal, the appellant is entitled to point out that the order impugned is bad in law because it is dehors the pleadings, or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against the provision of law or the decision is one which no Judge acting judicially could reasonably have reached. Once the appellate court is satisfied, after hearing the appeal, that the appeal involves a substantial question of law, it has to formulate the question and direct issuance of notice to the respondent. (Para 30-31) **BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 857](#) : 2022 (15) SCALE 588

Electricity Act, 2003; Section 125 - Findings of fact by the Regulatory Commission and the Tribunal cannot be reopened on appeal under Section 125 - Appeal shall lie only if the court is satisfied that the case involves a substantial question of law. (Para 106.2) **TATA Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 987](#)

Electricity Act, 2003; Section 125 - The existence of a 'substantial question of law' arising from the judgment of the APTEL is sine qua non for exercise of jurisdiction by this Court under Section 125 of the 2003 Act. (Para 27) **BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 857](#) : 2022 (15) SCALE 588

Section 181 - Powers of State Commissions to make regulations

Electricity Act, 2003; Section 181 - State Regulatory Commissions to frame Regulations under Section 181 of the Act on the terms and conditions for determination of tariff within three months from the date of this judgment. While framing these guidelines on determination of tariff, the Appropriate Commission shall be guided by the principles prescribed in Section 61, which also includes the NEP and NTP. Where the Appropriate Commission(s) has already framed regulations, they shall be amended to include provisions on the criteria for choosing the modalities to determine the tariff, in case they have not been already included. The Commissions while being guided by the principles contained in Section 61 shall effectuate a balance that would create a sustainable model of electricity regulation in the States. The Regulatory Commission shall curate to the specific needs of the State while framing these regulations. (Para 131) **TATA Power Company Limited Transmission v. Maharashtra Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 987](#)

Electricity Reforms Act, 1999 (Karnataka)

Electricity Reforms Act, 1999 (Karnataka); Section 27(2) - The proviso when it uses the words 'contracts concluded', does not use the words 'contracts concluded as regards tariffs' . A contract of the nature cannot be said to consist only of a rate and the term or even the quantum included. In a contract of this nature, there are obviously various other aspects about which the parties must be ad idem. The rate, the term and quantum are integrally interconnected with other terms. There cannot be concluded contract without parties being ad idem

about those terms. (Para 79) **Karnataka Power Transmission Corporation Ltd. v. JSW Energy Ltd.**, [2022 LiveLaw \(SC\) 981](#)

Electricity Reforms Act, 1999 (Karnataka); Section 41 - A Right of Appeal is a creature of a Statute. The right can be qualified or conditioned. The ambit of the appellate power is to be discerned from the terms of the Statute. A 'question of law' is not the same as a 'substantial question of law'. However, when the Statute insists on a 'question of law' to maintain an appeal, the Appellate Body stands constrained to that extent. (Para 88) **Karnataka Power Transmission Corporation Ltd. v. JSW Energy Ltd.**, [2022 LiveLaw \(SC\) 981](#)

Electricity Regulatory Commission (Karnataka) - The Commission is an Expert Body. Interference with its findings cannot be sustained, to begin with, if it is bereft of reasons. Findings of such a body must receive due deference. Perversity in the sense of findings, which are wholly without basis or material or which no person with the professed skills would arrive at, may merit interference. A finding, which ill squares with a clear statutory injunction, would leave the door ajar for overturning the finding. (Para 89) **Karnataka Power Transmission Corporation Ltd. v. JSW Energy Ltd.**, [2022 LiveLaw \(SC\) 981](#)

Electricity Duty Act, 2016 (Maharashtra)

Electricity Duty Act, 2016 (Maharashtra); Section 3(2) - Charitable Education Institutions are not entitled to the exemption from payment of electricity duty post 08.08.2016 - Exemption provision need to be interpreted literally and when the language used in exemption provision is simple, clear and unambiguous, the same has to be applied rigorously, strictly and literally. (Para 11.4) **State of Maharashtra v. Vile Parle Kelvani Mandal**, [2022 LiveLaw \(SC\) 32](#) : AIR 2022 SC 446 : (2022) 2 SCC 725

Employees Compensation Act, 1923

Employee's Compensation Act, 1923 - Appeal against High Court order which directed that the interest @ 12% p.a. shall become payable from the period after expiry of one month from the date of the Commissioner's order - Allowed - While directing the employer to pay the interest from the date of the order passed by the Commissioner, the High Court has not at all considered Section 4A(3)(a) and has considered Section 4A(3)(b) only, which is the penalty provision - Claimants shall be entitled to the interest @ 12% p.a. on the amount of compensation as awarded by the Commissioner from the date of the incident. **Shobha v. Chairman**, [2022 LiveLaw \(SC\) 271](#) : AIR 2022 SC 1410

Employees Compensation Act, 1923 - In the absence of any clear demarcation of duties of a Helper or a Cleaner and in view of the fact that Helper and Cleaner are interchangeably used, therefore, declining claim for the reason that deceased was engaged as a helper and not Cleaner is wholly unjustified. (Para 8) **Mangilal Vishnoi v. National Insurance**, [2022 LiveLaw \(SC\) 56](#)

Employee's Compensation Act, 1923 - The liability to pay the compensation would arise from the date on which the deceased died for which he is entitled

to the compensation and therefore, the liability to pay the interest on the amount of arrears/compensation shall be from the date of accident and not from the date of the order passed by the Commissioner. (Para 4.1) **Shobha v. Chairman**, [2022 LiveLaw \(SC\) 271](#) : AIR 2022 SC 1410

Employees Pension Scheme

Employees Pension Amendment Scheme - The amendment was made in exercise of power otherwise vested in the authority making such amendment and the amendments were made on the basis of certain relevant materials and not whimsically. (Para 32) **Employees Provident Fund Organization v. B. Sunil Kumar**, [2022 LiveLaw \(SC\) 912](#) : AIR 2022 SC 5634

Employees Provident Fund Act - Employees Pension Scheme - Supreme Court holds Employees Pension (Amendment) Scheme 2014 as legal and valid- Extends cut-off date to exercise option by four months- Holds condition for additional contribution by employees as ultra vires the EPF Act. **Employees Provident Fund Organization v. B. Sunil Kumar**, [2022 LiveLaw \(SC\) 912](#) : AIR 2022 SC 5634

Employees Provident Fund and Miscellaneous Provisions Act, 1952

Employees Provident Fund and Miscellaneous Provisions Act, 1952 - Section 14B - Any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14B - Mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities. (Para 17) **Horticulture Experiment Station Gonikoppal Coorg v. Regional Provident Fund Organization**, [2022 LiveLaw \(SC\) 202](#) : (2022) 4 SCC 516

Employees State Insurance Act, 1948

Employee State Insurance Act, 1948; Section 2(22) - "Conveyance allowance" is equivalent to the traveling allowance and therefore any conveyance allowance/traveling allowance is excluded from the definition of "wages". **Talema Electronic v. ESI Corporation**, [2022 LiveLaw \(SC\) 422](#)

Employees State Insurance Act, 1948 - Board of Control for Cricket in India [BCCI] can be said to be a "shop" for the purposes of attracting the provisions of Employees State Insurance Act - The activities of the BCCI can be said to be systematic commercial activities providing entertainment by selling tickets etc. (Para 9-12) **Board of Control for Cricket in India v. Regional Director Employees' State Insurance Corporation**, [2022 LiveLaw \(SC\) 725](#)

Employees State Insurance Act, 1948; Section 39(5)(a) - Neither the Authority nor the Court have any authority to either waive the interest and/or reduce the interest and/or the period during which the interest is payable - The interest leviable/payable is a statutory liability to pay the interest -The liability to pay the interest is from the date on which such contribution has become due and till the date of its actual payment. **Regional Director / Recovery Officer v. Nitinbhai Vallabhai Panchasara**, [2022 LiveLaw \(SC\) 983](#)

Employees State Insurance Act, 1948; Section 45-AA - Once the statute has fixed the condition of pre-deposit before filing an appeal, such condition is required to be satisfied - Giving appellate authority a discretion to waive of the amount determined, is clearly not sustainable. (Para 8) **Employees State Insurance Health Care v. Maruti Suzuki**, [2022 LiveLaw \(SC\) 453](#)

Employment of Local Candidates Act, 2020 (Haryana State)

Employment of Local Candidates Act, 2020 (Haryana State) - Constitutional Validity - Interim order passed by Punjab & Haryana High Court staying the implementation of the Act set aside - Stay of legislation can only be when the Court is of the opinion that it is manifestly unjust or glaringly unconstitutional - Sufficient reasons should be given for staying legislations. **State of Haryana v. Faridabad Industries Association**, [2022 LiveLaw \(SC\) 178](#)

Endosulfan Tragedy

Endosulfan Tragedy - Contempt plea preferred by victims alleging failure on the part of State of Kerala to disburse 5 lakhs compensation - State's Chief Secretary to hold monthly meetings to undertake the process of identification of the victims of endosulfan, ensuring disbursement of compensation of Rs 5 lakhs and taking steps to ensure provision of medical facilities. **Baiju K.G. v. Dr. V.P. Joy**, [2022 LiveLaw \(SC\) 517](#) : 2022 (8) SCALE 275

Environment

Environment - The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. (Para 101) **State of Uttar Pradesh v. Uday Education and Welfare Trust**, [2022 LiveLaw \(SC\) 868](#)

Environment (Protection) Act, 1986

Environment (Protection) Act, 1986; Section 3 - Guidelines issued by the Union Ministry on February 9 2011 for Ecologically Sensitive Zones near protected forests held to be reasonable - Further directions issued in relation to ESZ -No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ - Mining within the national parks and wildlife sanctuaries shall not be permitted. (Para 44) **In Re : TN Godavarman Thirumalpad v. Union of India**, [2022 LiveLaw \(SC\) 540](#) : 2022 (9) SCALE 254

Environment (Protection) Act, 1986 - Environmental Impact Assessment Notification 2006 - Ex post facto Environmental Clearance - EP Act does not prohibit ex post facto EC. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible - Ex post facto

EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operation. (Para 46-50) **D. Swamy v. Karnataka State Pollution Control Board, 2022 LiveLaw (SC) 791**

Environment Protection Act, 1986 - Appeal by Pahwa Plastics Pvt. Ltd against an NGT order holding that its manufacturing units, which did not have prior Environmental Clearance (EC) could not be allowed to operate - Allowed - The question in this case is, whether a unit contributing to the economy of the country and providing livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the concerned statutory authorities, and has applied for *Ex post facto* EC, should be closed down for the technical irregularity of want of prior environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. **Pahwa Plastics Pvt. Ltd. v. Dastak NGO, 2022 LiveLaw (SC) 318 : 2022 (5) SCALE 353**

Environment Protection Act, 1986 - Environmental Clearance - Need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment. (Para 62) **Pahwa Plastics Pvt. Ltd. v. Dastak NGO, 2022 LiveLaw (SC) 318 : 2022 (5) SCALE 353**

Environment Protection Act, 1986 - Ex post facto Environmental Clearance - The 1986 Act does not prohibit *Ex post facto* Environmental Clearance - It should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of *Ex post facto* approval outweigh the consequences of regularization of operations by grant of *Ex post facto* approval, and the establishment concerned otherwise conforms to the requisite pollution norms, *Ex post facto* approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it - An establishment contributing to the economy of the country and providing livelihood ought not to be closed down only on the ground of the technical irregularity of not obtaining prior Environmental Clearance irrespective of whether or not the unit actually causes pollution. (Para 63, 65.) **Pahwa**

Plastics Pvt. Ltd. v. Dastak NGO, [2022 LiveLaw \(SC\) 318](#) : 2022 (5) SCALE 353

Environmental Law

Environmental Law - Adherence to the principle of sustainable development is a constitutional requirement- Precautionary Principle essential feature of the principle of 'Sustainable Development' - In case of a doubt, protection of environment would have precedence over the economic interest - Precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. (Para 15-18) **T.N. Godavarman Thirumulpad v. Union of India, [2022 LiveLaw \(SC\) 467](#) : (2022) 9 SCC 306**

Environmental Law - Appeal against NGT order directing that mining activity shall not be permitted within and in the vicinity of Simplipal - Hadagarh - Kuldiha – Simplipal elephant corridor - Disposed of - Implement the Comprehensive Wildlife Management Plan as suggested by the Standing Committee of NBWL before permitting any mining activity in the eco-sensitive zone - Complete the process of declaration of the traditional elephant corridor as conservation reserve expeditiously. The mining operations of 97 quarries shall be permitted only thereafter. **Binay Kumar Dalei v. State of Odisha, [2022 LiveLaw \(SC\) 233](#) : AIR 2022 SC 1191 : (2022) 5 SCC 33**

Environmental Law - Public Trust Doctrine - Public Trust Doctrine is part of the law of land - The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large. (Para 28) **In Re : TN Godavarman Thirumulpad v. Union of India, [2022 LiveLaw \(SC\) 540](#) : 2022 (9) SCALE 254**

Environmental Law - Supreme Court revoked the approval granted by the Standing Committee of National Board for Wildlife (NBWL) for doubling of existing railway line from Castlerock (Karnataka) to Kulem (Goa) - Assessment of the impact which the project would have on the environment, especially in the protected area and wildlife sanctuary taking into account all the major factors such as the impact on the habitat, species, climate, temperature etc. caused due to felling of trees (not only for the laying of railway tracks but also for the secondary works such as setting up machinery, disposal of waste, and putting in place various mitigation measures etc.), movement of trains, human-wildlife interactions would have to be strictly undertaken before the project is considered by the NBWL. **T.N. Godavarman Thirumulpad v. Union of India, [2022 LiveLaw \(SC\) 467](#) : (2022) 9 SCC 306**

Environmental Law - Sustainable Development - Need to strike a balance between the development and the environmental issues - Though development is necessary for economical progress of the nation, it is equally necessary to safeguard the environment so as to preserve pollution free environment and ecology for the future generations to come. (Para 16) **State of Andhra Pradesh v. Raghu Rama Krishna Raju Kanumuru (MP)**, [2022 LiveLaw \(SC\) 544](#) : AIR 2022 SC 2850

Estoppel

Estoppel - There can be no estoppel against a statute - Plea of promissory estoppel would stand negated when the mandate of a statute is followed. (Para 25-29) **State of West Bengal v. Gitashree Dutta (Dey)**, [2022 LiveLaw \(SC\) 527](#)

Estoppel - There can be no estoppel against a statute or regulations having a statutory effect. (Para 23) **Employees State Insurance Co. v. Union of India**, [2022 LiveLaw \(SC\) 78](#) : AIR 2022 SC 1017

EWS reservation

EWS reservation - The reasons for allowing EWS reservation for the current academic year 2021-2022 provided. **Neil Aurelio Nunes v. Union of India**, [2022 LiveLaw \(SC\) 73](#) : (2022) 4 SCC 1

Excise Act, 1910 (U.P.)

Excise Act, 1910 (U.P.) - Section 3 - IMFL destroyed in fire answers to the description of “spirit”, “liquor” and “excisable article” within the meaning of Clauses (8) (11) and (22-a) of Section 3 of the Act of 1910, for being an intoxicating liquor containing alcohol obtained by distillation. (Para 36) **State of U.P. v. Mcdowell and Company Ltd.**, [2022 LiveLaw \(SC\) 13](#) : (2022) 6 SCC 223

Exim Policy

Exim Policy - The DGFT/Union is free to change the Exim Policy and consider from time to time on which items there shall be an incentive and on which items there shall not be any incentive. To grant the benefit of an incentive is a policy decision which may be varied and/or even withdrawn. No exporter can claim the incentive as a matter of right. Under the circumstances, the doctrine of promissory estoppel shall not be applicable to such a policy decision with respect to incentive. (Para 7) **Chowgule & Company Ltd. v. Assistant Director General of Foreign Trade**, [2022 LiveLaw \(SC\) 919](#) : AIR 2022 SC 5529

F

Fair Investigation

Fair Price Shop

Fair Price Shop - Supreme Court upheld cancellation of the declaration of Fair Price Shop vacancies by State of West Bengal in view of the implementation of National Food Security Act. *State of West Bengal v. Gitashree Dutta (Dey)*, [2022 LiveLaw \(SC\) 527](#)

Fake Pharmacists

Fake Pharmacists - PIL before Patna HC restored - The manner in which the High Court has disposed of the PIL ventilating the very serious grievances touching the health and life of the citizen is disapproved - High Court to call for detailed report/counter from the State of Bihar and Bihar State Pharmacy Council on (i) how many Governments' hospitals/hospitals/medical stores/private hospitals are being run either by fake pharmacist or without registered pharmacist; (ii) whether any action is taken by the State Government on the fact-finding committee report submitted by the Bihar State Pharmacy Council which was reported to be forwarded to the State Government; (iii) whether there are any fake pharmacists as alleged in the writ petition; (iv) any action is taken by the State Government or by the Bihar State Pharmacy Council against such fake pharmacist; (v) whether the Pharmacy Practice Regulations, 2015 are being followed in the entire State of Bihar or not. *Mukesh Kumar v. State of Bihar*, [2022 LiveLaw \(SC\) 995](#)

Family Courts Act, 1984

Family Courts Act, 1984 - Madras High Court Family Courts (Procedure) Rules, 1996 - Rule 52 - A free copy may be supplied as per the requirement under the Family Courts Act but that is a far cry from holding that an appeal can be carried without a certified copy - Rejected argument that that an appeal can be maintained within thirty days even if it is in the absence of a certified copy. (Para 22, 23) *N. Rajendran v. S. Valli*, [2022 LiveLaw \(SC\) 224](#) : 2022 (3) SCALE 275

Family Courts Act, 1984 - Madras High Court Family Courts (Procedure) Rules, 1996 - Rule 52 - A free copy may be supplied as per the requirement under the Family Courts Act but that is a far cry from holding that an appeal can be carried without a certified copy - Rejected argument that that an appeal can be maintained within thirty days even if it is in the absence of a certified copy. (Para 22, 23) *N. Rajendran v. S. Valli*, [2022 LiveLaw \(SC\) 224](#) : 2022 (3) SCALE 275

Family Courts Act, 1984 - Section 19, 20 - Limitation Act, 1963- Section 12, 29(2) - The period spent in obtaining the copy can be excluded in calculating the period of limitation to file matrimonial appeals under Family Courts Act - Nothing inconsistent in Section 12 read with Section 29(2) of the Limitation Act with Section 19 of the Family Courts Act - Section 20 will not override the provisions of Section 12 of the Limitation Act. ***N. Rajendran v. S. Valli, 2022 LiveLaw (SC) 224 : 2022 (3) SCALE 275***

Family Courts Act, 1984 - The Family Courts Act is not a standalone Act. It draws sustenance from Acts like the Hindu Marriage Act. This is for the reason that a petition within the meaning, for instance, of the Hindu Marriage Act, after a Family Court is established in India, is to be dealt with by the Family Court, on the grounds as provided under the Hindu Marriage Act. (Para 24) ***N. Rajendran v. S. Valli, 2022 LiveLaw (SC) 224 : 2022 (3) SCALE 275***

Films and Television Institute of India

Films and Television Institute of India - Majority view of the Committee appointed by SC accepted - Individuals with color blindness should be permitted to enroll for ALL courses offered by FTII. There should be no bar to admissions to the FTII for colorblind individuals - FTII should make reasonable accommodation in their curriculum for candidates with color blindness, in all courses where there is a bar to the admission of colorblind individuals. (Para 26-35) ***Ashutosh Kumar v. Film and Television Institute of India, 2022 LiveLaw (SC) 429***

Finance Act 1994

Finance Act 1994 - Service Tax - Secondment Agreement - Indian company employing services on employees seconded from overseas group companies can be said to be service recipient of manpower supply- Liable for service tax- The assessee was, for the relevant period, service recipient of the overseas group company concerned, which can be said to have provided manpower supply service, or a taxable service, for the two different periods in question (in relation to which show cause notices were issued). (Para 61) ***C.C. C.E. & S.T., Bangalore (Adjudication) Etc. v. M/s. Northern Operating Systems Pvt. Ltd., 2022 LiveLaw (SC) 526 : AIR 2022 SC 2450***

Finance Act 1994; Section 65B (44) - Definition of "service" - does not include activities listed as "deemed" sale under Article 366(29A) of Constitution (Para 36) ***Commissioner of Service Tax New Delhi v. Quick Heal Technologies Ltd, 2022 LiveLaw (SC) 660 : AIR 2022 SC 3660***

Finance Act, 1992 - Service Tax - Mega Exemption Notification no.25 of 2012-ST - Clause 5A - Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement - specified organisations - Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or 'Committee' or 'State Committee' as defined in section 2 of the Haj Committee Act, 2002 - Haj Group Organizers not specified organisation -

not eligible for exemption [Para 46, 47, 50, 52] **All India Haj Umrah Tour Organizer Association Mumbai v. Union of India**, [2022 LiveLaw \(SC\) 632](#)

Finance Act, 1992 - Service Tax - Mega Exemption Notification no.25 of 2012-ST - Clause 5(b) - Services by a person by way of conduct of any religious ceremony - It only exempts service provided by way of conduct of any religious ceremony - The service rendered by HGOs to Haj pilgrims is to facilitate them to reach at the destination to perform rituals/religious ceremonies. No religious ceremony is performed or conducted by the HGOs. [Para 51, 52] **All India Haj Umrah Tour Organizer Association Mumbai v. Union of India**, [2022 LiveLaw \(SC\) 632](#)

Finance Act, 1994; Section 65(44) - excludes from the sweep of service tax "a provision of service by an employee to the employer in the course of or in relation to his employment." - while the control (over performance of the seconded employees' work) and the right to ask them to return, if their functioning is not as is desired, is with the assessee, the fact remains that their overseas employer in relation to its business, deploys them to the assessee, on secondment. Secondly, the overseas employer- for whatever reason, pays them their salaries - their terms of employment, even during the secondment, are in accord with the policy of the overseas company, who is their employer - upon the end of the period of secondment, they return to their original places, to await deployment or extension of secondment. [Para 45 & 57] **C.C. C.E. & S.T., Bangalore (Adjudication) Etc. v. M/s. Northern Operating Systems Pvt. Ltd.**, [2022 LiveLaw \(SC\) 526](#) : AIR 2022 SC 2450

Foreign Contribution (Regulation) Act, 2010

Foreign Contribution (Regulation) Act, 2010 - It is open to the State to have a regime which may completely prohibit receipt of foreign donation, as no right inheres in the citizen to receive foreign contribution (donation). (Para 74) **Noel Harper v. Union of India**, [2022 LiveLaw \(SC\) 355](#) : 2022 (5) SCALE 775

Foreign Contribution (Regulation) Act, 2010; Section 12(1A) and 17(1) - Opening of main FCRA account in the designated bank as per the law made by the Parliament in that regard, cannot be brushed aside on the specious argument of some inconvenience being caused to the registered associations. (Para 76) **Noel Harper v. Union of India**, [2022 LiveLaw \(SC\) 355](#) : 2022 (5) SCALE 775

Foreign Contribution (Regulation) Act, 2010; Section 7 - Complete prohibition regarding transfer of foreign contribution to third party - The transfer within the meaning of Section 7, would be a case of per se (simpliciter) transfer by the recipient of foreign contribution to third party without requiring to engage in the definite activities of cultural, economic, educational or social programme of the recipient of foreign contribution, for which the recipient had obtained a certificate of registration from the Central Government - If the recipient of foreign contribution engages services of some third party or outsources its certain activities to third person, whilst undertaking definite activities itself and had to

pay therefor, it would be a case of utilisation. (*Para 47*) **Noel Harper v. Union of India**, [2022 LiveLaw \(SC\) 355](#) : 2022 (5) SCALE 775

Foreign Contribution (Regulation) Amendment Act, 2020 - Constitutional Validity upheld - Amended provisions vide the 2020 Act, namely, Sections 7, 12(1A), 12A and 17 of the FCRA Act, 2010, are intra vires the Constitution and the Principal Act - Section 12A read down and construed as permitting the key functionaries/office bearers of the applicant (associations/NGOs) who are Indian nationals, to produce Indian Passport for the purpose of their identification. (*Para 87*) **Noel Harper v. Union of India**, [2022 LiveLaw \(SC\) 355](#) : 2022 (5) SCALE 775

Foreign Exchange Regulation Act, 1973 - Banking Companies (Period of Preservation of Records) Rules, 1985 - FERA Proceedings initiated against Banks - Show cause notices issued in the year 2002, i.e., after a period of almost one decade from the date of the alleged transactions of 1992--1993, were not tenable in law - The Banks are required to preserve the record for five years and eight years respectively - Permitting the show cause notices and the proceedings continued thereunder of the transactions which have taken place much prior to eight years would be unfair and unreasonable. **Union of India v. Citibank NA**, [2022 LiveLaw \(SC\) 704](#)

Foreigners Act, 1946

Foreigners Act 1946 – Citizenship - Supreme Court orders the release of a 62-year old man named Mohammad Qamar, who has been under detention in a Foreigners Detention Centre since 2015 on being adjudged that he belonged to Pakistan and that he was not an Indian citizen - The Court directed the Union Government to take a decision on granting him Long Term Visa. **Ana Parveen v. Union of India**, [2022 LiveLaw \(SC\) 1038](#)

Forest (Conservation) Act, 1980

Forest (Conservation) Act, 1980; Section 2 - "Forest" or "any forest land" - (1) Statutorily recognized forests such as reserved or protected forests to which clause (i) of Section 2 is applicable; (2) The forests as understood in accordance with dictionary sense and (3) Any area recorded as a forest in Government records. (*Para 38*) **Narinder Singh v. Divesh Bhutani**, [2022 LiveLaw \(SC\) 620](#) : AIR 2022 SC 3479

Forest (Conservation) Act, 1980; Section 2 - The State Government or the competent authority cannot permit use for non-forest activities without obtaining prior approval from the Central Government - The power given to the Central Government under Section 2 must be exercised by adopting scientific and consistent yardsticks for applying the principles of sustainable development. (*Para 36-37*) **Narinder Singh v. Divesh Bhutani**, [2022 LiveLaw \(SC\) 620](#) : AIR 2022 SC 3479

Forest (Conservation) Act, 1980; Section 2 (ii-iv) - The specific land in respect of which a special order under section 4 of PLPA has been issued will

have all the trappings of a forest governed by clauses (ii) to (iv) of Section 2 of the 1980 Forest Act - Whether the special orders under Section 4 continue to be in force or not, the lands covered by the said notifications will continue to fall in the category of forests covered by Section 2 of the 1980 Forest Act. (Para 47 - 60) **Narinder Singh v. Divesh Bhutani**, [2022 LiveLaw \(SC\) 620](#) : AIR 2022 SC 3479

Forest (Conservation) Act, 1980; Section 2(i) - State Government cannot exercise the power under Section 27 of the 1927 Forest Act of declaring that a particular land will cease to be a reserved forest unless there is prior approval from the Central Government. (Para 43) **Narinder Singh v. Divesh Bhutani**, [2022 LiveLaw \(SC\) 620](#) : AIR 2022 SC 3479

Forest (Conservation) Act, 1980; Section 2(ii-iv) - Forest - Dictionary meaning - A large or extensive tract of land having a dense growth of trees, thickets, mangroves etc. A small isolated plot of land will not come within the ambit merely because there are some trees or thickets thereon, as opposed to extensive tract of land covered with dense growth of trees and underbrush or plants resembling a forest in profusion or lushness. (Para 40) **Narinder Singh v. Divesh Bhutani**, [2022 LiveLaw \(SC\) 620](#) : AIR 2022 SC 3479

Forest (Conservation) Act, 1980; Section 2(ii-iv) - Government Records - A Government record is a record maintained by its various departments - Only the entries made after following due process can be a part of any Government record. Government records will include land or revenue records and the record of the forest department. (Para 41) **Narinder Singh v. Divesh Bhutani**, [2022 LiveLaw \(SC\) 620](#) : AIR 2022 SC 3479

Forest Act, 1927

Forest Act, 1927 - Concept of forest discussed. (Para 26-30) **Narinder Singh v. Divesh Bhutani**, [2022 LiveLaw \(SC\) 620](#) : AIR 2022 SC 3479

Fraud

Fraud vitiates all actions. (Para 17) **New Okhla Industrial Development Authority v. Ravindra Kumar Singhvi**, [2022 LiveLaw \(SC\) 184](#) : AIR 2022 SC 928 : (2022) 5 SCC 591



General Clauses Act, 1897

General Clauses Act, 1897 - The principles of the General Clauses Act can be made applicable to statutes made by the State Legislatures as well. (Para 20) **State of Manipur v. Surjakumar Okram**, [2022 LiveLaw \(SC\) 113](#)

General Clauses Act, 1897; Section 21 - Assuming that the State was having power to amend, vary or rescind the notification, in that case also such power can be exercised in a like manner, namely after following the procedure, which was followed while issuing the original notification. (Para 9) **Gomantak Mazdoor Sangh v. State of Goa**, [2022 LiveLaw \(SC\) 466](#) : 2022 (7) SCALE 789

General Sales Tax Act, 1963 (Kerala)

General Sales Tax Act, 1963 (Kerala) - The surcharge on sales tax levied by the said Act is nothing but an increase of the basic sales tax levied under Section 5(1) of the KGST Act, as such the surcharge is nothing but a sales tax- A surcharge on a tax is nothing but the enhancement of the tax. (Para 14.4) **Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. Assistant Commissioner of Income Tax Circle 1(1)**, [2022 LiveLaw \(SC\) 4](#) : AIR 2022 SC 309 : (2022) 4 SCC 240

Gift Tax Act, 1958

Gift Tax Act, 1958 - Valuation of shares for the purpose of gift tax must take into consideration the limitations and restrictions. *Deputy Commissioner of Gift Tax v. BPL Ltd.*, [2022 LiveLaw \(SC\) 848](#)

Goods and Service Tax

Goods and Service Tax - Document Identification Number (DIN) System - Union of India / GST Council to issue advisory / instructions / recommendations to the respective States regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration - States to consider to implement the system for electronic (digital) generation of a DIN for all communications sent by the State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration at the earliest - It would be in the larger public interest and enhance good governance. (Para 6-7) **Pradeep Goyal v. Union of India**, [2022 LiveLaw \(SC\) 654](#)

Goods and Services Tax - Non-extension of e-way bill would not automatically amount to evasion of tax, especially when the non-delivery of goods within the validity period of the e-way bill was due to external factors, like, traffic blockage. **Asst. Commissioner v. Satyam Shivam Papers**, [2022 LiveLaw \(SC\) 87](#)

Goods and Services Tax - Private Haj tour operators not entitled to claim GST exemption available for conducting religious ceremony - Haj Group Organizers are not performing any religious ceremony - HGOs can't claim parity with Haj Committee, which is a specified organization eligible for GST exemption for services in relation to pilgrimage. **All India Haj Umrah Tour Organizer Association Mumbai v. Union of India**, [2022 LiveLaw \(SC\) 632](#)

Goods and Services Tax - Supreme Court allows 2 months additional window from September 1, 2022 to October 31, 2022 to claim transitional credit -

Directions issued. *Union of India v. Filco Trade Centre Pvt. Ltd.*, [2022 LiveLaw \(SC\) 628](#)

Goods and Services Tax (GST) - The recommendations of the GST council are not binding on the Union and the State Governments. The Parliament intended that the recommendations of the GST Council will have persuasive value. Both the Parliament and the State Legislatures can equally legislate on matters of Goods and Service Tax. *Union of India v. Mohit Minerals*, [2022 LiveLaw \(SC\) 500](#) : 2022 (8) SCALE 552

H

Haj Pilgrims

Haj Pilgrims - Bifurcation of services rendered by the HGOs - cannot be bifurcated into two parts; services provided within taxable territory and those provided outside the taxable territory for the purpose of tax exemption - HGOs receive charges from Haj pilgrims for the entire package; it is not the case of the HGOs that they charge separately for different services forming a part of the comprehensive package - only a part of the package cannot be picked up for invoking exemption - for the purposes of levy of service tax, the service rendered cannot be dissected like this. [Para 54] *All India Haj Umrah Tour Organizer Association Mumbai v. Union of India*, [2022 LiveLaw \(SC\) 632](#)

Hawking

Hawking - Any hawker can be permitted to hawk in the market only as per the hawking policy and not de hors the same - A hawker has no right to insist that he may be permitted to keep his goods and wares at the place where he is hawking overnight. (Para 1). *Madan Lal v. NDMC*, [2022 LiveLaw \(SC\) 373](#)

High Court (Public Interest Litigation) Rules, 2010 (Jharkhand)

High Court (Public Interest Litigation) Rules, 2010 (Jharkhand); Rules 4, 4-A, 4-B, 5 , 6A - Jharkhand HC held that Rules 4, 4A, 4B and 5 are not mandatory but directory in nature in view of Rule 6-A and therefore even though the Rules have not been followed that really will not come in the way of the Court to entertain a PIL, since the nature of allegations in the PIL was of a serious nature - Disapproving this view, the Supreme Court held: This reasoning, in our view, is in teeth of the directions given in *State of Uttaranchal v. Balwant Singh Chauhal* ((2010) 3 SCC 402), as well as a clear violation of the Jharkhand High Court Rules, primarily Rule 4-B. - The locus of the petitioner who initiates a PIL is therefore of extreme importance as this important form of litigation should not be abused by motivated individuals to abuse the process of the Court for their political purposes or for any other reason, but for a Public

Cause. (Para 14-16) **State of Jharkhand v. Shiv Shankar Sharma**, [2022 LiveLaw \(SC\) 924](#)

High Court Rules (Bombay)

High Court Rules (Bombay); Chapter XXX; Rule 3(1) Proviso - Once an application was preferred by any of the parties that a review may be heard by the Judge who had decided the matter and had passed the order from which the review arose, the matter ought to have been placed before the Chief Justice on the administrative side rather than order being passed on the judicial side. The proviso to Rule 3(1) of Chapter XXX of the Rules confers this power on the Chief Justice to assign a particular matter to a single Judge for hearing of the review application where the single Judge concerned was not available for the time being by reason of being on leave or otherwise as aforesaid i.e. where he had ceased to sit at a particular Bench. The Chief Justice, is the master of roster and is conferred with specific powers of assigning review petitions in given circumstances under the Rules. **Suresh G. Ramnani v. Aurelia Ana De Piedade Miranda @ Ariya Alvares**, [2022 LiveLaw \(SC\) 939](#)

High Court Rules (Patna)

High Court Rules (Patna) - Rule 8 of Chapter XII - Appeal against conviction shall be heard for admission unless the accused has surrendered to the order of the Court below convicting him to a sentence of imprisonment except in a case where the appellant has been released on bail by the trial court after convicting him - This Rule applies to the pre-admission stage, not applicable after admission. (Para 7) **Dhananjay Rai @ Guddu Rai v. State of Bihar**, [2022 LiveLaw \(SC\) 597](#) : AIR 2022 SC 3346

Highways Act, 2001 (Tamil Nadu)

Highways Act, 2001 (Tamil Nadu); Section 15(2) - Highways Rules, 2003 (Tamil Nadu); Rule 5(2) - Highways Department may or may not file a statement by way of answer to the objections by land owners - Not a mandatory requirement - Non-filing of a statement by way of answer to the objections by the Highways Department and/or non-furnishing the copy of the same to the original land owners shall not vitiate the entire process of acquisition process. (Para 5.1) **M. Mohan v. State Government of Tamil Nadu**, [2022 LiveLaw \(SC\) 737](#) : AIR 2022 SC 4085

Highways Act, 2001 (Tamil Nadu); Section 15(2) - Tamil Nadu Highways Rules, 2003; Rule 5 - Rule 5 cannot be said to be inconsistent with Section 15(2) of the Act. (Para 7) **M. Mohan v. State Government of Tamil Nadu**, [2022 LiveLaw \(SC\) 737](#) : AIR 2022 SC 4085

Hijab Ban Case

Hijab Ban Case - Appeals against Karnataka High Court judgment which upheld Hijab Ban in some schools/pre-university colleges - In view of the divergent views expressed by the Bench, the matter placed before the Chief

Justice of India for constitution of an appropriate Bench. ***Aishat Shifa v. State of Karnataka***, [2022 LiveLaw \(SC\) 842](#)

Hindu Adoption & Maintenance Act, 1956

Hindu Adoption & Maintenance Act, 1956; Section 12 - Adoption - While the main object of adoption in the past has been to secure the performance of one's funeral rights and to preserve the continuance of one's lineage, in recent times, the modern adoption theory aims to restore family life to a child deprived of his or her biological family - When child takes on to be a kosher member of the adoptive family it is only logical that he takes the surname of the adoptive family - A name is important as a child derives his identity from it and a difference in name from his family would act as a constant reminder of the factum of adoption and expose the child to unnecessary questions hindering a smooth, natural relationship between him and his parent. (Para 11-14) ***Akella Lalita v. Sri Konda Hanumantha Rao***, [2022 LiveLaw \(SC\) 638](#) : AIR 2022 SC 3544

Hindu Adoption and Maintenance Act, 1956; Section 9(3) - Natural Guardian - Mother has an equal position as the father. (Para 9) ***Akella Lalita v. Sri Konda Hanumantha Rao***, [2022 LiveLaw \(SC\) 638](#) : AIR 2022 SC 3544

Hindu Law

Hindu Law - Hindu woman's right to maintenance is a tangible right against the property which flows from the spiritual relationship between the husband and the wife. Such right was recognized and enjoined under the Shastric Hindu Law - It was not and is not an empty formality or an illusory claim being conceded as a matter of grace and generosity. (Para 14, 20) ***Munni Devi @ Nathi Devi v. Rajendra @ Lallu Lal***, [2022 LiveLaw \(SC\) 515](#) : AIR 2022 SC 2596

Hindu Law - Sources of Hindu law and Judicial precedents discussed - Ancient text as also the Smritis, the Commentaries written by various renowned learned persons and even judicial pronouncements have recognized the rights of several female heirs, the wives and the daughter's being the foremost of them. (Para 21 -65) ***Arunachala Gounder v. Ponnusamy***, [2022 LiveLaw \(SC\) 71](#) : AIR 2022 SC 605

Hindu Marriage Act, 1955

Hindu Marriage Act, 1955 - Section 13(1) (ib) - Desertion - Merely because on account of the death of the appellant's mother, the respondent visited her matrimonial home in December 2009 and stayed there only for one day, it cannot be said that there was a resumption of cohabitation. (Para 11) ***Debananda Tamuli v. Smti Kakumoni Katakya***, [2022 LiveLaw \(SC\) 167](#) : AIR 2022 SC 1099 : (2022) 5 SCC 459

Hindu Marriage Act, 1955 - Section 13(1) (ib) - Desertion - The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion is established or not will depend on the peculiar facts of each case. It is a matter

of drawing an inference based on the facts brought on record by way of evidence. (Para 8) ***Debananda Tamuli v. Smti Kakumoni Katakya***, [2022 LiveLaw \(SC\) 167](#) : AIR 2022 SC 1099 : (2022) 5 SCC 459

Hindu Marriage Act, 1955 - Section 13(1) (ib) - Desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end - There should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. (Para 7) ***Debananda Tamuli v. Smti Kakumoni Katakya***, [2022 LiveLaw \(SC\) 167](#) : AIR 2022 SC 1099 : (2022) 5 SCC 459

Hindu Marriage Act, 1955; Section 9, 26 - Orders giving visitation rights or temporary child custody cannot be passed in a proceedings under Section 9 of the Hindu Marriage Act for restitution of conjugal rights - A separate and independent petition under Section 26 has to be filed. ***Priyanka v. Santoshkumar***, [2022 LiveLaw \(SC\) 1021](#)

Hindu Marriage Act, 1956 - Section 15 - Filing of appeal must be treated as having been presented within the meaning of Section 15 of the Act. The argument that not only must the appellant file the appeal, or prefer the appeal or present the appeal, but he must also ensure that the appeal comes on the judicial side of the High Court is clearly without any basis. (Para 27) ***N. Rajendran v. S. Valli***, [2022 LiveLaw \(SC\) 224](#) : 2022 (3) SCALE 275

Hindu Minority and Guardianship Act, 1956

Hindu Minority and Guardianship Act, 1956; Section 13 - Custody Petition - The consideration of the well-being and welfare of the child must get precedence over the individual or personal rights of the parents - the rights of the parents are irrelevant when a Court decides the custody issue. (Para 26, 32) ***Vasudha Sethi v. Kiran V. Bhaskar***, [2022 LiveLaw \(SC\) 48](#) : AIR 2022 SC 476

Hindu Succession Act, 1955

Hindu Succession Act, 1955; Section 2(2), 6 - Female member of the Scheduled Tribe is not entitled to any right of survivorship under the provisions of Hindu Succession Act - It is high time for the Central Government to look into the matter and if required, to amend the provisions of the Hindu Succession Act by which it is not made applicable to the members of the Scheduled Tribe - Female tribal is entitled to parity with male tribal in intestate succession. (Para 7-7.2) ***Kamla Neti v. Special Land Acquisition Officer***, [2022 LiveLaw \(SC\) 1014](#)

Hindu Succession Act, 1956 - Section 14 - Sub-section (2) of Section 14 inter alia applies to a Will which may create independent and new title in favour

of females for the first time and is not a recognition of a pre-existing right. In such cases of a restricted estate in favour of a female is legally permissible and Section 14(1) of the said Act will not operate in that sphere. (Para 30) **Jogi Ram v. Suresh Kumar**, [2022 LiveLaw \(SC\) 115](#) : (2022) 4 SCC 274

Hindu Succession Act, 1956 - Section 14(1) - The objective of Section 14(1) is to create an absolute interest in case of a limited interest of the wife where such limited estate owes its origin to law as it stood then. The objective cannot be that a Hindu male who owned self-acquired property is unable to execute a Will giving a limited estate to a wife if all other aspects including maintenance are taken care of. If we were to hold so it would imply that if the wife is disinherited under the Will it would be sustainable but if a limited estate is given it would mature into an absolute interest irrespective of the intent of the testator. (Para 31) **Jogi Ram v. Suresh Kumar**, [2022 LiveLaw \(SC\) 115](#) : (2022) 4 SCC 274

Hindu Succession Act, 1956; Section 14 - The legislative intent of enacting Section 14(l) of the Act was to remedy the limitation of a Hindu woman who could not claim absolute interest in the properties inherited by her but only had a life interest in the estate so inherited. (Para 69) **Arunachala Gounder v. Ponnusamy**, [2022 LiveLaw \(SC\) 71](#) : AIR 2022 SC 605

Hindu Succession Act, 1956; Section 14(1) - The words "possessed by" used in Section 14(1) are of the widest possible amplitude and include the state of owning a property, even though the Hindu woman is not in actual or physical possession of the same - The possession of the widow, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title. (Para 14) **Munni Devi @ Nathi Devi v. Rajendra @ Lallu Lal**, [2022 LiveLaw \(SC\) 515](#) : AIR 2022 SC 2596

Hindu Succession Act, 1956; Section 14(1) - Where a Hindu widow is found to be in exclusive settled legal possession of the HUF property, that itself would create a presumption that such property was earmarked for realization of her pre-existing right of maintenance, more particularly when the surviving coparcener did not earmark any alternative property for recognizing her pre-existing right of maintenance. (Para 20) **Munni Devi @ Nathi Devi v. Rajendra @ Lallu Lal**, [2022 LiveLaw \(SC\) 515](#) : AIR 2022 SC 2596

Hindu Succession Act, 1956; Section 15 - Inherited property of a female Hindu dying issueless and intestate, goes back to the source - If a female Hindu dies intestate without leaving any issue, then the property inherited by her from her father or mother would go to the heirs of her father whereas the property inherited from her husband or father-in-law would go to the heirs of the husband. In case, a female Hindu dies leaving behind her husband or any issue, then Section 15(1)(a) comes into operation and the properties left behind including the properties which she inherited from her parents would devolve simultaneously upon her husband and her issues as provided in Section

15(1)(a) of the Act. (Para 72-73) **Arunachala Gounder v. Ponnusamy**, [2022 LiveLaw \(SC\) 71](#) : AIR 2022 SC 605

Hindu Undivided Family

Hindu Undivided Family - Joint Family Property - Gift - A Hindu father or any other managing member of a HUF has power to make a gift of ancestral property only for a 'pious purpose' - Term 'pious purpose' is a gift for charitable and/or religious purpose - A deed of gift in regard to the ancestral property executed 'out of love and affection' does not come within the scope of the term 'pious purpose'. (Para 13) **K.C. Laxmana v. K.C. Chandrappa Gowda**, [2022 LiveLaw \(SC\) 381](#) : 2022 (6) SCALE 315

Hindu Undivided Family - Joint Family Property - Power to alienate only in three situations, namely, (i) legal necessity (ii) for the benefit of the estate and (iii) with the consent of all the coparceners of the family - Where an alienation is not made with the consent of all the coparceners, it is voidable at the instance of the coparceners whose consent has not been obtained. (Para 12) **K.C. Laxmana v. K.C. Chandrappa Gowda**, [2022 LiveLaw \(SC\) 381](#) : 2022 (6) SCALE 315



Imposition of Ceiling on Land Holdings Act, 1960 (Uttar Pradesh)

Imposition of Ceiling on Land Holdings Act, 1960 (Uttar Pradesh) - If subletting is in derogation of the terms of the Lease Deed, then the sub-lessee continues to be the ostensible tenure holder of land and the lessee the real holder. (Para 31-32) **Hardev Singh v. Prescribed Authority**, [2022 LiveLaw \(SC\) 44](#) : AIR 2022 SC 436 : (2022) 3 SCC 21

Income Tax Act, 1961

Income Tax Act, 1961 - Appeal against Gujarat High Court judgment extending the immunity under the "Income Declaration Scheme" (IDS) to an assessee who was not the declarant under the scheme - Allowed - The High Court fell into error, in holding that the sequitur to a declaration under the IDS can lead to immunity (from taxation) in the hands of a non-declarant. **Deputy Commissioner of Income Tax v. MR Shah Logistics**, [2022 LiveLaw \(SC\) 323](#) : 2022 (5) SCALE 395

Income Tax Act, 1961 - The 'fee' or 'charge' as mentioned in Section 40(a)(iib) is clear in terms and that will take in only 'fee' or 'charge' as mentioned therein or any fee or charge by whatever name called, but cannot cover tax or surcharge on tax and such taxes are outside the scope and ambit of Section 40(a)(iib)(A) and Section 40(a)(iib)(B) of the Act. (Para 14.3) **Kerala State**

Beverages Manufacturing & Marketing Corporation Ltd. v. Assistant Commissioner of Income Tax Circle 1(1), [2022 LiveLaw \(SC\) 4](#): AIR 2022 SC 309 : (2022) 4 SCC 240

Income Tax Act, 1961 - The aspect of 'exclusivity' under Section 40(a)(iib) has to be viewed from the nature of undertaking on which levy is imposed and not on the number of undertakings on which the levy is imposed- Exclusivity is to be considered with reference to nature of licence and not on number of State-owned Undertakings. (Para 14.2) ***Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. Assistant Commissioner of Income Tax Circle 1(1), [2022 LiveLaw \(SC\) 4](#): AIR 2022 SC 309 : (2022) 4 SCC 240***

Income Tax Act, 1961 - The surcharge on sales tax and turnover tax, is not a fee or charge coming within the scope of Section 40(a)(iib)(A) or 40(a)(iib)(B), as such same is not an amount which can be disallowed under the said provision. (Para 16) ***Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. Assistant Commissioner of Income Tax Circle 1(1), [2022 LiveLaw \(SC\) 4](#) : AIR 2022 SC 309 : (2022) 4 SCC 240***

Income Tax Act, 1961 - Turnover tax is also outside the purview of Section 40(a) (iib)(A) and 40(a)(iib)(B). (Para 15) ***Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. Assistant Commissioner of Income Tax Circle 1(1), [2022 LiveLaw \(SC\) 4](#) : AIR 2022 SC 309 : (2022) 4 SCC 240***

Section 2 (1A) - "Agricultural Income"

Income Tax Act, 1961; Section 2 (1A) - Companies Act, 1956; Section 394 (2), 481 - Despite amalgamation, the business, enterprise and undertaking of the transferee or amalgamated company- which ceases to exist, after amalgamation, is treated as a continuing one, and any benefits, by way of carry forward of losses (of the transferor company), depreciation, etc., are allowed to the transferee - Whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case. (Para 42) ***Principal Commissioner of Income Tax v. Mahagun Realtors (P) Ltd; [2022 LiveLaw \(SC\) 346](#) : AIR 2022 SC 1672***

Section 2 (15) - "Charitable Purpose"

Income Tax Act, 1961; Section 2(15) - Tax exemption for charitable purposes - An assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration-However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that the activities of trade, commerce or business are connected to the achievement of its objects of GPU; and the receipts do not

exceed the quantified limit. (Para 253) **Assistant Commissioner of Income Tax v. Ahmedabad Urban Development Authority**, [2022 LiveLaw \(SC\) 865](#)

Income Tax Act 1961; Section 2(15) - Tax exemption for charitable purposes - for achieving a general public utility object, if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted - if the quantum of such profits do not exceed 20% of its overall receipts. (Para 172) **Assistant Commissioner of Income Tax v. Ahmedabad Urban Development Authority**, [2022 LiveLaw \(SC\) 865](#)

Income Tax Act 1961; Section 2(15) - Amounts charged by statutory authorities, corporations, statutory regulatory authorities for their public activities can't be treated as commercial receipts-However, if the amounts collected are significantly higher than the costs incurred, it can be treated as commercial income. (Para 253) **Assistant Commissioner of Income Tax v. Ahmedabad Urban Development Authority**, [2022 LiveLaw \(SC\) 865](#)

Income Tax Act 1961; Section 2(15) - Tax exemption for professional bodies like ICAI- bodies which regulate professions and are created by or under statutes which are enjoined to prescribe compulsory courses to be undergone before the individuals concerned is entitled to claim entry into the profession or vocation, and also continuously monitor the conduct of its members do not ipsofacto carry on activities in the nature of trade, commerce or business, or services in relation thereto-However, this is subject to the caveat that if the assessing authorities discern that certain kinds of activities carried out by such regulatory body involved charging of fees that are significantly higher than the cost incurred (with a nominal mark-up) or providing other facilities or services such as admission forms, coaching classes, registration processing fees, etc., at markedly higher prices, those would constitute commercial or business receipts. (Para 196, 253) **Assistant Commissioner of Income Tax v. Ahmedabad Urban Development Authority**, [2022 LiveLaw \(SC\) 865](#)

Section 10 - Incomes not included in total income

Income Tax Act, 1961; Section 10(23C) - The requirement of the charitable institution, society or trust etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education - All objects of the society, trust etc., must relate to imparting education or be in relation to educational activities - Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23C) of the IT Act. At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities. (Para 60, 76-a,b) **New Noble Educational Society v. Chief Commissioner of Income Tax 1**, [2022 LiveLaw \(SC\) 859](#) : 2022 (15) Scale 302

Income Tax Act, 1961; Section 10(23C) - Wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under Section 10(23C) should also comply with provisions of such state laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society etc.). (Para 73,76-g) **New Noble Educational Society v. Chief Commissioner of Income Tax 1, 2022 LiveLaw (SC) 859 : 2022 (15) Scale 302**

Income Tax Act, 1961; Section 10(5), 192(1) - Income Tax Rules, 1962; Rule 2B - Appeal against Delhi HC Judgment holding that amount received by SBI employees towards their Leave Travel Concession (LTC) claims is not liable for the exemption as these employees had visited foreign countries which is not permissible under the law - Dismissed - LTC is not for foreign travel - The travel must be done from one designated place in India to another designated place within India - The moment employees undertake travel with a foreign leg, it is not a travel within India and hence not covered under the provisions of Section 10(5) - Employer cannot claim ignorance about the travel plans of its employees as during settlement of LTC Bills the complete facts are available before the assessee about the details of their employees' travels. Therefore, it cannot be a case of bonafide mistake. **State Bank of India v. Assistant Commissioner of Income Tax, 2022 LiveLaw (SC) 917 : AIR 2022 SC 5604**

Income Tax Act, 1961; Section 10B(8) - For claiming the benefit under Section 10B (8) of the IT Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with. (Para 14) **Principal Commissioner of Income Tax-III Bangalore v. Wipro Ltd., 2022 LiveLaw (SC) 583 : AIR 2022 SC 3466**

Section 12AA - Procedure for registration

Income Tax Act, 1961; Section 12AA - Registration of a trust or institution - Even if in a case where the registration application under Section 12AA is not decided within six months, there shall not be any deemed registration. **Harshit Foundation v Commissioner, 2022 LiveLaw (SC) 431**

Section 36 - Other deductions

Income Tax Act, 1961; Sections 36(1)(va), 43B - The non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction - There is a marked distinction between the nature and character of the two amounts viz. the employers' contribution and employees' contribution required to be deposited by the employer - the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. (Para 53-54) **Checkmate Services Pvt. Ltd. v. Commissioner of Income Tax-I, 2022 LiveLaw (SC) 838 : 2022 (15) SCALE 117**

Section 37 – General

Income Tax Act, 1961; Section 37 - Loss suffered owing to exchange fluctuation while repaying loan can be regarded as revenue expenditure - The exchange fluctuation loss is an expenditure incidental to carrying on of business and comes within the purview of section 37 of the Act as the same is incurred wholly and exclusively for the purposes of business. (Para 3, 7-9) **Wipro Finance Ltd. v. Commissioner of Income Tax**, [2022 LiveLaw \(SC\) 418](#)

Income Tax Act, 1961 - Section 37(1) - Explanation 1 contains within its ambit all such activities which are illegal/prohibited by law and/or punishable. (Para 17) **Apex Laboratories Pvt. Ltd. v. Deputy Commissioner**, [2022 LiveLaw \(SC\) 195](#) : 2022 (4) SCALE 26

Income Tax Act, 1961 - Section 37(1) - Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 - Pharmaceutical companies' gifting freebies to doctors, etc. is clearly "prohibited by law", and not allowed to be claimed as a deduction under Section 37(1) - When acceptance of freebies is punishable by the MCI, pharmaceutical companies cannot be granted the tax benefit for providing such freebies, and thereby (actively and with full knowledge) enabling the commission of the act which attracts such opprobrium. (Para 33, 22) **Apex Laboratories Pvt. Ltd. v. Deputy Commissioner**, [2022 LiveLaw \(SC\) 195](#) : 2022 (4) SCALE 26

Income Tax Act, 1961 - Section 37(1) - Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 - Denial of the tax benefit cannot be construed as penalizing the assessee pharmaceutical company. Only its participation in what is plainly an action prohibited by law, precludes the assessee from claiming it as a deductible expenditure. (Para 27) **Apex Laboratories Pvt. Ltd. v. Deputy Commissioner**, [2022 LiveLaw \(SC\) 195](#) : 2022 (4) SCALE 26

Section 40 - Amounts not deductible

Income Tax Act, 1961 - Kerala General Sales Tax Act, 1963 - Surcharge or tax were never intended to be included in the net of amended Section 40(a)(iib)(A) or 40(a)(iib)(B) of the Income-tax Act, 1961. (Para 14.5) **Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. Assistant Commissioner of Income Tax Circle 1(1)**, [2022 LiveLaw \(SC\) 4](#): AIR 2022 SC 309 : (2022) 4 SCC 240

Section 45 - Capital gains

Income Tax Act, 1961; Section 45(4) - Section 45(4) applicable to not only the cases of dissolution but also cases of subsisting partners of a partnership, transferring the assets in favour of a retiring partner. **Commissioner of Income Tax v. Mansukh Dyeing and Printing Mills**, [2022 LiveLaw \(SC\) 991](#)

Section 127 - Power to transfer cases

Income Tax Act, 1961; Section 127 - by administrative order a 'case' can be transferred from one Assessing Authority to another Assessing Officer located

in a different State - power of transfer under Section 127 relates to the jurisdiction of the Income Tax Authorities, not the ITAT of High Court - appellate jurisdiction of a High Court cannot dependent upon pure executive power exercised under Section 127 - transfer of a case from one judicial forum to another judicial forum, without the intervention of Court is against the independence of judiciary - even when cases of an assessee are transferred, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise appellate jurisdiction - this would be true even when the transfer is under Section 127 for the same assessment year. [Para Nos. 19, 25, 26, 28, 29, 31, 33] **Pr. Commissioner of Income Tax-I, Chandigarh v. ABC Papers Ltd.**, [2022 LiveLaw \(SC\) 686](#) : AIR 2022 SC 3905 : (2022) 9 SCC 1

Section 132 - Search and seizure

Income Tax Act, 1961; Section 132 - Appeal against the judgment of High Court of Gujarat whereby the warrant of authorization issued by Principal Director of Income Tax (Investigation) under Section 132 of the Income Tax Act was quashed - Allowed - The question as to whether such reasons are adequate or not is not a matter for the Court to review in a writ petition. The sufficiency of the grounds which induced the competent authority to act is not a justiciable issue. **Principal Director of Income Tax (Investigation) v. Laljibhai KanjiBhai Mandalia**, [2022 LiveLaw \(SC\) 592](#) : AIR 2022 SC 3304

Income Tax Act, 1961; Section 132 - Principles in exercising the writ jurisdiction in the matter of search and seizure under Section 132 restated. (Para 33) **Principal Director of Income Tax (Investigation) v. Laljibhai KanjiBhai Mandalia**, [2022 LiveLaw \(SC\) 592](#) : AIR 2022 SC 3304

Income Tax Act, 1961; Section 132 - Sufficiency or inadequacy of the reasons to believe recorded cannot be gone into while considering the validity of an act of authorization to conduct search and seizure. The belief recorded alone is justiciable but only while keeping in view the Wednesbury Principle of Reasonableness. Such reasonableness is not a power to act as an appellate authority over the reasons to believe recorded. (Para 32) **Principal Director of Income Tax (Investigation) v. Laljibhai KanjiBhai Mandalia**, [2022 LiveLaw \(SC\) 592](#) : AIR 2022 SC 3304

Section 148 - Issue of notice where income has escaped assessment.

Income Tax Act, 1961; Section 148, 148A - Finance Act, 2021 - (i) The respective impugned section 148 notices issued to the respective assesseees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assesseees the information and material relied upon by the Revenue so that the assesseees can reply to the notices within two weeks thereafter; (ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as

a one time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts; (iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessee; (iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and; (v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not - The present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to pan India. (Para 8) **Union of India v. Ashish Agarwal**, [2022 LiveLaw \(SC\) 444](#) : AIR 2022 SC 2781

Constitution of India, 1950; Article 226 - Appeal against Bombay HC judgments dismissing writ petitions reopening of the assessment/re-assessment proceedings under Section 148 of the Income Tax Act - Allowed - Orders are bereft of reasoning as diverse grounds were urged/raised by the parties which ought to have been examined by the High Court in the first place and a clear finding was required to be recorded upon analysing the relevant documents - Remanded. **Vishal Ashwin Patel v. Assistant Commissioner**, [2022 LiveLaw \(SC\) 322](#) : 2022 (5) SCALE 392

Section 194A - Interest other than "Interest on securities"

Income Tax Act, 1961; Section 194A(1) - Any person who is responsible for paying to a resident any income by way of interest shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash/cheque or draft whichever is earlier deduct income tax thereon at the rates in force - the Union Bank of India did not deduct TDS at source while paying interest to Agra Development Authority, but subsequently deducted and deposited the same within the financial year. **Union Bank of India v. Additional Commissioner of Income Tax (TDS)**, [2022 LiveLaw \(SC\) 278](#)

Income Tax Act, 1961; Section 194A(3)(iii)(f) - Provided for exemption from mandate of Section 194A(1), inter alia, for paying interest to such corporations as notified by the Central Government - Central Government vide notification dated 22.10.1970 notified corporation established by a statute for the purpose of exemption - Applying the same principle as in Commissioner of Income Tax (TDS) Kanpur And Anr. v. Canara Bank (2018) 9 SCC 322, the Apex Court permitted Agra Development Authority to be considered as a corporation established by a statute - Therefore, Union Bank of India was eligible for the

exemption. ***Union Bank of India v. Additional Commissioner of Income Tax (TDS)***, [2022 LiveLaw \(SC\) 278](#)

Section 194H - Commission or brokerage

Income Tax Act, 1961; Section 194H - Contract Act, 1870; Section 182 - Application of Section 194H of the IT Act to the Supplementary Commission amounts earned by the travel agent - Section 194H is to be read with Section 182 of the Contract Act. If a relationship between two parties as culled out from their intentions as manifested in the terms of the contract between them indicate the existence of a principal-agent relationship as defined under Section 182 of the Contract Act, then the definition of "Commission" under Section 194H of the IT Act stands attracted and the requirement to deduct TDS arises. ***Singapore Airlines Ltd. v. C.I.T., Delhi***, [2022 LiveLaw \(SC\) 959](#)

Section 220 - When tax payable and when assessee deemed in default.

Income Tax Act, 1961; Section 220(2A) - Merely raising the dispute before any authority cannot be a ground not to levy the interest and/or waiver of interest under Section 220(2A) - Otherwise each and every assessee may raise a dispute and thereafter may contend that as the assessee was bona fide litigating and therefore no interest shall be leviable - Under Section 220(2) of the Act, the levy of simple interest on non-payment of the tax @ 1% p.a. is, as such, mandatory. ***Pioneer Overseas Corporation USA v. Commissioner of Income Tax***, [2022 LiveLaw \(SC\) 944](#)

Section 254 - Orders of Appellate Tribunal

Income Tax Act, 1961; Section 254 - Limitation to to entertain fresh claim would apply to the "assessing authority", but not impinge upon the plenary powers of the ITAT bestowed under Section 254 of the Act - Rejected contention that ITAT cannot entertain fresh claim for the first time. (*Para 10-11*) ***Wipro Finance Ltd. v. Commissioner of Income Tax***, [2022 LiveLaw \(SC\) 418](#)

Section 260A - Appeal to High Court

Income Tax Act, 1961; Section 260A - Appeals against every decision of ITAT shall lie only before the High Court within whose jurisdiction the assessing officer who passed the assessment order is situated. ***Commissioner of Income Tax - I v. Balak Capital Pvt. Ltd.***; [2022 LiveLaw \(SC\) 982](#)

Income Tax Act, 1961; Section 260A - provides for a statutory appeal to the High Court against every order of the ITAT - does not specify the High Court before which an appeal would lie in cases where Tribunals operated for plurality of States - benches of the ITAT are constituted to exercise jurisdiction over more than one state; functions as the administrative discretion of the President - jurisdiction exercised by the benches of the ITAT do not follow the structure contemplated in Article 1 of the Constitution, which divides the Union into States and Union Territories - the appropriate High Court would be the one where the Assessing Authority is situated. [*Para Nos. 13.3, 14, 15, 18, 30, 33*] **Pr.**

Commissioner of Income Tax-I, Chandigarh v. ABC Papers Ltd., 2022 LiveLaw (SC) 686 : AIR 2022 SC 3905 : (2022) 9 SCC 1

Income Tax Act 1961; Section 260A - Appeals against orders of Income Tax Appellate Tribunal (ITAT) will lie only before the High Court within whose jurisdiction the assessing officer is situated. Even if the case or cases of an assessee are transferred in exercise of power under Section 127 of the Act, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s). (Para 33) **Pr. Commissioner of Income Tax-I, Chandigarh v. ABC Papers Ltd., 2022 LiveLaw (SC) 686 : AIR 2022 SC 3905 : (2022) 9 SCC 1**

Section 271C - Penalty for failure to deduct tax at source

Income Tax Act, 1961; Section 271C - If the recipient of income on which TDS has not been deducted, even though it was liable to such deduction under the IT Act, has already included that amount in its income and paid taxes on the same, the Assessee can no longer be proceeded against for recovery of the short fall in TDS. However, it would be open to the Revenue to seek payment of interest under Section 201(1A) for the period between the date of default in deduction of TDS and the date on which the recipient actually paid income tax on the amount for which there had been a shortfall in such deduction. (Para 56) **Singapore Airlines Ltd. v. C.I.T., Delhi, 2022 LiveLaw (SC) 959**

Indian Medicine Central Council Act, 1970

Indian Medicine Central Council Act, 1970 - Appeal against orders of the Karnataka High Court, which had permitted Karnataka Ayurveda Medical College to admit students for the academic year 2018-2019 in view of the permission granted for the year 2019-2020 - Allowed - The finding that the permission granted for a subsequent academic year would also enure to the benefit of earlier academic year though the said institution was not fulfilling the criteria of minimum standard, is totally erroneous. **Central Council for Indian Medicine v. Karnataka Ayurveda Medical College, 2022 LiveLaw (SC) 365 : AIR 2022 SC 1837 : (2022) 7 SCC 46**

Indian Medicine Central Council Act, 1970 - Indian Medicine Central Council (Post-Graduate Ayurveda Education) Regulations, 2012 - No medical college can open a new or higher course of study or training, including a post graduate course, except with the previous permission of the Central Government. Prior to such a permission being granted, the procedure as prescribed under Section 13A has to be followed. (Para 28) **Central Council for Indian Medicine v. Karnataka Ayurveda Medical College, 2022 LiveLaw (SC) 365 : AIR 2022 SC 1837 : (2022) 7 SCC 46**

Industrial Areas Development Act, 1966 (Karnataka)

Industrial Areas Development Act, 1966 (Karnataka); Section 28(1), 41 - Power to acquire land beyond development by KIADB - Regulations framed by

the Board under Section 41 also contemplates acquiring land for the purpose of allotment to a single company to set up an industry. (Para 37-39) ***M.S.P.L. Ltd. v. State of Karnataka***, [2022 LiveLaw \(SC\) 886](#)

Industrial Areas Development Act, 1966 (Karnataka); Section 29(4) - Land Acquisition Act, 1894; Section 18(1) - Person Interested - A subsequent allottee after the land was acquired by KIADB, can neither be said to be a beneficiary nor a "person interested" for the purpose of determination of compensation - The acquisition under the Land Acquisition Act, 1894 and the acquisition under the KIAD Act, 1966 are both distinct and the provisions under both the Acts are distinguishable. (Para 7.3-7.4) ***Gregory Patrao v. Mangalore Refinery and Petrochemicals Ltd.***, [2022 LiveLaw \(SC\) 602](#) : (2022) 10 SCC 461

Industrial Areas Development Act, 1966 (Karnataka); Sections 1, 3, 28 - Appeal against judgment of Karnataka High Court quashing the notifications for acquisition of land - Allowed - Division Bench committed an error in quashing the acquisition proceedings. ***M.S.P.L. Ltd. v. State of Karnataka***, [2022 LiveLaw \(SC\) 886](#)

Industrial Disputes Act, 1947

Industrial Disputes Act, 1947 - Appeal against Karnataka High Court judgment which held that an employer must give proper opportunity of hearing to the workmen before deducting their wages for "go slow" approach by which they had failed to produce the agreed output - Disposed - The impugned judgment protects the interest of the appellant and the workmen by prescribing the right procedure which should be followed in case the appellant is of the opinion that the workmen, though present on duty, are not working and are not giving the agreed production on the basis of which wages and incentives have been fixed. ***Bata India Ltd. vs. Workmen of Bata India Ltd***; [2022 LiveLaw \(SC\) 325](#) : (2022) 6 SCC 95

Industrial Disputes Act, 1947 - Industrial Tribunal - If irregularity or illegality committed by a Tribunal touches upon the jurisdiction to try and determine over a subject dispute is altogether beyond its purview, that question would go to the root of the matter and it would be within the jurisdiction of the superior court to correct such error. (Para 15) ***Oil and Natural Gas Corporation Ltd. v. President, Oil Field Employees Association***, [2022 LiveLaw \(SC\) 176](#) : 2022 (2) SCALE 861

Industrial Disputes Act, 1947 - Industrial Tribunal - The Tribunal could not go beyond the disputes that were referred to it - The scope of jurisdiction of the Industrial Court is wide and in appropriate cases it has the jurisdiction even to make a contract. (Para 14, 25) ***Oil and Natural Gas Corporation Ltd. v. President, Oil Field Employees Association***, [2022 LiveLaw \(SC\) 176](#) : 2022 (2) SCALE 861

Industrial Disputes Act, 1947 - Jurisdiction of civil court not ousted when the matter relates to correction of date of birth - Jurisdiction of the civil court is not

ousted, as this is not a case relating to enforcement of a right or an obligation under the Industrial Disputes Act, 1947. ***Tulshi Choudhary v. Steel Authority of India Ltd.***, [2022 LiveLaw \(SC\) 668](#)

Industrial Disputes Act, 1947 - Right of minority workmen to raise industrial dispute - A minority union of workers may raise an industrial dispute even if another union which consists of the majority of them enters into a settlement with the employer. (Para 20) ***Oil and Natural Gas Corporation Ltd. v. President, Oil Field Employees Association***, [2022 LiveLaw \(SC\) 176](#) : 2022 (2) SCALE 861

Industrial Disputes Act, 1947 - Section 18 - Binding nature of a settlement on all persons employed in an establishment discussed. (Para 16 - 17) ***Oil and Natural Gas Corporation Ltd. v. President, Oil Field Employees Association***, [2022 LiveLaw \(SC\) 176](#) : 2022 (2) SCALE 861

Industrial Disputes Act, 1947 - Section 33C(2) - Prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33C(2) of the Industrial Disputes Act. (Para 6) ***Bombay Chemical Industries v. Deputy Labour Commissioner***, [2022 LiveLaw \(SC\) 130](#) : (2022) 5 SCC 629

Industrial Disputes Act, 1947 - Section 33C(2) - The benefit sought to be enforced under Section 33-C (2) of the ID Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C (2) of the ID Act while the latter does not. (Para 6) ***Bombay Chemical Industries v. Deputy Labour Commissioner***, [2022 LiveLaw \(SC\) 130](#) : (2022) 5 SCC 629

Industrial Disputes Act, 1947 - The principle of limited interference would apply to a proceeding of this nature under the 1947 Act. (Para 25) ***Oil and Natural Gas Corporation Ltd. v. President, Oil Field Employees Association***, [2022 LiveLaw \(SC\) 176](#) : 2022 (2) SCALE 861

Industrial Disputes Act, 1947; Section 25F - If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. (Para 19) ***Armed Forces Ex Officers Multi Services Cooperative Society Ltd. v. Rashtriya Mazdoor Sangh (INTUC)***, [2022 LiveLaw \(SC\) 674](#) : AIR 2022 SC 3783 : (2022) 9 SCC 586

Industrial Disputes Act, 1947; Section 25F - Retrenchment - Principle of law that reemployment of retrenched workmen does not entitle them to claim continuity of service - This principle will only apply to cases where the retrenchment is bona fide - When retrenchment is not bona fide and once the orders of retrenchment are set aside, the workmen will naturally be entitled to

continuity of service with order of back wages as determined by a Tribunal or a Court of law. (Para 16) **Armed Forces Ex Officers Multi Services Cooperative Society Ltd. v. Rashtriya Mazdoor Sangh (INTUC)**, [2022 LiveLaw \(SC\) 674](#) : AIR 2022 SC 3783 : (2022) 9 SCC 586

Industrial Disputes Act, 1947; Section 25F - Retrenchment - Principle that a policy decision for re-organising the business based on economic considerations is within an enterprise's proprietary decision and retrenchment in this context must be accepted as an inevitable consequence - The material requirement of bona fide of the decision - When the retrenchment seems to have been imposed as retribution against the workmen for going on a strike, this principle will not apply. (Para 15) **Armed Forces Ex Officers Multi Services Cooperative Society Ltd. v. Rashtriya Mazdoor Sangh (INTUC)**, [2022 LiveLaw \(SC\) 674](#) : AIR 2022 SC 3783 : (2022) 9 SCC 586

Industrial Disputes Act, 1947 - Section 33C(2) - Not open for the Labour Court to entertain disputed questions and adjudicate upon the employer - employee relationship - In an application under Section 33C(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. (Para 6) **Bombay Chemical Industries v. Deputy Labour Commissioner**, [2022 LiveLaw \(SC\) 130](#) : (2022) 5 SCC 629

Information Technology Act, 2000

Information Technology Act, 2000; Section 66A - No one should be prosecuted under Section 66A of the Act, which was struck down as unconstitutional by the Court in 2015 in the Shreya Singhal Case. **Peoples Union for Civil Liberties v. Union of India**, [2022 LiveLaw \(SC\) 846](#)

Insider trading

Insider trading – Profit motive – Mitigating factor – Distress sale – Securities and Exchange Board of India (SEBI) Act, 1992 (15 of 1992) – Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 – Regulations 2(d), 2(e), 2(ha), 2(k), 3, 4 – Appeal under Section 15Z – Transaction likely to result in loss cannot be basis to accuse insider in possession of price-sensitive information of insider trading - Actual gain or loss immaterial – Motive for making a gain essential – MD & Chairman who sold shares to fund corporate debt restructuring (CDR) package before information about cancellation of shareholders' agreements disclosed to the public held not guilty of insider trading – Similar to a distress sale – Test applied, whether an attempt to take advantage of or encash the benefit of information in possession made – Not the same as *mens rea* - Merely because a person was in possession of unpublished price sensitive information at the time go trading in securities, it cannot be held that the transaction becomes the mischief of "insider trading", unless it is established that there was an intention to take

advantage of the information. [Paras 28, 31, 35, 37, 38, 42] **Securities and Exchange Board of India v. Abhijit Rajan**, [2022 LiveLaw \(SC\) 787](#)

Insolvency and Bankruptcy Code, 2016

Insolvency and Bankruptcy Code, 2016 - Appeal challenging NCLAT order which reversed the order of the NCLT wherein it had held that the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was not time-barred - Allowed - The failure of the NCLAT as the first appellate authority to look into a very vital aspect such as this, vitiates its order, especially when NCLT has recorded a specific finding of fact - Remanded. **S.V. Fashions Pvt. Ltd. v. Ritu Murli Manohar Goyal**, [2022 LiveLaw \(SC\) 326](#) : 2022 (5) SCALE 442

Insolvency and Bankruptcy Code, 2016 – Difference between financial and operational creditors in the nature of their role in the Committee of Creditors - It is assumed the operational creditors will be unwilling to take the risk of restructuring their debts in order to make the corporate debtor a going concern. Thus, their debt is not seen as a long -term investment in the going concern status of the corporate debtor, which would incentivize them to restructure it, but merely as a one -off transaction with the corporate debtor for certain goods or services. (Para 32) **Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.**, [2022 LiveLaw \(SC\) 129](#) : (2022) 7 SCC 164

Insolvency and Bankruptcy Code, 2016 - IBC does not exclude the application of Section 14 or 18 or any other provision of the Limitation Act. (Para 81) **Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.**, [2022 LiveLaw \(SC\) 648](#) : AIR 2022 SC 3559

Insolvency and Bankruptcy Code, 2016 – IBC proceedings should not become recovery proceedings - IBC not akin to a recovery legislation for creditors, but is a legislation beneficial for the corporate debtor. **Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.**, [2022 LiveLaw \(SC\) 129](#) : (2022) 7 SCC 164

Insolvency and Bankruptcy Code, 2016 - If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan - If a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC - The Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues. (Para 52-54) **State Tax Officer v. Rainbow Papers Ltd.**, [2022 LiveLaw \(SC\) 743](#) : AIR 2022 SC 4141

Insolvency and Bankruptcy Code, 2016 - Intended to consolidate and amend the laws with a view to reorganize Corporate Debtors and resolve insolvency in

a time bound manner for maximization of the value of the assets of the Corporate Debtor - The statute deals with and/or tackles insolvency and bankruptcy. It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. (Para 80 - 81) **Vidarbha Industries Power Ltd. v. Axis Bank Ltd.**, [2022 LiveLaw \(SC\) 587](#) : (2022) 8 SCC 352

Insolvency and Bankruptcy Code, 2016 - NCLT admitted an application for initiating CIRP filed by operational creditor - NCLAT set it aside - Supreme Court dismissed and held: NCLT committed a grave error of law by admitting the application of the Operational Creditor, even though there was a pre-existing dispute as noted by it. **SS Engineers v. Hindustan Petroleum Corporation Ltd.**; [2022 LiveLaw \(SC\) 617](#)

Insolvency and Bankruptcy Code, 2016 - NCLT/NCLAT must make a reasonable assessment of the fees and expenses payable to the Interim Resolution Profession and cannot pass an order in an ad-hoc manner. (Para 16) **Devarajan Raman v. Bank of India Ltd.**, [2022 LiveLaw \(SC\) 24](#) : (2022) 3 SCC 254

Insolvency and Bankruptcy Code, 2016 - NOIDA is an operational creditor under the provisions of the IBC Code. **New Okhla Industrial Development Authority v. Anand Sonbhadra**, [2022 LiveLaw \(SC\) 491](#) : 2022 (7) SCALE 656

Insolvency and Bankruptcy Code 2016 - Supreme Court holds that there is no ground to review the the judgment in *Vidarbha Industries Power Ltd. v. Axis Bank Limited*, [2022 LiveLaw \(SC\) 587](#) which held that the National Company Law Tribunal has discretion to not admit the insolvency application filed by a financial creditor even if the corporate debtor is in default. **Axis Bank Ltd v. Vidarbha Industries Power Ltd.**; [2022 LiveLaw \(SC\) 817](#)

Insolvency and Bankruptcy Code, 2016 - The provisions of Section 18 of the Limitation Act are not alien to and are applicable to proceedings under the IBC; and (ii) An acknowledgement in a balance sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, so long as the acknowledgement was within a period of three years from the original date of default. (Para 13) **State Bank of India v. Krishidhan Seeds**, [2022 LiveLaw \(SC\) 497](#) : 2022 (8) SCALE 253

Insolvency and Bankruptcy Code 2016 - There can be no dispute with the proposition that the period of limitation for making an application under Section 7 or 9 of the IBC is three years from the date of accrual of the right to sue, that is, the date of default. (Para 56) **Kotak Mahindra Bank Limited v. Kew Precision Parts Pvt. Ltd.**, [2022 LiveLaw \(SC\) 673](#) : (2022) 9 SCC 364

Insolvency and Bankruptcy Code 2016 - There is no specific period of limitation prescribed in the Limitation Act, 1963, for an application under the IBC, before the Adjudicating Authority (NCLT). An application for which no period of limitation is provided anywhere else in the Schedule to the Limitation

Act, is governed by Article 137 of the Schedule to the said Act. Under Article 137 of the Schedule to the Limitation Act, the period of limitation prescribed for such an application is three years from the date of accrual of the right to apply. (Para 55) **Kotak Mahindra Bank Limited v. Kew Precision Parts Pvt. Ltd.**, [2022 LiveLaw \(SC\) 673](#) : (2022) 9 SCC 364

Insolvency and Bankruptcy Code, 2016 - The Court allowed withdrawal of Corporate Insolvency Resolution Process against a builder in an application filed by three homebuyers in view of a settlement plan agreed upon by the majority of them. In the larger interest of the homebuyers, the Apex Court exercised power under Article 142 to permit withdrawal of the CIRP proceedings and set aside all matters pending between the parties. **Amit Katyal v. Meera Ahuja**, [2022 LiveLaw \(SC\) 259](#) : AIR 2022 SC 1433 : (2022) 8 SCC 320

Insolvency and Bankruptcy Code, 2016 - The IBC is not just a statute for recovery of debts. It is also not a statute which only prescribes the modalities of liquidation of a corporate body, unable to pay its debts. It is essentially a statute which works towards the revival of a corporate body, unable to pay its debts, by appointment of a Resolution Professional. (Para 55) **Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.**, [2022 LiveLaw \(SC\) 648](#) : AIR 2022 SC 3559

Insolvency and Bankruptcy Code, 2016 - The Legislature has consciously differentiated between Financial Creditors and Operational Creditors, as there is an innate difference between Financial Creditors, in the business of investment and financing, and Operational Creditors in the business of supply of goods and services. Financial credit is usually secured and of much longer duration. Such credits, which are often long term credits, on which the operation of the Corporate Debtor depends, cannot be equated to operational debts which are usually unsecured, of a shorter duration and of lesser amount. The financial strength and nature of business of a Financial Creditor cannot be compared with that of an Operational Creditor, engaged in supply of goods and services. The impact of the non-payment of admitted dues could be far more serious on an Operational Creditor than on a financial creditor. (Para 78) **Vidarbha Industries Power Ltd. v. Axis Bank Ltd.**, [2022 LiveLaw \(SC\) 587](#) : (2022) 8 SCC 352

Insolvency and Bankruptcy Code, 2016 - The object and purpose of 14 the IBC is not to kill the company and stop/stall the project, but to ensure that the business of the company runs as a going concern. (Para 12) **Amit Katyal v. Meera Ahuja**, [2022 LiveLaw \(SC\) 259](#) : AIR 2022 SC 1433 : (2022) 8 SCC 320

Insolvency and Bankruptcy Code, 2016 - The provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. **Invest Asset Securitisation and Reconstruction v. Girnar Fibres**, [2022 LiveLaw \(SC\) 423](#)

Insolvency and Bankruptcy Code, 2016 - Various stages involved in the corporate insolvency process in India discussed. (Para 34) **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs**, [2022 LiveLaw \(SC\) 715](#) : 2022 (13) SCALE 275

Section 3 (30) - "secured creditor"

Insolvency and Bankruptcy Code, 2016; Section 3(30) - Secured Creditor - A creditor in favour of whom security interest is credited - Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority. (Para 57) **State Tax Officer v. Rainbow Papers Ltd.**, [2022 LiveLaw \(SC\) 743](#) : AIR 2022 SC 4141

Section 5 (7) & (8) - "financial creditor" & "financial debt"

Insolvency and Bankruptcy Code 2016; Section 5(8), 5(7) - A liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" - The holder of the Recovery Certificate would be a financial creditor and would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate - Affirmed the view taken in Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy (2021) 10 SCC 330. (Para 84-85) **Kotak Mahindra Bank Ltd. v. A. Balakrishna**, [2022 LiveLaw \(SC\) 534](#) : AIR 2022 SC 2652 : (2022) 9 SCC 186

Section 5 (13) - "insolvency resolution process costs"

Insolvency and Bankruptcy Code, 2016; Section 5(13), 53(1)(b), 53(1)(c) - Insolvency resolution process costs - Dues towards the wages/salaries of only those workmen/employees who actually worked during the CIRP are to be included in the CIRP costs - The wages and salaries of all other workmen / employees of the Corporate Debtor during the CIRP who actually have not worked and/or performed their duties when the Corporate Debtor was a going concern, shall not be included automatically in the CIRP costs. Such dues will be governed by Section 53(1)(b) and Section 53(1) (c) of the Insolvency and Bankruptcy Code. (Para 9-10) **Sunil Kumar Jain v. Sundaresh Bhatt**, [2022 LiveLaw \(SC\) 382](#) : AIR 2022 SC 1985 : (2022) 7 SCC 540

Section 5 (20) & (21) - "Operational Creditor" & "Operational Debt"

Insolvency and Bankruptcy Code, 2016 – Section 5(20) and 5(21) - Operational Debt - Operational Creditor - A debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt - The phrase "in respect of" in Section 5(21) has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational services from the corporate debtor, which ultimately lead to an operational debt. (Para 43, 45) **Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.**, [2022 LiveLaw \(SC\) 129](#) : (2022) 7 SCC 164

Section 7 - Initiation of corporate insolvency resolution process by financial creditor

Insolvency and Bankruptcy Code 2016; Section 7(5) - No ground to review judgment in *Vidarbha Industries Power Ltd. v. Axis Bank Limited* which held that adjudicating authority has discretion under Section 7(5) - Apprehension that the judgment will undermine the objectives of IBC is misconceived - Observations were made in the context of the case at hand. ***Axis Bank Ltd v. Vidarbha Industries Power Ltd*; [2022 LiveLaw \(SC\) 817](#)**

Insolvency and Bankruptcy Code, 2016; Section 7 - An application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years. (Para 97) ***Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.*, [2022 LiveLaw \(SC\) 648](#) : AIR 2022 SC 3559**

Insolvency and Bankruptcy Code, 2016; Section 7 - CIRP can be initiated against the Corporate Guarantor without proceeding against the principal borrower - The liability of the guarantor is co-extensive with that of the Principal Borrower. (Para 13-16) ***K. Paramasivam v. Karur Vysya Bank Ltd.*, [2022 LiveLaw \(SC\) 742](#) : AIR 2022 SC 4127**

Insolvency and Bankruptcy Code, 2016; Section 7 - Limitation Act, 1963; Section 18 - Entries in Books of Account/Balance sheet of a company can be treated as acknowledgement of liability in respect of debt payable to a financial creditor. (Para 85) ***Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.*, [2022 LiveLaw \(SC\) 648](#) : AIR 2022 SC 3559**

Insolvency and Bankruptcy Code, 2016; Section 7 - Pleadings - An application under Section 7 in the prescribed form cannot be compared with the plaint in a suit, and cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a Court of law - There is no scope for elaborate pleadings - Documents filed along with the application, or later, and subsequent affidavits and applications would have to be construed as part of the pleadings. (Para 49,76) ***Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.*, [2022 LiveLaw \(SC\) 648](#) : AIR 2022 SC 3559**

Insolvency and Bankruptcy Code, 2016; Section 7 - The approval of a resolution in respect of one borrower cannot certainly discharge a co-borrower - If there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why proceedings under Section 7 of the IBC cannot be initiated against both the Corporate Debtors - The same amount cannot be realised from both the Corporate Debtors. If the dues are realised in part from one Corporate Debtor, the balance may be realised from the other Corporate Debtor being the co-borrower. However, once the claim of the

Financial Creditor is discharged, there can be no question of recovery of the claim twice over. (*Para 36-37*) ***Maitreya Doshi v. Anand Rathi Global Finance Ltd.***, [2022 LiveLaw \(SC\) 789](#) : AIR 2022 SC 4595

Insolvency and Bankruptcy Code, 2016; Section 7 - The period of limitation for making an application under Section 7 or 9 of the IBC is three years from the date of accrual of the right to sue, that is, the date of default. (*Para 69*) ***Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.***, [2022 LiveLaw \(SC\) 648](#) : AIR 2022 SC 3559

Insolvency and Bankruptcy Code, 2016; Section 7(5)(a) - Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition - It has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. (*Para 87 - 88*) ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd.***, [2022 LiveLaw \(SC\) 587](#) : (2022) 8 SCC 352

Insolvency and Bankruptcy Code, 2016; Section 7(5)(a) - The Adjudicating Authority (NCLT) has been conferred the discretion to admit the application of the Financial Creditor. If facts and circumstances so warrant, the Adjudicating Authority can keep the admission in abeyance or even reject the application. Of course, in case of rejection of an application, the Financial Creditor is not denuded of the right to apply afresh for initiation of CIRP, if its dues continue to remain unpaid - The Adjudicating Authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority may in its discretion not admit the application of a Financial Creditor. (*Para 77 - 79*) ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd.***, [2022 LiveLaw \(SC\) 587](#) : (2022) 8 SCC 352

Insolvency and Bankruptcy Code, 2016; Section 7(5)(b) - when the Adjudicating Authority is satisfied that default has not occurred or the application is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application - provided it shall, before rejecting the application, give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority - the provision would extent to appeals - appeal is the continuation of original proceedings. (*Para 70*) ***Kotak Mahindra Bank Limited v. Kew Precision Parts Pvt. Ltd.***, [2022 LiveLaw \(SC\) 673](#) : (2022) 9 SCC 364

Insolvency and Bankruptcy Code, 2016; Section 7-9 - Noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and by an operational creditor -The NCLT is not a debt collection forum. (*Para 31-32*) ***SS Engineers v. Hindustan Petroleum Corporation Ltd.***; [2022 LiveLaw \(SC\) 617](#)

Section 8 - Insolvency resolution by operational creditor

Insolvency and Bankruptcy Code, 2016; Sections 8 & 9 - If the claim is undisputed and the operational debt remains unpaid, CIRP must commence- IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. (Para 31-32) **SS Engineers v. Hindustan Petroleum Corporation Ltd;** [2022 LiveLaw \(SC\) 617](#)

Insolvency and Bankruptcy Code, 2016; Sections 8 & 9 - if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed - CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor. (Para 31-32) **SS Engineers v. Hindustan Petroleum Corporation Ltd;** [2022 LiveLaw \(SC\) 617](#)

Section 9 - Application for initiation of corporate insolvency resolution process by operational creditor

Insolvency and Bankruptcy Code, 2016; Sections 9 - Section 9(5)(a) mandatory - An application of an Operational Creditor for initiation of CIRP under Section 9(2) of the IBC is mandatorily required to be admitted if the application is complete in all respects and in compliance of the 28 requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice has been delivered to the Corporate Debtor by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor. (Para 76) **Vidarbha Industries Power Ltd. v. Axis Bank Ltd.;** [2022 LiveLaw \(SC\) 587](#) : (2022) 8 SCC 352

Insolvency and Bankruptcy Code, 2016 - Section 9 – Limitation Act, 1963 – Article 137 – Limitation Act would apply to applications filed under Sections 7 and 9 of the IBC. **Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.;** [2022 LiveLaw \(SC\) 129](#) : (2022) 7 SCC 164

Insolvency and Bankruptcy Code, 2016 – Section 9 – Limitation Act, 1963 – Article 137 – Limitation does not commence when the debt becomes due but only when a default occurs. As noted earlier in the judgment, default is defined under Section 3(12) of the IBC as the non -payment of the debt by the corporate debtor when it has become due. (Para 59) **Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.;** [2022 LiveLaw \(SC\) 129](#) : (2022) 7 SCC 164

Section 12A - Withdrawal of application admitted under section 7, 9 or 10

Insolvency and Bankruptcy Code, 2016; Section 12A - At any stage before a COC is constituted, a party can approach NCLT/Adjudicating Authority directly and the Tribunal may in exercise of its powers under Rule 11 of the NCLT Rules, allow or disallow an application for withdrawal or settlement - In an appropriate case and where the case is being made out and the NCLT is satisfied about the

settlement, may permit/allow an application for withdrawal or settlement. **Amit Katyal v. Meera Ahuja**, [2022 LiveLaw \(SC\) 259](#) : AIR 2022 SC 1433 : (2022) 8 SCC 320

Insolvency and Bankruptcy Code, 2016; Section 12A - National Company Law Tribunal Rules, 2016; Rule 11 - Section 12A clearly permits withdrawal of an application under Section 7 IBC that has been admitted - The question of approval of the Committee of Creditors by the requisite percentage of votes, can only arise after the Committee of Creditors is constituted - Before the Committee of Creditors is constituted, there is no bar to withdrawal by the applicant of an application admitted under Section 7 IBC - The settlement cannot be stifled before the constitution of the Committee of Creditors in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process is not a reason to stifle the settlement - Rule 11 of the NCLT Rules enables the NCLT to pass orders for the ends of justice including order permitting an applicant for CIRP to withdraw its application and to enable a corporate body to carry on business with ease, free of any impediment. (Para 23-30) **Ashok G. Rajani v. Beacon Trusteeship Ltd.**, [2022 LiveLaw \(SC\) 790](#) : AIR 2022 SC 4863

Insolvency and Bankruptcy Code, 2016; Section 12A - Regulation 30A of the CIRP Regulations, 2016 - This provision is held to be directory depending on fact of case. **Amit Katyal v. Meera Ahuja**, [2022 LiveLaw \(SC\) 259](#) : AIR 2022 SC 1433 : (2022) 8 SCC 320

Insolvency and Bankruptcy Code, 2016; Section 12A - When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stake-holders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules. (Para 24) **Vallal Rck v. M/s. Siva Industries and Holdings Ltd**; [2022 LiveLaw \(SC\) 541](#) : AIR 2022 SC 2636 : (2022) 9 SCC 803

Section 13 - Declaration of moratorium and public announcement

Insolvency and Bankruptcy Code, 2016 - Sections 13, 15 and 31 - The claim in respect of the demand was not lodged after public announcements were issued under Sections 13 and 15 of the IBC - On the date on which the Resolution Plan was approved by the NCLT, all claims stood frozen - No claim, which is not a part of the Resolution Plan, would survive. **Ruchi Soya Industries Ltd. v. Union of India**, [2022 LiveLaw \(SC\) 207](#)

Section 14 - Moratorium

Insolvency and Bankruptcy Code, 2016; Section 14 - Moratorium on the initiation of CIRP proceedings and its effects - One of the purposes of the moratorium is to keep the assets of the Corporate Debtor together during the insolvency resolution process and to facilitate orderly completion of the processes envisaged under the statute. Such measures ensure the curtailing of parallel proceedings and reduce the possibility of conflicting outcomes in the process - one of the motivations of imposing a moratorium is for Section 14(1)(a), (b), and (c) of the IBC to form a shield that protects pecuniary attacks against the Corporate Debtor. This is done in order to provide the Corporate Debtor with breathing space, to allow it to continue as a going concern and rehabilitate itself. (Para 36) **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs**, [2022 LiveLaw \(SC\) 715](#) : **2022 (13) SCALE 275**

Insolvency and Bankruptcy Code, 2016; Section 14 - Negotiable Instruments Act, 1881; Section 138 and 141 - Moratorium - Liability of natural persons like a Director of the Company - The moratorium provisions contained in Section 14 of the Insolvency and Bankruptcy Code, 2016 would apply only to the corporate debtor and that the natural persons mentioned in Section 141 of the Act would continue to be statutorily liable under the provisions of the Act. **Narinder Garg v. Kotak Mahindra Bank**, [2022 LiveLaw \(SC\) 428](#) : **2022 (7) SCALE 162**

Insolvency and Bankruptcy Code, 2016; Section 14, 238 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - After the CIRP is initiated, all actions including any action under the SARFAESI Act to foreclose, recover or enforce any security interest are prohibited. (Para 24, 35) **Indian Overseas Bank v. RCM Infrastructure Ltd**; [2022 LiveLaw \(SC\) 496](#) : **AIR 2022 SC 2687 : (2022) 8 SCC 516**

Insolvency and Bankruptcy Code, 2016; Section 14, 60(6) - Section 60(6) does contemplate exclusion of the entire period during which the moratorium was in force in respect of corporate debtor in regard to a proceeding as contemplated therein at the hands of the corporate debtor - Present an order of Moratorium under Section 14, the entire period of the Moratorium is liable to be excluded in computing the period of limitation even in a suit or an application by a corporate debtor. (Para 25-28) **New Delhi Municipal Council v. Minosha India Ltd.**, [2022 LiveLaw \(SC\) 469](#) : **(2022) 8 SCC 384**

Insolvency and Bankruptcy Code, 2016; Sections 14, 33(5) - Customs Act, 1961 - IBC would prevail over Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The customs authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act - Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a

limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act - After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority - In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC. (Para 53) **Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs**, [2022 LiveLaw \(SC\) 715](#) : **2022 (13) SCALE 275**

Section 20 - Management of operations of corporate debtor as going concern

Insolvency and Bankruptcy Code, 2016; Section 20 - Even if it is found that the Corporate Debtor was not a going concern during the CIRP despite best efforts by the resolution professional, it cannot be presumed that still the Corporate Debtor was a going concern during the CIRP period. It depends on the facts of each case. (Para 12) **Sunil Kumar Jain v. Sundaresh Bhatt**, [2022 LiveLaw \(SC\) 382](#) : **AIR 2022 SC 1985** : **(2022) 7 SCC 540**

Section 29A - Persons not eligible to be resolution applicant

Insolvency and Bankruptcy Code, 2016; Section 29A(h) - The word “such creditor” in Section 29A(h) has to be interpreted to mean similarly placed creditors after the application for insolvency application is admitted by the adjudicating authority - What is required to earn a disqualification under the said provision is a mere existence of a personal guarantee that stands invoked by a single creditor, notwithstanding the application being filed by any other creditor seeking initiation of insolvency resolution process. This is subject to further compliance of invocation of the said personal guarantee by any other creditor. (Para 53) **Bank of Baroda v. MBL Infrastructures**, [2022 LiveLaw \(SC\) 62](#) : **(2022) 5 SCC 661**

Section 30 - Submission of resolution plan

Insolvency and Bankruptcy Code, 2016; Section 30(2) - A resolution plan which does not meet the requirements of Sub Section (2) of Section 30 of the IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a Corporate Debtor. (Para 48) **State Tax Officer v. Rainbow Papers Ltd.**, [2022 LiveLaw \(SC\) 743](#) : **AIR 2022 SC 4141**

Section 31 - Approval of resolution plan

Insolvency and Bankruptcy Code, 2016; Section 31(2) - If a Resolution Plan is ex facie not in conformity with law and/or the provisions of IBC and/or the

Rules and Regulations framed thereunder, the Resolution would have to be rejected - Even if Section 31(2) is construed to confer discretionary power on the Adjudicating Authority to reject a Resolution Plan, it has to be kept in mind that discretionary power cannot be exercised arbitrarily, whimsically or without proper application of mind to the facts and circumstances which require discretion to be exercised one way or the other. (Para 50-51) **State Tax Officer v. Rainbow Papers Ltd.**, [2022 LiveLaw \(SC\) 743](#) : AIR 2022 SC 4141

Section 36 – Liquidation Estate

Insolvency and Bankruptcy Code, 2016; Section 36(4), 53(1) - Section 53(1) of the IB Code shall not be applicable to dues of the workmen/employees on account of provident fund, gratuity and pension - They are to be treated outside the liquidation process and liquidation estate assets under the IB Code. (Para 13) **Sunil Kumar Jain v. Sundaresh Bhatt**, [2022 LiveLaw \(SC\) 382](#) : AIR 2022 SC 1985 : (2022) 7 SCC 540

Section 53 - Distribution of Assets

Insolvency and Bankruptcy Code, 2016; Section 53 - Gujarat Value Added Tax, 2003; Section 48 - Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC- Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date. (Para 56) **State Tax Officer v. Rainbow Papers Ltd.**, [2022 LiveLaw \(SC\) 743](#) : AIR 2022 SC 4141

Section 61 - Appeals and Appellate Authority

Insolvency and Bankruptcy Code, 2016; Section 61 - An appeal against the order of NCLT shall be preferred within a period of 30 days from the date on which the order was passed by the NCLT. The Appellate Tribunal has the power to extend the period of limitation by another 15 days. **Safire Technologies Pvt. Ltd. V. Regional Provident Fund Commissioner**, [2022 LiveLaw \(SC\) 472](#)

Section 238 - Provisions of this Code to override other laws

Insolvency and Bankruptcy Code, 2016; Section 238 - IBC is a complete Code in itself - The provisions of the IBC would prevail notwithstanding anything inconsistent therewith contained in any other law for the time being in force. (Para 25-27) **Indian Overseas Bank v. RCM Infrastructure Ltd**; [2022 LiveLaw \(SC\) 496](#) : AIR 2022 SC 2687 : (2022) 8 SCC 516

Insurance Law

Insurance - Insurance companies refusing claim on flimsy grounds and/or technical grounds - While settling the claims, the insurance company should not be too technical and ask for the documents, which the insured is not in a position to produce due to circumstances beyond his control. (Para 4.1) **Gurmel Singh v. National Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 506](#) : AIR 2022 SC 2486

Insurance Law - Burden is on the insurer to show case falls within the purview of exclusion clause- In case of ambiguity, benefit goes to the insured. (Para 12) ***Narsingh Ispat Ltd. v. Oriental Insurance Company Ltd.***, [2022 LiveLaw \(SC\) 443](#) : AIR 2022 SC 2148 : (2022) 6 SCC 654

Insurance Law - Exclusion of liability in insurance policies - as a matter of general principle, it is well established that if one party, otherwise liable, wishes to exclude or limit his liability to the other party, he must do so in clear words; and that the contract should be given the meaning it would convey to a reasonable person having all the background knowledge which is reasonably available to the person or class of persons to whom the document is addressed. (Para 19) ***United India Insurance Co. Ltd. v. Levis Strauss (India) Pvt. Ltd.***, [2022 LiveLaw \(SC\) 487](#) : (2022) 6 SCC 1

Insurance Law - The vehicle of the complainant (the insured) which was insured with Insurance Company was robbed. The next day, an FIR was registered by him. Accused were arrested and challan filed. Thereafter, the complainant lodged the insurance claim. The same was repudiated on the ground that there was a delay in intimating the Insurance Company about the occurrence of the theft. Though District Forum and State Consumer Commission allowed the complaint - NCDRC dismissed it by allowing insurer's revision petition. Allowing the appeal, the Supreme Court set aside the NCDRC order and upheld the State Commission order. ***Jaina Construction Company v. Oriental Insurance Company Ltd.***, [2022 LiveLaw \(SC\) 154](#) : (2022) 4 SCC 527

Insurance Law - When the policy itself defines the acts of terrorism in the Exclusion Clause, the terms of the policy being a concluded contract will govern the rights and liabilities of the parties. Therefore, the parties cannot rely upon the definitions of 'terrorism' in various penal statutes since the Exclusion Clause contains an exhaustive definition of acts of terrorism. (Para 13) ***Narsingh Ispat Ltd. v. Oriental Insurance Company Ltd.***, [2022 LiveLaw \(SC\) 443](#) : AIR 2022 SC 2148 : (2022) 6 SCC 654

Insurance Act, 1938

Insurance Act, 1938 - Duty of insurer to disclose exclusion clause - When an exclusion clause is introduced making the contract unenforceable on the date on which it is executed, much to the knowledge of the insurer, non-disclosure and a failure to furnish a copy of the said contract by following the procedure required by statute, would make the said clause redundant and non-existent. [Para 15] ***Texco Marketing Pvt. Ltd. v. TATA AIG General Insurance Company Ltd.***, [2022 LiveLaw \(SC\) 937](#)

Insurance Act, 1938 - An exclusion clause in a contract of insurance has to be interpreted differently. Not only the onus but also the burden lies with the insurer when reliance is made on such a clause. This is for the reason that insurance contracts are special contracts premised on the notion of good faith. It is not a leverage or a safeguard for the insurer, but is meant to be pressed into service

on a contingency, being a contract of speculation. An insurance contract by its very nature mandates disclosure of all material facts by both parties. [Para 11] **Texco Marketing Pvt. Ltd. v. TATA AIG General Insurance Company Ltd., 2022 LiveLaw (SC) 937**

Insurance Act, 1938 - Any non-compliance of IRDA Regulations, obviously would lead to the irresistible conclusion that the offending clause, be it an exclusion clause, cannot be pressed into service by the insurer against the insured as he may not be in knowhow of the same. [Para 21] **Texco Marketing Pvt. Ltd. v. TATA AIG General Insurance Company Ltd., 2022 LiveLaw (SC) 937**

Insurance Contract

Insurance Contract - Interpreting ambiguous terms in an insurance contract - first harmoniously by reading the contract in its entirety - if still vague then the term must be interpreted in favour of the insured, i.e., against the drafter of the policy. **Haris Marine Products v. Export Credit Guarantee Corporation (ECGC), 2022 LiveLaw (SC) 432 : AIR 2022 SC 3036**

Double Insurance

Insurance Law - Double Insurance - where an entity seeks to cover risks for the same or similar incidents through two different - overlapping policies - two or more insurers must have insured the same assured in respect of the same risk on the same interest in the same subject-matter - once the first insurer has paid a complete indemnity to the assured, the second insurer would be entitled to decline liability - in the case of specific risks, such as those arising from loss due to fire, etc., the insured cannot profit and take advantage by double insurance. (Para 46, 47) **United India Insurance Co. Ltd. v. Levis Strauss (India) Pvt. Ltd., 2022 LiveLaw (SC) 487 : (2022) 6 SCC 1**

Theft of Vehicle

Insurance Law - Theft of Vehicle - Repudiation of Claim - The Insurance Company cannot repudiate claim merely on the ground that there was a delay in intimating the Insurance Company about the occurrence of the theft, when the insured had lodged the FIR immediately after the theft of the vehicle. **Jaina Construction Company v. Oriental Insurance Company Ltd., 2022 LiveLaw (SC) 154 : (2022) 4 SCC 527**

Interim Directions

Interim Directions - Appeal against Punjab and Haryana HC interim directions issued against OLX - Allowed -There was no occasion for the High Court to pass these directions; and more particularly, without hearing the appellant. **OLX India BV v. State of Haryana, 2022 LiveLaw (SC) 269 : (2022) 4 SCC 390**

Interim Order

Interim Order - A party who is in enjoyment of an interim order, is bound to lose the benefit of such interim order when the ultimate outcome of the case goes

against him. (Para 20) **Fertilizer Corporation of India Ltd. v. Rajesh Chandra Shrivastava**, [2022 LiveLaw \(SC\) 351](#) : AIR 2022 SC 1707

Interim Orders - A stayed order is not wiped out from the existence, unless it is quashed - Once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order. In other words, the interim order comes to an end with the dismissal of the proceedings - It is the duty of the Court to put the parties in the same position they would have been but for the interim order of the court, unless the order granting interim stay or final order dismissing the proceedings specifies otherwise. (Para 24) **State of U.P. v. Prem Chopra**, [2022 LiveLaw \(SC\) 378](#)

Interim Orders - Appeal against Allahabad HC order holding that the writ petitioner was not liable to pay interest as he was under the protection of the interim order (though the writ petition was dismissed for non-prosecution and the notice demanding interest was issued after it) - Allowed - On the dismissal of the proceedings or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order. **State of U.P. v. Prem Chopra**, [2022 LiveLaw \(SC\) 378](#)

Interim Relief

Interim Relief - The court has to consider the prima facie case made out by the applicant for interim relief, both on the question of locus standi to sue, if questioned and on the merits of the prayer for interim relief. The Court also has to consider the balance of convenience. (Para 21) **Shri Babuji Rawji Shah v. S. Hussain Zaidi**, [2022 LiveLaw \(SC\) 213](#) : 2022 (4) SCALE 440

Interpretation of Contract

Interpretation of Contract - Contract between FCI and transport contractors - Whether the demurrages imposed on the Corporation by the Railways can be, in turn, recovered by the Corporation from the contractors as "charges" recoverable under this clause? The Corporation in the present contract has chosen not to include the power to recover demurrages and as such the expression "charges" cannot be interpreted to include demurrages - Demurrage is undoubtedly a charge, however, such a textual understanding would not help us decipher the true and correct intention of the parties to the present contract. **Food Corporation of India v. Abhijith Paul**, [2022 LiveLaw \(SC\) 975](#)

Interpretation of Contract - Scope of contractual expressions must be understood as intended by the parties to the contract - The process of interpretation, though the exclusive domain of the Court, inheres the duty to decipher the meaning attributed to contractual terms by the parties to the contract - Words and expressions used in the contract are principal tools to ascertain such intention. While interpreting the words, courts look at the expressions falling for interpretation in the context of other provisions of the contract and also in the context of the contract as a whole. These are intrinsic tools for interpreting a contract. As a principle of interpretation, courts do not resort to materials external to the contract for construing the intention of the

parties. There are, however, certain exceptions to the rule excluding reference or reliance on external sources to interpret a contract. One such exception is in the case of a latent ambiguity, which cannot be resolved without reference to extrinsic evidence. Latent ambiguity exists when words in a contract appear to be free from ambiguity; however, when they are sought to be applied to a particular context or question, they are amenable to multiple outcomes - Extrinsic evidence, in cases of latent ambiguity, is admissible both to ascertain where necessary, the meaning of the words used, and to identify the objects to which they are to be applied. (Para 17, 27) **Food Corporation of India v. Abhijith Paul**, [2022 LiveLaw \(SC\) 975](#)

Interpretation of Contract - The rights and duties of the parties to the contract subsist or perish in terms of the contract itself. Even if a party to the contract is a governmental authority, there is no place for discretion vested in the officers administering the contract. Discretion, a principle within the province of administrative law, has no place in contractual matters unless, of course, the parties have expressly incorporated it as a part of the contract. It is the bounden duty of the court while interpreting the terms of the contracts, to reject the exercise of any such discretion that is entirely outside the realm of the contract. (Para 22 - 24) **State of Madhya Pradesh v. SEW Construction Ltd.**, [2022 LiveLaw \(SC\) 977](#)

Interpretation of Statute

Interpretation of Statute - Difference and distinction between a charging provision in a fiscal statute and an exemption notification - The principle that in the event of ambiguity in a provision in a fiscal statute, a construction favourable to the assessee should be adopted is concerned, shall not be applicable to construction of an exemption notification, when it is clear and not ambiguous - It will be for the assessee to show that he comes within the purview of the notification. Eligibility clause in relation to exemption notification must be given effect to as per the language and not to expand its scope deviating from its language. (Para 8.4) **Krishi Upaj Mandi Samiti v. Commissioner**, [2022 LiveLaw \(SC\) 203](#) : AIR 2022 SC 1234 : (2022) 5 SCC 62

Interpretation of Statute - Taxation Statutes - Exemption Notifications - The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication - The notification has to be read as a whole. An exception and/or an exempting provision in a taxing statute should be construed strictly and given a meaning according to legislative intent - It is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions. (Para 8.1 - 8.3) **Krishi Upaj Mandi Samiti v. Commissioner**, [2022 LiveLaw \(SC\) 203](#) : AIR 2022 SC 1234 : (2022) 5 SCC 62

Interpretation of Statutes - “*Ut Res Magis Valeat Quam Pereat*” - A liberal construction should be put up on written instruments, so as to uphold them, if possible, and carry into effect, the intention of the parties - Interpretation of a provision of law that will defeat the very intention of the legislature must be shunned in favour of an interpretation that will promote the object sought to be achieved through the legislation. (Para 13) ***State of Madhya Pradesh v. Jogendra***, [2022 LiveLaw \(SC\) 37](#) : AIR 2022 SC 933 : (2022) 5 SCC 401

Interpretation of Statutes - A government cannot misuse the "removal of difficulty clause" to remove all obstacles in its path which arise due to statutory restrictions. Allowing such actions would be antithetical to the rule of law. Misusing the limited power granted to make minor adaptations and peripheral adjustments in a statute for making its implementation effective, to side-step the provisions of the statute altogether would defeat the purpose of the legislation - Where there is a specific provision, it is not open to the State government to conjure up a lacunae or omission and purportedly exercise the power to remove difficulties. (Para 48- 49) ***State of West Bengal v. Anindya Sundar Das***, [2022 LiveLaw \(SC\) 831](#) : AIR 2022 SC 4902

Interpretation of Statutes - A rule made under a statute could not override or supersede a provision of the parent statute itself. (Para 7) ***Union of India v. Alapan Bandyopadhyay***, [2022 LiveLaw \(SC\) 12](#) : AIR 2022 SC 499 : (2022) 3 SCC 133

Interpretation of Statutes - A statute must be read to avoid a construction which would make certain provisions or terms meaningless or redundant. (Para 41) ***State of West Bengal v. Anindya Sundar Das***, [2022 LiveLaw \(SC\) 831](#) : AIR 2022 SC 4902

Interpretation of Statutes - All interpretations must subserve and help implementation of the intention of the Act - This is applicable while interpreting any provision in any statute especially when the power under that provision is conferred to pass orders that may be just or proper. (Para 18) ***Bhola Kumhar v. State of Chhattisgarh***, [2022 LiveLaw \(SC\) 589](#)

Interpretation of Statutes - All the provisions in the Statute have to be construed in context with each other and no provision can be read in isolation - The provisions of a statute ought to be interpreted in such a manner which would advance the object and purpose of the enactment. (Para 39-41) ***Kotak Mahindra Bank Ltd. v. A. Balakrishna***, [2022 LiveLaw \(SC\) 534](#) : AIR 2022 SC 2652 : (2022) 9 SCC 186

Interpretation of Statutes - Courts would not indulge in interpretation of a report of a body and when there is better material in the form of the Act itself available for interpretation. (Para 18) ***New Delhi Municipal Council v. Minosha India Ltd.***, [2022 LiveLaw \(SC\) 469](#) : (2022) 8 SCC 384

Interpretation of Statutes - Each and every word and each and every phrase mentioned in the provision will have to be given effect to. Statutes have to be construed so that every word has a place and everything is in its place. (Para

21) *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation*, [2022 LiveLaw \(SC\) 452](#) : AIR 2022 SC 2165 : (2022) 9 SCC 286

Interpretation of Statutes - Environment and Forest Laws - The approach of the court in interpreting the laws relating to forests and the environment discussed (Para 25) *Narinder Singh v. Divesh Bhutani*, [2022 LiveLaw \(SC\) 620](#) : AIR 2022 SC 3479

Interpretation of Statutes - First and foremost principle of interpretation of a statute is the rule of literal interpretation - Purposive interpretation can only be resorted to when the plain words of a statute are ambiguous or if construed literally, the provision would nullify the object of the statute or otherwise lead to an absurd result. (Para 65 - 69) *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*, [2022 LiveLaw \(SC\) 587](#) : (2022) 8 SCC 352

Interpretation of Statutes - Golden rule of interpretation discussed - If the words of a statute are not ambiguous, the scope of interpretation dwindles. (Para 19-23) *New Delhi Municipal Council v. Minosha India Ltd.*, [2022 LiveLaw \(SC\) 469](#) : (2022) 8 SCC 384

Interpretation of Statutes - Heydon's/Mischief Rule. (Para 53) *State of Himachal Pradesh v. Nirmal Kaur @ Nimmo*, [2022 LiveLaw \(SC\) 866](#)

Interpretation of Statutes - If a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. (Para 13) *Noor Mohammed v. Khurram Pasha*, [2022 LiveLaw \(SC\) 652](#) : AIR 2022 SC 3592 : (2022) 9 SCC 23

Interpretation of Statutes - If the language is unambiguous and capable of one meaning, that alone should be applied and not any other, based under surmise that the Parliament or the legislature intended it to be so. In other words, it is only in cases of ambiguity that the court can use other aids to discern the true meaning. Where the statute is clear and the words plain, the legislation has to be given effect in its own terms - It is only when the application of literal interpretation gives rise to an absurdity, should the interpretation be expansive. (Para 52-54) *New Noble Educational Society v. Chief Commissioner of Income Tax 1*, [2022 LiveLaw \(SC\) 859](#) : 2022 (15) Scale 302

Interpretation of Statutes - If the plain meaning of the provision does not admit of any ambiguity no other external aid will be necessary to interpret the provision except to give it the plain meaning. (Para 9) *Delhi Airtech Services Pvt. Ltd v. State of U.P.*, [2022 LiveLaw \(SC\) 888](#)

Interpretation of Statutes - Intention of legislature - Legislative intent in the enactment of a statute is to be gathered from the express words used in the statute unless the plain words literally construed give rise to absurd results. This Court has to go by the plain words of the statute to construe the legislative. (Para 11) *State of Rajasthan v. Tejmal Choudhary*, [2022 LiveLaw \(SC\) 158](#)

Interpretation of Statutes - Interpretation of law has two essential purposes: one is to clarify to the people governed by it, the meaning of the letter of the

law; the other is to shed light and give shape to the intent of the law maker. And, in this process the courts' responsibility lies in discerning the social purpose which the specific provision subserves. (Para 34) **Apex Laboratories Pvt. Ltd. v. Deputy Commissioner**, [2022 LiveLaw \(SC\) 195](#) : (2022) 7 SCC 98

Interpretation of Statutes - It is a settled principle of law that all the provisions in the statute have to be read harmoniously. It is presumed that each and every provision has been brought by the legislature into the statute book with some purpose. A particular provision cannot be read in isolation and has to be read in context to each other. An attempt has to be made to reconcile all the provisions of the statute together, unless it is impossible. (Para 40) **Ardhendu Kumar Das v. State of Odisha**, [2022 LiveLaw \(SC\) 539](#) : AIR 2022 SC 2695

Interpretation of Statutes - it is the duty of the court to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner so as to harmonise them - when two conflicting provisions in an Act cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both - if the court has a choice between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, such an interpretation will have to be avoided - an interpretation, which will result in anomaly or absurdity, should be avoided - the statute has to be interpreted in such a manner that it preserves its workability. **Kalyan Dombivali Municipal Corporation v. Sanjay Gajanan Gharat**, [2022 LiveLaw \(SC\) 337](#) : AIR 2022 SC 1618

Interpretation of Statutes - it is the duty of the court to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner so as to harmonise them - when two conflicting provisions in an Act cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both - if the court has a choice between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, such an interpretation will have to be avoided - an interpretation, which will result in anomaly or absurdity, should be avoided - the statute has to be interpreted in such a manner that it preserves its workability. **Kalyan Dombivali Municipal Corporation v. Sanjay Gajanan Gharat**, [2022 LiveLaw \(SC\) 337](#) : AIR 2022 SC 1618

Interpretation of Statutes - Legal Fiction - Legal fiction presupposes the existence of the State of facts which may not exist and then works out the consequences which flow from that state of facts. (Para 26) **Gujarat State Civil Supplies Corporation v. Mahakali Foods Pvt. Ltd.**, [2022 LiveLaw \(SC\) 893](#) : AIR 2022 SC 5545

Interpretation of Statutes - Legal Fiction - When a legal fiction is employed by the legislature, it becomes a duty of the Court to interpret it and to give it meaning. In gleaning its meaning, the Court is duty bound to ascertain the purpose of this legislative device. The Court cannot allow its mind to be boggled in the matter of carrying the legal fiction to its logical end. But this is not the same as holding that the Court will not look to the object of the Act and, in

particular, the fiction in question. (Para 36) ***New Okhla Industrial Development Authority (Noida) v. Yunus***, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516

Interpretation of Statutes - Maharashtra Control of Organised Crime Act, 1999 - the provisions of MCOCA need to be strictly construed and for their application, an unlawful activity has to fall within the periphery of organised crime. (Para 12-12.3) ***Abhishek v. State of Maharashtra***, [2022 LiveLaw \(SC\) 516](#) : AIR 2022 SC 2488 : (2022) 8 SCC 282

Interpretation of Statutes - May and Shall - The expression "may", if circumstances so demand can be construed as "shall". (Para 51) ***State Tax Officer v. Rainbow Papers Ltd.***, [2022 LiveLaw \(SC\) 743](#) : AIR 2022 SC 4141

Interpretation of Statutes - Meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just and expedient - While interpreting a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. (Para 27) ***Gujarat State Civil Supplies Corporation v. Mahakali Foods Pvt. Ltd.***, [2022 LiveLaw \(SC\) 893](#) : AIR 2022 SC 5545

Interpretation of Statutes - Municipal laws giving effect to International Conventions - Courts of law must endeavor to maintain a uniformity of interpretation with courts of other jurisdictions while interpreting international treaties and conventions. (Para 29) ***Bhagwandas B. Ramchandani v. British Airways***, [2022 LiveLaw \(SC\) 645](#)

Interpretation of Statutes - Penal Statutes - The rule of strict construction of a penal statute or a special penal statute is not intended to put all the provisions in such a tight iron cast that they become practically unworkable, and thereby, the entire purpose of the law is defeated. (Para 12.4-12.6) ***Abhishek v. State of Maharashtra***, [2022 LiveLaw \(SC\) 516](#) : AIR 2022 SC 2488 : (2022) 8 SCC 282

Interpretation of Statutes - Principles that govern the interpretation to be given to proviso in the context of main provision discussed. (Para 50) ***Prabha Tyagi v. Kamlesh Devi***, [2022 LiveLaw \(SC\) 474](#) : AIR 2022 SC 2331

Interpretation of Statutes - Purposive Construction - A statute has to be construed according to the intent that makes it and it is always the duty of the Court to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, it is always desirable of the Court to choose the interpretation which represents the true intention of the legislature. (Para 43-46) ***Securities and Exchange Board of India v. National Stock Exchange Members Association***, [2022 LiveLaw \(SC\) 840](#) : AIR 2022 SC 5213

Interpretation of Statutes - Purposive Interpretation - While interpreting the provisions of the statute, the court has to prefer an interpretation which advances the purpose of the statute - Even in relation to a penal statute, any narrow and pedantic, literal and lexical construction may not always be given direct effect and the interpretation has to be preferred with regard to the subject matter of the offence and the object of law it seeks to achieve. (Para 66-80) **State of Himachal Pradesh v. Nirmal Kaur @ Nimmo**, [2022 LiveLaw \(SC\) 866](#)

Interpretation of Statutes - Retrospectivity - A statute which affect substantive rights is presumed to be prospective in operation unless made retrospective and unless textually impossible a statute which merely affects procedure is presumed to be retrospective. However, a statute which not only changes the procedure but also creates new rights or liabilities is to be construed to be prospective in operation, unless otherwise provided either expressly or by necessary implication. **State of Rajasthan v. Tejmal Choudhary**, [2022 LiveLaw \(SC\) 158](#)

Interpretation of Statutes - Retrospectivity - Every statute is prospective, unless it is expressly or by necessary implication made to have retrospective operation. There is a presumption against retrospectivity. An express provision should ordinarily be made to make a statute retrospective. The presumption against retrospectivity may also be rebutted by necessary implication. (Para 7) **State of Rajasthan v. Tejmal Choudhary**, [2022 LiveLaw \(SC\) 158](#)

Interpretation of Statutes - Retrospectivity - The device of a legal fiction can also be used to introduce retrospective operation. Generally, it is considered that every statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made retrospective. **State of Rajasthan v. Tejmal Choudhary**, [2022 LiveLaw \(SC\) 158](#)

Interpretation of Statutes - Rule of *Contra proferentem* - The rule of contra proferentem thus protects the insured from the vagaries of an unfavourable interpretation of an ambiguous term to which it did not agree - The rule assumes special significance in standard form insurance policies, called contract d' adhesion or boilerplate contracts, in which the insured has little to no countervailing bargaining power. **Haris Marine Products v. Export Credit Guarantee Corporation (ECGC)**, [2022 LiveLaw \(SC\) 432](#) : AIR 2022 SC 3036

Interpretation of Statutes - Same expression appearing at different places in a statute - it is the context which must determine whether the same expression occurring at two different places must be considered differently or in the same light. (Para 49- 50) **State of Uttar Pradesh v. Atul Kumar Dwivedi**, [2022 LiveLaw \(SC\) 20](#) : AIR 2022 SC 973

Interpretation of Statutes - Service Law - When the rules are specific and clear, there is no need for interpretation which may lead to a case of judicial legislation. (Para 13) **Union of India v. Manpreet Singh Poonam**, [2022 LiveLaw \(SC\) 254](#) : (2022) 6 SCC 105

Interpretation of Statutes - Strict Interpretation - Substantive law should be construed strictly so as to give effect and protection to the substantive rights unless the statute otherwise intends. Strict construction is one which limits the application of the statute by the words used - The basic rule of strict construction of a penal statute is that a person cannot be penalised without a clear letter of the law. Presumptions or assumptions have no role in the interpretation of penal statutes - They are to be construed strictly in accordance with the provisions of law. Nothing can be implied. In such cases, the courts are not so much concerned with what might possibly have been intended. Instead, they are concerned with what has actually been said. (Para 46-47) **State of Gujarat v. Sandip Omprakash Gupta**, [2022 LiveLaw \(SC\) 1031](#)

Interpretation of Statutes - Subordinate Legislation - A subordinate legislation must be interpreted to effectuate the statutory purpose and objective. (Para 21.1) **Regional Transport Authority v. Shaju**, [2022 LiveLaw \(SC\) 174](#) : 2022 (3) SCALE 554

Interpretation of Statutes - Taxation - Exemption Entry - When the exemption Entry is clear and unambiguous, no external aid for interpretation is called for, whether in the form of Budget speech or any other notification under any other enactment. (Para 11) **Authority for Clarification and Advance Ruling v. Aakavi Spinning Mills (P) Ltd.**, [2022 LiveLaw \(SC\) 191](#)

Interpretation of Statutes - Taxation Laws - In a taxing statute the provisions are to be read as they are and they are to be literally construed, more particularly in a case of exemption sought by an assessee - An assessee claiming exemption has to strictly and literally comply with the exemption provisions. (Para 8, 11) **Principal Commissioner of Income Tax-III Bangalore v. Wipro Ltd.**, [2022 LiveLaw \(SC\) 583](#) : AIR 2022 SC 3466

Interpretation of Statutes - Taxation Statutes - In the taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining defined meaning. Strict interpretation to the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it alleges to absurd results. (Para 14.3) **State of Gujarat v. ArcelorMittal Nippon Steel**, [2022 LiveLaw \(SC\) 79](#) : (2022) 6 SCC 459

Interpretation of Statutes - Taxation Statutes - The exemption notification should be strictly construed and given meaning according to legislative intent. The Statutory provisions providing for exemption have to be interpreted in the light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions. (Para 14.3) **State of Gujarat v. ArcelorMittal Nippon Steel**, [2022 LiveLaw \(SC\) 79](#) : (2022) 6 SCC 459

Interpretation of Statutes - Taxation Statutes - The notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an

exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in industrial policy and the exemption notifications. (Para 14.2) **State of Gujarat v. ArcelorMittal Nippon Steel**, [2022 LiveLaw \(SC\) 79](#) : (2022) 6 SCC 459

Interpretation of Statutes - Taxation Statutes - The principle that construction favourable to the assessee should be adopted shall not be applicable to construction of an exemption notification, if it is clear and not ambiguous. Thus, it will be for the assessee to show that he comes within the purview of the notification. Eligibility clause in relation to exemption notification must be given effect to as per the language and not to expand the scope deviating from the language. (Para 14.6) **State of Gujarat v. ArcelorMittal Nippon Steel**, [2022 LiveLaw \(SC\) 79](#) : (2022) 6 SCC 459

Interpretation of Statutes - Taxation Statutes - There is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification. (Para 14.6) **State of Gujarat v. ArcelorMittal Nippon Steel**, [2022 LiveLaw \(SC\) 79](#) : (2022) 6 SCC 459

Interpretation of Statutes - Taxation Statutes - While the exemption notification should be liberally construed, beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise. (Para 14.1) **State of Gujarat v. ArcelorMittal Nippon Steel**, [2022 LiveLaw \(SC\) 79](#) : (2022) 6 SCC 459

Interpretation of Statutes - Taxing Statutes - Principle of interpretation of taxing statutes – that they need to be interpreted strictly – cannot sustain when it results in an absurdity contrary to the intentions of the Parliament. (Para 33) **Apex Laboratories Pvt. Ltd. v. Deputy Commissioner**, [2022 LiveLaw \(SC\) 195](#) : (2022) 7 SCC 98

Interpretation of Statutes - The construct of the provision must depend on the context of the legislative intent and the purpose for which such dispensation has been envisaged. The setting in which the expression has been used in the concerned section of the Act would assume significance. (Para 16) **NKGSB Cooperative Bank Ltd. v. Subir Chakravarty**, [2022 LiveLaw \(SC\) 212](#) : AIR 2022 SC 1325 : (2022) 10 SCC 286

Interpretation of Statutes - The Courts should refrain itself from expressing value judgments and policy views in order to interpret statutes. Statutes are to be read in their plain language and not otherwise. (Para 45) **M.S.P.L. Ltd. v. State of Karnataka**, [2022 LiveLaw \(SC\) 886](#)

Interpretation of Statutes - The interpretation is to be in the manner which will subserve and promote the object and intention behind the legislation. If it is not interpreted in the manner as aforesaid it would defeat the very intention of the legislation (Para 14.3) **Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. Assistant Commissioner of Income Tax Circle 1(1)**, [2022 LiveLaw \(SC\) 4](#) : AIR 2022 SC 309 : (2022) 4 SCC 240

Interpretation of Statutes - The interpretation which advances the object and purpose of the Act, has to be preferred. (Para 24) **Chhattisgarh State Power Distribution Company Ltd. v. Chhattisgarh State Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 478](#) : AIR 2022 SC 2904

Interpretation of Statutes - The object of a proviso is to except from the main provision something enacted in the substantive clause. It cannot however, by itself be read as a substantive provision - The scope of a proviso. (Para 55-58) **New Noble Educational Society v. Chief Commissioner of Income Tax 1**, [2022 LiveLaw \(SC\) 859](#) : 2022 (15) Scale 302

Interpretation of Statutes - The words used in a particular statute cannot be used to interpret the same word in a different statute especially when the two statutes are not *pari materia* with each other and have a wholly different scheme from one another. (Para 11) **Board of Control for Cricket in India v. Regional Director Employees' State Insurance Corporation**, [2022 LiveLaw \(SC\) 725](#)

Interpretation of Statutes - To examine whether a provision is directory or mandatory, one of the tests is that the court is required to ascertain the real intention of the legislature by carefully attending to the whole scheme of the statute. (Para 29) **Manickam @ Thandapani v. Vasantha**, [2022 LiveLaw \(SC\) 395](#)

Interpretation of Statutes - When a provision of a statute is made subject to another provision by the legislature, this evinces an intent that where the latter provision is attracted, the former would give way. (Para 43) **State of Sikkim v. Jasbir Singh**, [2022 LiveLaw \(SC\) 116](#) : (2022) 7 SCC 287

Interpretation of Statutes - When Statutes provide more than one judicial fora for effectuating a right or to enforce a duty-obligation, it is a feature of remedial choices offered by the State for an effective access to justice. Therefore, while interpreting statutes provisioning plurality of remedies, it is necessary for Courts to harmonise the provisions in a constructive manner. (Para 14.1-14.2) **Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor**, [2022 LiveLaw \(SC\) 352](#) : AIR 2022 SC 1824

Interpretation of Statutes - When the language of a statutory provision is plain and unambiguous, it is not permissible for the Court to add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. (Para 75) **Kotak Mahindra Bank Ltd. v. A. Balakrishna**, [2022 LiveLaw \(SC\) 534](#) : AIR 2022 SC 2652 : (2022) 9 SCC 186

Interpretation of Statutes - When two or more enactments operating in the same field contain a non obstante clause stating that its provisions will have effect notwithstanding anything inconsistent therewith contained in any other law, the conflict has to be resolved upon consideration of the purpose and policy underlying the enactments - The rule that a non-obstante clause in a later statute prevails over the non-obstante clause in an earlier statute is not an absolute rule. The question of which provision prevails, would necessarily depend on the object of the enactment and, in particular, the object of giving

overriding effect to the enactment or any specific provision thereof. (Para 68-70) **Owners and Parties Interested in the Vessel M.V. Polaris Galaxy v. Banque Cantonale De Geneve**, [2022 LiveLaw \(SC\) 793](#)

Interpretation of Statutes - Where a statute contains both general provision as well as specific provision, the later must prevail. (Para 8) **K.C. Laxmana v. K.C. Chandrappa Gowda**, [2022 LiveLaw \(SC\) 381](#) : 2022 (6) SCALE 315

Interpretation of Statutes - Where the definition of a word is inclusive, as presaged by the adoption of the expression 'includes', it is prima facie extensive. (Para 32) **State of Maharashtra v. 63 Moons Technologies Ltd**; [2022 LiveLaw \(SC\) 400](#) : (2022) 9 SCC 457

Interpretation of Statutes - Where the same Statute uses different terms and expressions, then it is clear that Legislature is referring to distinct and different things. (Para 14.5) **Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. Assistant Commissioner of Income Tax Circle 1(1)**, [2022 LiveLaw \(SC\) 4](#) : AIR 2022 SC 309 : (2022) 4 SCC 240

Interpretation of Statutes - While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. (Para 57) **Satender Kumar Antil v. Central Bureau of Investigation**, [2022 LiveLaw \(SC\) 577](#) : AIR 2022 SC 3386 : (2022) 10 SCC 51

Interpretation of Statutes - While interpreting the provisions of a statute, it is necessary that the textual interpretation should be matched with the contextual one. The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. (Para 61) **Renaissance Hotel Holding Inc v. B. Vijaya Sai**, [2022 LiveLaw \(SC\) 65](#) : (2022) 5 SCC 1

Interpretation of Statutes - Words of a taxing statute should be read in their ordinary, natural, and grammatical meaning - In construing the words in a constitutional enactment that confers legislative power, a liberal construction should be placed upon the words so that they may have effect in their widest amplitude. (Para 47) **OCL India Ltd. v. State of Orissa**, [2022 LiveLaw \(SC\) 911](#) : AIR 2022 SC 5609



Judicial Infrastructure

Judicial Infrastructure - Supreme Court directs the Law Secretaries of all State Governments to file affidavits relating to budget allocation and utilization. *Imtiaz Ahmad v State of Uttar Pradesh*, [2022 LiveLaw \(SC\) 636](#)

Judgment & Order

Judgment & Order - Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness. (Para 18) *Ms. Y v. State of Rajasthan*, [2022 LiveLaw \(SC\) 384](#) : AIR 2022 SC 1910 : (2022) 9 SCC 269

Judgment and Order - An order is in the given factual scenario. The judgment lays down the principles of law. The scenario is that any order or judgment passed by this Court becomes a reportable exercise to create more volumes of reported cases! This thus has a possibility at times of causing some confusion on the legal principles prevalent. *State of Punjab v. Jasbir Singh*, [2022 LiveLaw \(SC\) 776](#)

Judgment and Order - Judgment or decree obtained by fraud is to be treated as a nullity - Non-disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud. (Para 21) *Ram Kumar v. State of Uttar Pradesh*, [2022 LiveLaw \(SC\) 806](#) : AIR 2022 SC 4705

Judgments - Accessibility - Judgments to carry paragraph numbers and a table of contents in a longer version - Judgments should be accessible to persons from all sections of society including persons with disability - They should not have improperly placed watermarks and should be signed using digital signatures - They should not be scanned versions of printed copies. The practice of printing and scanning documents is a futile and time-consuming process which does not serve any purpose. The practice should be eradicated from the litigation process as it tends to make documents as well as the process inaccessible for an entire gamut of citizens. (Para 20-21) *State Bank of India v. Ajay Kumar Sood*, [2022 LiveLaw \(SC\) 710](#)

Judgments - Broad guidelines on judgment writing - While judges may have their own style of judgment writing, they must ensure lucidity in writing across these styles - Incoherent judgments have a serious impact upon the dignity of our institutions - "IRAC" method of judgment writing - The judge must write to provide an easy-to-understand analysis of the issues of law and fact which arise

for decision. (Para 10-28) **State Bank of India v. Ajay Kumar Sood**, [2022 LiveLaw \(SC\) 710](#)

Judgments - High Court dictated operative portion of the order on 06.11.2019 but the final order was dictated only on 15.03.2020 i.e. after 4 months and it typed out and corrected on 15.04.2020 - Supreme Court observed that it has repeatedly frowned upon the aspect of the oral orders being passed. **Surendra Pratap Singh v. Vishwaraj Singh**, [2022 LiveLaw \(SC\) 335](#)

Judgments - It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case - To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes. **Axis Bank Ltd v. Vidarbha Industries Power Ltd**; [2022 LiveLaw \(SC\) 817](#)

Judgments - Practice of pronouncing final order without a reasoned judgment - Serious difficulties are caused on account of the said practice - Even if such oral orders were to be pronounced, it is expected that they are either dictated in Court or at least must follow immediately thereafter to facilitate the aggrieved party to seek redressal from the higher Court. (Para 2-3) **Surendra Pratap Singh v. Vishwaraj Singh**, [2022 LiveLaw \(SC\) 335](#)

Judgments - Supreme Court advises High Courts to pronounce judgments without delay after concluding arguments - It is always advisable that the High Court delivers the judgment at the earliest after the arguments are concluded and the judgment is reserved-Long delay in delivery of the judgment gives rise to unnecessary speculations in the minds of the parties in a case. (Para 6.2) **State of U.P. v. Akhil Sharda**, [2022 LiveLaw \(SC\) 594](#)

Judgments - Words and phrases and/or sentences in a judgment cannot be read in the manner of a statute, and that too out of context. (Para 47) **Pahwa Plastics Pvt. Ltd. v. Dastak NGO**, [2022 LiveLaw \(SC\) 318](#) : 2022 (5) SCALE 353

Judicial Misconduct

Judicial Misconduct - Showing undue favour to a party under the guise of passing judicial orders is the worst kind of judicial dishonesty and misconduct. The extraneous consideration for showing favour need not always be a monetary consideration. It is often said that "the public servants are like fish in the water, none can say when and how a fish drank the water". A judge must decide the case on the basis of the facts on record and the law applicable to the case. If he decides a case for extraneous reasons, then he is not performing his duties in accordance with law. As often quoted, a judge, like Caesar's wife, must be above suspicion. (Para 15) **Muzaffar Hussain v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 450](#)

Judicial Review

Judicial Review - Limited scope of judicial review over policy matters of executive-we do not think in exercise of judicial power we can require the State to operate a pension scheme in a particular manner. These factors would be for the policy makers to examine and prescribe. We cannot issue directions on the Central Government to work out statutory scheme in a particular fashion. (Para 32) *Employees Provident Fund Organization v. B. Sunil Kumar*, [2022 LiveLaw \(SC\) 912](#) : AIR 2022 SC 5634

Jurisdiction

Jurisdiction - An ouster of jurisdiction cannot be lightly assumed unless express words are used or such a consequence follows by necessary implication. (Para 16) *Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal*, [2022 LiveLaw \(SC\) 221](#) : (2022) 6 SCC 496



Labour Law

Labour Law - An employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages- In the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish the same. [Para 31-33] *Allahabad Bank v. Avtar Bhushan Bhartiya*, [2022 LiveLaw \(SC\) 405](#) : AIR 2022 SC 3025

Labour Law - Appeal against Madras HC judgment directing payment of backwages to an employee - Dismissed - Employee/writ petitioner cannot be denied the back wages for no fault of his and the principle of "no work no pay" shall not be applicable. *Salim Ali Centre for Ornithology & Natural History v. Dr. Mathew K. Sebastian*, [2022 LiveLaw \(SC\) 377](#) : 2022 (6) SCALE 265

Labour Law - Employee is not supposed to prove the negative that he was not gainfully employed during the period he was out of employment- Once he asserts that he is not gainfully employed, thereafter the onus will shift to the employer positively and it would be for the employer to prove that the employee was gainfully employed. (Para 6) *Salim Ali Centre for Ornithology & Natural History v. Dr. Mathew K. Sebastian*, [2022 LiveLaw \(SC\) 377](#) : 2022 (6) SCALE 265

Labour Law - Industrial Disputes Act 1947 - Once the order of termination was approved by the Industrial Tribunal on appreciation of evidence led before it, thereafter the findings recorded by the Industrial Tribunal were binding between the parties. No contrary view could have been taken by the Labour Court contrary to the findings recorded by the Industrial Tribunal. *(Para 5.2) Rajasthan State Road Transport Corporation v. Bharat Singh Jhala, 2022 LiveLaw (SC) 818*

Labour Law - Supreme Court directs reinstatement of watchman who was retrenched 20 years ago - Labour Court had directed him to be reinstated in 2010- High Court set aside the direction for reinstatement and modified it as a direction for lumpsum payment of 1 lakh compensation- Supreme Court held that the High Court's interference was unwarranted in the facts of the case - Had the respondent management chosen to accept the verdict, the appellant would have been spared the agony of waiting for more than 10 years. In such circumstances, the denial of backwages, has resulted in punishing him - So apart from reinstatement, the SC directs that the workman be paid backwages of from 2020 to 2022. *Jeetubha Khansangji Jadeja v. Kuttch District Panchayat, 2022 LiveLaw (SC) 797*

Land Acquisition

Land Acquisition - Appeal against Himachal Pradesh HC judgment which disposed a writ petition challenging dispossession and seeking compensation - Allowed - In the absence of written consent to voluntarily give up their land, the appellants were entitled to compensation in terms of law - State directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants. *Sukh Dutt Ratra v. State of Himachal Pradesh, 2022 LiveLaw (SC) 347 : (2022) 7 SCC 508*

Land Acquisition - Need for written consent in matters of land acquisition proceedings - contention of 'oral' consent to be baseless. *Sukh Dutt Ratra v. State of Himachal Pradesh, 2022 LiveLaw (SC) 347 : (2022) 7 SCC 508*

Land Acquisition - When the matter relates to the payment of amount of compensation to the land losers, if at all two views are possible, the view that advances the cause of justice is always to be preferred rather than the other view, which may draw its strength only from technicalities. *(Para 14) Kazi Moinuddin Kazi Bashiroddin v. Maharashtra Tourism Development Corporation, 2022 LiveLaw (SC) 827*

Land Acquisition Act, 1894 - A consent award cannot be the basis to award and/or determine the compensation in other acquisition, more particularly, when there are other evidences on record - In case of a consent award, one is required to consider the circumstances under which the consent award was passed and the parties agreed to accept the compensation at a particular rate. In a given case, due to urgent requirement, the acquiring body and/or the beneficiary of the acquisition may agree to give a particular compensation.

(Para 5) **Special Land Acquisition Officer v. N. Savitha**, [2022 LiveLaw \(SC\) 316](#) : (2022) 7 SCC 256

Land Acquisition Act, 1894 - Appeal against Karnataka HC judgment that enhanced the amount of compensation in respect of the acquired land on the basis of a Consent award - Allowed - The consent award ought not to have been relied upon and/or considered for the purpose of determining the compensation in case of another acquisition - The High Court has not at all considered whether the lands acquired in the present case is similarly situated to the lands acquired in the case of the said Consent award. **Special Land Acquisition Officer v. N. Savitha**, [2022 LiveLaw \(SC\) 316](#) : (2022) 7 SCC 256

Land Acquisition Act, 1894 - Awarding of fair compensation to the landowner whose land has been acquired for public purpose - The claimant whose land is acquired is entitled to the fair market value of his land. (Para 3.1) **Sanjay Kumar Singh v. State of Jharkhand**, [2022 LiveLaw \(SC\) 268](#) : AIR 2022 SC 1372 : (2022) 7 SCC 247

Land Acquisition Act, 1894 - If on account of acquisition of land a person is deprived of possession of his property, he should be paid compensation immediately and if the same is not paid to him forthwith, he would be entitled to interest on the compensation amount from the date of taking possession of the land till the date of payment. **Gayabai Digambar Puri v. Executive Engineer**, [2022 LiveLaw \(SC\) 15](#)

Land Acquisition Act, 1894 - Land acquired in 1981 but compensation not yet paid - Authorities directed payment of compensation within two months - The value of the said land cannot be computed at the rate less than Rs. 250/- per sq. yard which is supported by the evidence brought on record by the land owners. **Revenue Divisional Officer v. Ismail Bhai**, [2022 LiveLaw \(SC\) 984](#)

Land Acquisition Act, 1894 - Market Value - It is not the nature of land which alone is determinative of the market value of the land. The market value must be determined keeping in view the various factors including proximity to the developed area and the road etc. (Para 11) **Madhukar Govindrao Kamble v. Vidarbha Irrigation Development Corp.**, [2022 LiveLaw \(SC\) 112](#) : 2022 (2) SCALE 551

Land Acquisition Act, 1894 - Section 23(1) - The six items covered by Section 23(1), which are to be taken into consideration by the court in determining compensation, can be summarized as follows: - (i) The market value of the land on the date of publication of notification under Section 4(1); (ii) The damage to standing crops or trees, which are on the land at the time of the Collector taking possession; (iii) The damage sustained by reason of severing such land from the unacquired land; (iv) The damage sustained by reason of the acquisition injuriously affecting the other property, movable or immovable, in any other manner or the earnings, of the person interested; (v) The reasonable expenses incurred by the person interested, in changing his residence or place of business, when he is compelled to do so in consequence of the acquisition; (vi)

The damage bona fide resulting from diminution of the profits of the land between the time of publication of the declaration under Section 6 and the time of the Collector's taking possession. (Para 31) **Walchandnagar Industries Ltd. v. State of Maharashtra**, [2022 LiveLaw \(SC\) 159](#) : (2022) 5 SCC 71

Land Acquisition Act, 1894 - Section 23(1) - What is injuriously affected at the time of Collector's taking possession of the land, may either be the unacquired portion of the immovable property or other movable property or even the earnings of the person interested. (Para 34) **Walchandnagar Industries Ltd. v. State of Maharashtra**, [2022 LiveLaw \(SC\) 159](#) : (2022) 5 SCC 71

Land Acquisition Act, 1894 – Section 28A – Legal Services Authorities Act, 1987 - An Award passed under Section 20 of the 1987 Act by the Lok Adalat cannot be the basis for invoking Section 28A. (Para 49) **New Okhla Industrial Development Authority (Noida) v. Yunus**, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516

Land Acquisition Act, 1894 – Section 28A – Legal Services Authorities Act, 1987 - The award which is passed by the Lok Adalat cannot be said to be an award passed under Part III. It is the compromise arrived at between the parties before the Lok Adalat which culminates in the award by the Lok Adalat. In fact, an award under Part III of the Act contemplates grounds or reasons and therefore, adjudication is contemplated. (Para 44) **New Okhla Industrial Development Authority (Noida) v. Yunus**, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516

Land Acquisition Act, 1894 – Section 28A – Legal Services Authorities Act, 1987 - The word 'Court' has been defined in the Act as the Principal Civil Court of original jurisdiction unless the appropriate Government has appointed a Special Judicial Officer to perform judicial functions of the court under this Act. The Court is not the same as a Lok Adalat. (Para 45) **New Okhla Industrial Development Authority (Noida) v. Yunus**, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516

Land Acquisition Act, 1894 - Section 49 - Distinction between the scope of sub -section (1) and the scope of sub -section (2) of Section 49 discussed. **Walchandnagar Industries Ltd. v. State of Maharashtra**, [2022 LiveLaw \(SC\) 159](#) : (2022) 5 SCC 71

Land Acquisition Act, 1894 - The purpose for which acquisition is made is also a relevant factor for determining the market value. **S. Shankaraiah v. Land Acquisition Officer**, [2022 LiveLaw \(SC\) 934](#) : AIR 2022 SC 5702

Land Acquisition Act, 1894 - The rates mentioned in the Ready Reckoner, which are basically for the purpose of collection of stamp duty, which are the uniform rates for all the lands in the area, cannot be the basis for determination of the compensation for the lands acquired under the Land Acquisition Act - The market value of the land depends upon the location of the land; area of the land; whether the land is in a developed area or not; whether the acquisition is of a small plot of land or a big chunk of land and number of other advantageous and

disadvantageous factors are required to be considered - There cannot be a uniform market value of the land for the purpose of determination of the compensation for the lands acquired under the Land Acquisition Act. (Para 9-12) ***Bharat Sanchar Nigam Ltd. v. Nemichand Damodardas***, [2022 LiveLaw \(SC\) 603](#) : AIR 2022 SC 3458

Land Acquisition Act, 1894 - There may be different market prices/compensation with respect to different lands, may be in the same village and/or nearby location. The land, which is on a prime location and which is on the highway and/or at a proximity to a highway may have a different market price than the land which is situated in a different location/interior of the village and which might not have a good potential for development. (Para 6) ***Special Land Acquisition Officer v. N. Savitha***, [2022 LiveLaw \(SC\) 316](#) : (2022) 7 SCC 256

Land Acquisition Act, 1894; Section 11A, 17(3A) - The provision contained in Section 11A shall be applicable to cases in which the acquiring authority has not complied with the requirement of Section 17 (3A) by tendering and paying eighty per centum of the estimated compensation before taking possession since possession in such cases cannot be considered to be taken in accordance with law and the vesting is not absolute - If the requirement is complied and possession is taken after tendering and paying eighty per centum, though there is need to pass an award and pay the balance compensation within a reasonable time, the rigour of Section 11A will not apply so as to render the entire proceedings for acquisition to lapse in the context of absolute vesting. The right of land loser in such case is to enforce passing of the award and recover the compensation - The decision in this case if it arises for consideration in any other case under Act, 1894 or any other enactment relating to land acquisition containing pari materia provisions shall be applied only prospectively and cases which have attained finality shall not be reopened. (Para 25-26) ***Delhi Airtech Services Pvt. Ltd v. State of U.P.***, [2022 LiveLaw \(SC\) 888](#)

Land Acquisition Act, 1894; Section 17 - (1) payment of 80% (2) taking over possession thereafter and (3) vesting of land in the government take place in a sequence. Absent anyone of these in the sequence, the emergency provision fails - It cannot be understood as providing any discretion to the acquiring authority. (Para 12) ***Delhi Airtech Services Pvt. Ltd v. State of U.P.***, [2022 LiveLaw \(SC\) 888](#)

Land Acquisition Act, 1894; Section 23(1) - Injurious affection to property, in any other manner, may stand on a different footing from injurious affection to earnings. (Para 78) ***Walchandnagar Industries Ltd. v. State of Maharashtra***, [2022 LiveLaw \(SC\) 159](#) : (2022) 5 SCC 71

Land Acquisition Act, 1894; Sections 11A and 6 - If the award is not made within the period of two years from the date of publication of the declaration under Section 6, the entire proceedings will stand lapsed. The only option for the acquiring authority if the land is still required for the public purpose is to

notify afresh from the stage of issuing notification under Section 4. The computation of two years would however exclude the period if the process was stayed by an order of the Court. (Para 11) **Delhi Airtech Services Pvt. Ltd v. State of U.P.**, [2022 LiveLaw \(SC\) 888](#)

Land Law

Land Law - Bangalore Development Authority Act, 1976 - Land Acquisition Act, 1894 - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Since LA Act has been incorporated into the BDA Act so far as they are applicable, the provisions of 2013 Act are not applicable for the acquisitions made under the BDA Act. (Para 23) **Bangalore Development Authority v. State of Karnataka**, [2022 LiveLaw \(SC\) 76](#) : AIR 2022 SC 598

Land Law - Supreme Court holds that persons in four villages which were acquired for Mahanadi coalfields in 1988 are entitled to compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 - Directions issued for providing employment and resettlement packages in addition to land compensation. **Mahanadi Coal Fields Ltd. v. Mathias Oram**, [2022 LiveLaw \(SC\) 916](#) : AIR 2022 SC 5723

Land Laws - Abolition of Inams Act, 1955 (Andhra Pradesh (Telangana Area)) - The land dedicated for pious and religious purpose is not immune from its vesting with the State. (Para 196) **State of Andhra Pradesh v. A.P. State Wakf Board**, [2022 LiveLaw \(SC\) 136](#)

Land Reforms Act, 1954 (Delhi)

Land Reforms Act, 1954 (Delhi); Section 50(a) - Constitutional Validity upheld - The Act is special law, dealing with fragmentation, ceiling, and devolution of tenancy rights over agricultural holdings only - The Contention re: Gender bias/ women empowerment rejected - There can be no challenge to the 1954 Act as the said legislation is included in the Ninth Schedule of the Constitution. **Har Naraini Devi v. Union of India**, [2022 LiveLaw \(SC\) 783](#) : AIR 2022 SC 4632

Land Reforms Act, 1961 (Karnataka) - Beneficent legislation for granting occupancy rights to cultivating tenants of agricultural lands - In construing the provisions of such enactments, the court should adopt a construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory - Most of the tenants are villagers from remote areas and most of them are illiterate persons and that the Act is a beneficent legislation. This aspect has to be kept in mind while deciding cases under the Act. (Para 23, 28) **Nadakerappa v. Pillamma**, [2022 LiveLaw \(SC\) 332](#) : AIR 2022 SC 1609

Land Revenue Code (Maharashtra)

Land Revenue Code (Maharashtra) - Maharashtra Government cannot insist on NOC from it for registering the subsequent transfer of flats built on a land

leased to a developer - State government is not entitled to a premium when the land is not allotted to a society but to a builder on lease, who has constructed flats for private individuals, who in turn formed a Co-operative Society-1999 and 1983 Resolutions are applicable to the co-operative societies to whom the government lands are sanctioned on concessional rates-Since the land was not allotted to a society but to a builder on lease, who has constructed flats for private individuals, who have subsequently formed a Co-operative Society, the 1983 Resolution and 1999 Resolution would not be applicable to the members of such a society. (Paras 13, 14 & 15) **State of Maharashtra v. Aspi Chinoy**, [2022 LiveLaw \(SC\) 825](#)

Law of Precedent

Law of Precedent - Constitution Bench Judgment - Once the majority opines in a particular matter, that is the judgment of the Constitution Bench. (Para 3) **Ravindra v. Union of India**, [2022 LiveLaw \(SC\) 156](#)

Law of Precedents - A decision is an authority only for what it actually decides. Every judgment must be read as applicable to the particular facts, proved or assumed to be proved. The generality of the expressions found there, is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. (Para 93) **Ms. X v. Registrar General**, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Law of Precedents - A judgment of a Court is precedent for the issue of law which is raised and decided. Words and phrases used in a judgment cannot be read in isolation, out of context. (Para 59) **Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar**, [2022 LiveLaw \(SC\) 121](#) : (2022) 4 SCC 463

Law of Precedents - Obiter Dictum - Ratio Decidendi - “*Obiter dictum*” as “an opinion not necessary to a judgment; an observation as to the law made by a Judge in the course of a case, but not necessary to its decision, and therefore, of no binding effect; often called as obiter dictum, ‘a remark by the way’”- A decision on a point not necessary for the purpose of or which does not fall for determination in that decision becomes an *obiter dictum* - Only the *ratio decidendi* can act as the binding or authoritative precedent. Reliance placed on mere general observations or casual expressions of the Court, is not of much avail. (Para 41) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Law of Precedents - The ratio decidendi is a rule deducible from the application of law to the facts and circumstances of a case and not some conclusion based upon facts which may appear to be similar. - One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. (Para 94) **Ms. X v. Registrar General**, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Law of Torts

Law of Torts - Negligence - Meaning - Failure to exercise that care which a reasonably prudent person would usually exercise under similar circumstances would amount to negligence; it is not necessary that negligence would always be advertent one where the wrongdoer is aware of unreasonable risk being created but it may be inadvertent or passive too, arising for want of foresight or because of some omission. However, the question as to whether the liability because of negligence could be fastened on the respondent company or not cannot be determined without dealing with the other aspects related with exceptions and defence to the allegation of negligence. (Para 49-52) **State of U.P. v. Mcdowell and Company Ltd., [2022 LiveLaw \(SC\) 13](#) : (2022) 6 SCC 223**

Law of Torts - Negligence - The fault of "negligence" need not always be of active negligence or of gross negligence, but it may also be of inadvertent negligence or of passive negligence. (Para 63) **State of U.P. v. Mcdowell and Company Ltd., [2022 LiveLaw \(SC\) 13](#) : (2022) 6 SCC 223**

Legal Aid

Legal Aid - What is meant by the duty of the State to ensure a fair defence to an accused is not the employment of a defence counsel for namesake. It has to be the provision of a counsel who defends the accused diligently to the best of his abilities - The presence of counsel on record means effective, genuine and faithful presence and not a mere farcical, sham or a virtual presence that is illusory, if not fraudulent - In Sessions trials, more particularly relating to serious offences involving severe sentences, appoint experienced lawyers who had conducted such cases in the past. It is desirable that in such cases senior advocate practising in the trial court shall be requested to conduct the case himself or herself on behalf of the undefended accused or at least provide good guidance to the advocate who is appointed as amicus curiae or an advocate from the legal aid panel to defend the case of the accused persons. (Para 117-126) **Ramanand @ Nandlal Bharti v. State of Uttar Pradesh, [2022 LiveLaw \(SC\) 843](#) : AIR 2022 SC 5273**

Legal maxim

Legal maxim - Cessante ratione legis cessat ipsa lex - Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself. (Para 25) **Kamla Devi v. State of Rajasthan, [2022 LiveLaw \(SC\) 272](#) : AIR 2022 SC 1524 : (2022) 6 SCC 725**

Legal Maxims - "*Leges posteriores priores contrarias abrogant*" (the later laws shall abrogate earlier contrary laws) - "*generalia specialibus non derogant*" (General laws do not prevail over Special laws). When there is apparent conflict between two statutes, the provisions of a general statute must yield to those of a special one. (Para 17, 18) **Gujarat State Civil Supplies Corporation v. Mahakali Foods Pvt. Ltd., [2022 LiveLaw \(SC\) 893](#) : AIR 2022 SC 5545**

Legal Maxims - 'Contra proferentem rule - Inapplicability of this doctrine to the eligibility conditions in a notice inviting tender - This rule cannot be applied to lay down that in case of any ambiguity in a tender document, it has to be construed in favour of a particular person who projects a particular viewpoint - if two different tenderers suggest two different interpretations, the question would always remain as to which of the two interpretations is to be accepted? Obviously, to avoid such unworkable scenarios, the principle is that the author of the tender document is the best person to interpret its documents and requirements. The only requirement of law, for such process of decision making by the tender inviting authority, is that it should not be suffering from illegality, irrationality, mala fide, perversity, or procedural impropriety. (Para 24) **Agmatel India Pvt. Ltd. v. Resoursys Telecom**, [2022 LiveLaw \(SC\) 105](#) : AIR 2022 SC 1103 : (2022) 5 SCC 362

Legal Maxims - Concept of dies non juridicus - A day which is regarded by the law as one on which no judicial act can be performed, or legal diligence used. [Referred to P. Ramanatha Aiyar's Law Lexicon] (Para 25.1) **Prakash Corporates v. Dee Vee Projects Ltd.**, [2022 LiveLaw \(SC\) 162](#) : AIR 2022 SC 946 : (2022) 5 SCC 112

Legal Maxims - *Falsus in uno, falsus in omnibus* is not the principle applicable in India. (Para 6) **Rishi Pal Singh v. New India Assurance Co Ltd.**, [2022 LiveLaw \(SC\) 646](#)

Legal Maxims - Nemo dat quod non habet - No one can confer a better title than what he himself has. (Para 19) **Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese**, [2022 LiveLaw \(SC\) 338](#) : AIR 2022 SC 1640 : (2022) 7 SCC 90

Legal Maxims - Nemo dat quod non habet - No one can confer a better title than what he himself has. (Para 19) **Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese**, [2022 LiveLaw \(SC\) 338](#) : AIR 2022 SC 1640 : (2022) 7 SCC 90

Legal Maxims - Res ipsa loquitor - *Res ipsa loquitor* is resorted to when an accident is shown to have occurred and the cause of the accident is primarily within the knowledge of the defendant. The mere fact that the cause of the accident is unknown does not prevent the plaintiff from recovering the damages, if proper inference to be drawn from the circumstances which are known is that it was caused by the negligence of the defendant. (Para 53) **Sanjay Gupta v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 368](#) : (2022) 7 SCC 203

Legal Maxims - Res ipsa loquitor - Negligence may be presumed from the mere fact of accident; of course, the presumption depends upon the nature of the accident and the surrounding factors. (Para 57-58) **State of U.P. v. Mcdowell and Company Ltd.**, [2022 LiveLaw \(SC\) 13](#) : (2022) 6 SCC 223

Legal Maxims- 'Contra proferentem rule - The rule applied in the case of ambiguity in the insurance policy because the policies are made by the insurer and its ambiguity cannot be allowed to operate against the insured. (Para 24)

***Agmatel India Pvt. Ltd. v. Resoursys Telecom*, [2022 LiveLaw \(SC\) 105](#) : AIR 2022 SC 1103 : (2022) 5 SCC 362**

Legal Services Act, 1987

Legal Services Act, 1987; Section 22C, 22D - Permanent Lok Adalat has adjudicatory functions and is empowered to decide the dispute between the parties on merits - Conciliation proceedings under Section 22-C of the LSA Act are mandatory in nature - Even if the opposite party does not appear, the Permanent Lok Adalat is still bound to follow the step-by-step procedure - Main goal is conciliation and settlement of disputes in relation to public utilities, with a decision on merits always being the last resort. (Para 26-28) ***Canara Bank v. G.S. Jayarama*, [2022 LiveLaw \(SC\) 499](#) : (2022) 7 SCC 776**

Legal Services Act, 1987; Sections 19 - 22E - Two different types of Lok Adalats - (1) Lok Adalat constituted under Section 19 of the LSA Act, having no adjudicatory power, which can only conduct conciliatory proceedings (2) Permanent Lok Adalat, established under Section 22-B(1) of the LSA Act in respect of public utility services, which can carry out both conciliatory and adjudicatory functions, subject to the procedure to be followed under Section 22-C of the LSA Act. (Para 28-31) ***Canara Bank v. G.S. Jayarama*, [2022 LiveLaw \(SC\) 499](#) : (2022) 7 SCC 776**

Legal Services Act, 1987; Sections 19 - 22E - Similarities between Lok Adalats and Permanent Lok Adalats - (i) they can both attempt conciliation proceedings with the parties before them, and can pass awards recording the terms of settlement agreed upon by the parties (Section 20(3) and 22- C(7)); (ii) in doing do, they are both bound by principles of justice, equity, fair play and other legal principles (Section 20(4) and 22-D); and (iii) their awards, deemed to be decrees of courts, will be final and cannot be challenged in an appeal (Section 21 and 22-E). - Permanent Lok Adalat is limited to disputes regarding public utility services, crucially, its powers are wider than the Lok Adalat in many respects. (Para 21- 22) ***Canara Bank v. G.S. Jayarama*, [2022 LiveLaw \(SC\) 499](#) : (2022) 7 SCC 776**

Legal Services Authorities Act, 1987 - An Award passed by the Lok Adalat is not a compromise decree. An Award passed by the Lok Adalat without anything more, is to be treated as a decree inter alia. (Para 47) ***New Okhla Industrial Development Authority (Noida) v. Yunus*, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516**

Legal Services Authorities Act, 1987 – Code of Civil Procedure, 1908 – Order XXII - An award unless it is successfully questioned in appropriate proceedings, becomes unalterable and non -violable. In the case of a compromise falling under Order XXIII Code of Civil Procedure, it becomes a duty of the Court to apply its mind to the terms of the compromise. Without anything more, the mere compromise arrived at between the parties does not have the imprimatur of the Court. It becomes a compromise decree only when the procedures in the Code are undergone. (Para 47) ***New Okhla Industrial***

***Development Authority (Noida) v. Yunus*, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516**

Legal Services Authorities Act, 1987 – Even when the Criminal Court refers the matter under Section 138 of the Negotiable Instruments Act in order to make it executable, it will be treated as if it were a decree. ***New Okhla Industrial Development Authority (Noida) v. Yunus*, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516**

Legal Services Authorities Act, 1987 – If a Revenue Court or a Tribunal which, undoubtedly, fall under Section 2(aaa) of the 1987 Act were to refer a case to the Lok Adalat under Section 20(1) and an award is passed it may become the order of the court/tribunal. In other words, if the matter were finally concluded on a regular basis, that is, without reference to the Lok Adalat, it would be an order which would be passed. (Para 39) ***New Okhla Industrial Development Authority (Noida) v. Yunus*, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516**

Legal Services Authorities Act, 1987 – It is the province and duty of the Court in the ultimate analysis to give effect to the will of the legislature – Golden rule of interpretation of statutes along with other principles discussed - Referred to Union of India and Another v. Hansoli Devi 6 (2002) 7 SCC 273 (Para 30) ***New Okhla Industrial Development Authority (Noida) v. Yunus*, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516**

Legal Services Authorities Act, 1987 – Lok Adalat - An Award passed by the Lok Adalat under 1987 Act is the culmination of a non -adjudicatory process. The parties are persuaded even by members of the Lok Adalat to arrive at mutually agreeable compromise. The Award sets out the terms. The provisions contained in Section 21 by which the Award is treated as if it were a decree is intended only to clothe the Award with enforceability. In view of the provisions of Section 21 by which it is to be treated as a decree which cannot be challenged, undoubtedly, by way of an appeal in view of the express provisions forbidding it, unless it is set aside in other appropriate proceedings, it becomes enforceable. The purport of the law giver is only to confer it with enforceability in like manner as if it were a decree. Thus, the legal fiction that the Award is to be treated as a decree goes no further. (Para 37) ***New Okhla Industrial Development Authority (Noida) v. Yunus*, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516**

Legal Services Authorities Act, 1987 – Lok Adalat - The Court as defined in Section 2 (aaa) can refer the case to the Lok Adalat. Such court, as already noticed, can be civil, criminal or a revenue court. (Para 38) ***New Okhla Industrial Development Authority (Noida) v. Yunus*, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516**

Legal Services Authorities Act, 1987 – Lok Adalat - The Lok Adalat by virtue of the express provisions is only a facilitator of settlement and compromise in regard to matters which are referred to it. It has no adjudicatory role. (Para 27)

***New Okhla Industrial Development Authority (Noida) v. Yunus*, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516**

Legal Services Authorities Act, 1987 – Section 19 - An Award passed under Section 19 of the 1987 Act is a product of compromise. Sans compromise, the Lok Adalat loses jurisdiction. The matter goes back to the Court for adjudication. Pursuant to the compromise and the terms being reduced to writing with the approval of the parties it assumes the garb of an Award which in turn is again deemed to be a decree without anything more. (Para 48) ***New Okhla Industrial Development Authority (Noida) v. Yunus*, [2022 LiveLaw \(SC\) 123](#) : AIR 2022 SC 847 : (2022) 9 SCC 516**

Legal Services Authorities Act, 1987; Section 12 (e) - Incidents of December 1992 and January 1993 are the incidents of ethnic violence within the meaning of clause (e) of Sub-section (1) of Section 12 of the 1987 Act - Riot victims are entitled to free legal aid. (Para 16) ***Shakeel Ahmed vs Union of India*, [2022 LiveLaw \(SC\) 910](#)**

Legislation

Legislation - A statute which is made by a competent legislature is valid till it is declared unconstitutional by a court of law. After declaration of a statute as unconstitutional by a court of law, it is non est for all purposes. (Para 23) ***State of Manipur v. Surjakumar Okram*, [2022 LiveLaw \(SC\) 113](#)**

Legislation - Amendment - All amendments are deemed to apply prospectively unless expressly specified to apply retrospectively or intended to have been done so by the legislature. (Para 23) ***Har Naraini Devi v. Union of India*, [2022 LiveLaw \(SC\) 783](#) : AIR 2022 SC 4632**

Legislation - Amendment - Retrospective or Prospective - Ordinarily, the effect of amendment by substitution would be that the earlier provisions would be repealed, and amended provisions would be enacted in place of the earlier provisions from the date of inception of that enactment. However, if the substituted provisions contain any substantive provisions which create new rights, obligations, or take away any vested rights, then such substitution cannot automatically be assumed to have come into force retrospectively. In such cases, the legislature has to expressly provide as to whether such substitution is to be construed retrospectively or not. (Para 54) ***Katta Sujatha Reddy v. Siddamsetty Infra Projects Pvt. Ltd.*, [2022 LiveLaw \(SC\) 712](#) : AIR 2022 SC 5435**

Legislation - Amendment - When the legislature acts within its power to usher in a valid law and rectify a legal error, even after a court ruling, the legislature exercises its constitutional power to enact the law and does not overrule an earlier court decision - The power to amend, which includes the power to amend the statute with retrospective effect, is a constitutional power vested with the legislature, which is not confined and restricted to any particular type of statutes, namely, tax statutes. (Para 13, 22) ***Independent Schools Federation of India v. Union of India*, [2022 LiveLaw \(SC\) 719](#) : 2022 (12) SCALE 463**

Legislation - Difference between retroactive effect and retrospective operation - Retrospective statute operates backwards and takes away vested rights accrued under law. The retroactive statute does not operate retrospectively, but it operates in future, albeit it does not become retrospective in operation when the operation is based on the character and status that arose earlier. Character or event which has happened in past or requisites which have been drawn from antecedent events cannot be necessarily construed as having retrospective effect. A retrospective statute means a statute which creates a new obligation on transactions or considerations already past or destroyed or impaired vested rights on and from the retrospective date. ***Independent Schools Federation of India v. Union of India***, [2022 LiveLaw \(SC\) 719](#) : 2022 (12) SCALE 463

Legislation - Distinction between declaration of a statute as unconstitutional by a Court of law and the repeal of a statute by the Legislature - On declaration of a statute as unconstitutional, it becomes void ab initio. Saving past transactions are within the exclusive domain of the Court - Though the consequence of repeal is also obliteration of the statute with retrospective effect on past transactions, the Legislature is empowered to introduce a saving clause in the repealing act. (Para 20) ***State of Manipur v. Surjakumar Okram***, [2022 LiveLaw \(SC\) 113](#)

Legislation - It is for the legislature to amend the law and not the Court. (Para 6.1) ***Kamla Neti v. Special Land Acquisition Officer***, [2022 LiveLaw \(SC\) 1014](#)

Legislation - Legislature has power to enact retroactive/retrospective civil legislations under the Constitution. However, Article 20(1) mandates that no law mandating a punitive provision can be enacted retrospectively. Further, a punitive provision cannot be couched as a civil provision to by-pass the mandate under Article 20(1) of the Constitution which follows the settled legal principle that "what cannot be done directly, cannot be done indirectly". (Para 17.10) ***Union of India v. Ganpati Dealcom Pvt. Ltd.***, [2022 LiveLaw \(SC\) 700](#) : AIR 2022 SC 4558

Legislation - Repeal - There is no question of repeal of a statute which has been declared as unconstitutional by a Court. The very declaration by a Court that a statute is unconstitutional obliterates the statute entirely as though it had never been passed. The consequences of declaration of unconstitutionality of a statute have to be dealt with only by the Court. (Para 23) ***State of Manipur v. Surjakumar Okram***, [2022 LiveLaw \(SC\) 113](#)

Legislation - Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. (Para 9) ***Chandra Sekhar Jha v. Union of India***, [2022 LiveLaw \(SC\) 256](#)

Legislation - Writ petition seeking direction to centre and States to publish draft legislation - There are certain Legislations which contemplate participation of public at certain levels. For instance, in some town-planning legislations public participation at the stage of finalization of a Draft Development Plan is

contemplated and encouraged. The legislative provisions thus do provide for such participation whenever deemed appropriate - It would not be proper on our part to direct the Government at the Central or State level to publish every Draft Legislation. ***Ashwini Kumar Upadhyay v. Union of India***, [2022 LiveLaw \(SC\) 906](#)

Legislation - Writ petition seeking direction to centre and States to publish legislation in regional language - We do see some force in the submission that the people at large must have every facility to make themselves aware of the Legislations that would govern their conduct and day-to-day life and therefore such Legislations must be kept in public domain in all regional languages - We only express hope that the abovementioned prayer would be looked into by all the concerned and steps in that behalf shall be taken. ***Ashwini Kumar Upadhyay v. Union of India***, [2022 LiveLaw \(SC\) 906](#)

Legislative Assembly

Legislative Assembly - Maharashtra Legislative Assembly's resolution of July 5, 2021, which suspended 12 BJP MLAs for a period of one year for alleged disorderly behavior in the house - Resolution directing suspension of the petitioners beyond the period of the remainder of the concerned Monsoon Session held in July 2021 is *non est* in the eyes of law, nullity, unconstitutional, substantively illegal and irrational - In absence of any express provision bestowing power in the Legislature to suspend its member(s) beyond the term of the ongoing Session, the inherent power of the Legislature can be invoked only to the extent necessary and for proper exercise of the functions of the House at the relevant point of time. ***Ashish Shelar v. Maharashtra Leg. Assembly***, [2022 LiveLaw \(SC\) 91](#) : AIR 2022 SC 721

Legislative Assembly - There can be no place for disorderly conduct in the House much less “grossly disorderly”. Such conduct must be dealt with sternly for ensuring orderly functioning of the House. But, that action must be constitutional, legal, rational and as per the procedure established by law. (Para 74) ***Ashish Shelar v. Maharashtra Leg. Assembly***, [2022 LiveLaw \(SC\) 91](#) : AIR 2022 SC 721

Legislative Assembly Rules (Maharashtra); Rule 53 - The word “suspension” is necessarily linked to attendance of the member in the House. Thus, the suspension may be resorted to merely for ensuring orderly conduct of the business of the House during the concerned Session. Anything in excess of that would be irrational suspension. (Para 54) ***Ashish Shelar v. Maharashtra Leg. Assembly***, [2022 LiveLaw \(SC\) 91](#) : AIR 2022 SC 721

Legitimate Expectation - A facet of Article 14 of the Constitution - The doctrine of legitimate expectations can be invoked if a representation made by a public body leads an individual to believe that they would be a recipient of a substantive benefit. (Para 26) ***Indian Ex Servicemen Movement v. Union of India***, [2022 LiveLaw \(SC\) 289](#) : (2022) 7 SCC 323

Letter of Credit

Letter of Credit - A letter of credit is independent of and unqualified by the contract of sale or underlying transactions. *Bawa Paulins Pvt. Ltd. v. UPS Freight Services (India) Pvt. Ltd.*, [2022 LiveLaw \(SC\) 938](#)

Letters Patent (Calcutta High Court)

Letters Patent (Calcutta High Court); Clause 15 - Appeal against Division Bench order of the Calcutta High Court which allowed Letters Patent appeal against a Single Judge order which directed defendants to file affidavit- in -opposition and postponed the hearing of the application seeking injunction - Allowed - Though by postponement of the issue with regard to grant of ad-interim injunction, the order might have caused some inconvenience and may be, to some extent, prejudice to the plaintiff; the same could not be treated as a 'judgment' inasmuch as there was no conclusive finding as to whether the plaintiff was entitled for grant of ad- interim injunction or not. As such, the order passed by the Single Judge did not contain the traits and trappings of finality - The appellate court cannot usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not. *Shyam Sel and Power Ltd. v. Shyam Steel Industries Ltd.*; [2022 LiveLaw \(SC\) 282](#) : 2022 (4) SCALE 720

Letters Patent (Calcutta High Court); Clause 15 - Whether an order impugned would be a 'judgment' within the scope of Clause 15 of Letters Patent, would depend on facts and circumstances of each case - For such an order to be construed as a 'judgment', it must have the traits and trappings of finality - It must affect vital and valuable rights of the parties, which works serious injustice to the party concerned. Each and every order passed by the Court during the course of the trial, though may cause some inconvenience to one of the parties or, to some extent, some prejudice to one of the parties, cannot be treated as a 'judgment'. If such is permitted, the floodgate of appeals would be open against the order of Single Judge. *Shyam Sel and Power Ltd. v. Shyam Steel Industries Ltd.*; [2022 LiveLaw \(SC\) 282](#) : 2022 (4) SCALE 720

Licensing and Performance for Public Amusement including Cabaret Performance, Melas and Tamashas Rule, 1960

Licensing and Performance for Public Amusement including Cabaret Performance, Melas and Tamashas Rule, 1960 - The regulation on the overall number of performers, or even the dimensions of a stage (on which a performance can take place) cannot be characterized as a restriction; they can fall within the legitimate domain of the authority of the commissioner or the government which formulates such conditions. (Para 47) *Hotel Priya A Proprietorship v. State of Maharashtra*, [2022 LiveLaw \(SC\) 186](#) : 2022 (3) SCALE 663

Limitation

Limitation - Suo Motu Order Extending Limitation - Even the period of limitation which could have been extended and/or condoned by the Tribunal/Court is excluded and/or extended even up to 07.10.2021. (Para 2) ***Centaur Pharmaceuticals Pvt. Ltd. v. Stanford Laboratories Pvt. Ltd.***, [2022 LiveLaw \(SC\) 26](#)

Limitation - When the proceedings are required to be initiated within a particular period provided under the Statute, the same are required to be initiated within the said period. However, where no such period has been provided in the Statute, the authorities are required to initiate the said proceeding within a reasonable period. No doubt that what would be a reasonable period would depend upon the facts and circumstances of each case. (Para 19) ***Union of India v. Citibank NA***, [2022 LiveLaw \(SC\) 704](#)

Limitation Act 1963; Section 17 - By such a clever drafting and using the word "fraud", the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation-Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. (Para 7.8) ***C.S. Ramaswamy v. V.K. Senthil***, [2022 LiveLaw \(SC\) 822](#) : AIR 2022 SC 4724

Limitation Act, 1963 – Article 137 – Limitation Act would apply to applications filed under Sections 7 and 9 of the IBC. ***Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.***, [2022 LiveLaw \(SC\) 129](#) : (2022) 7 SCC 164

Limitation Act, 1963 – Article 137 – Limitation does not commence when the debt becomes due but only when a default occurs. As noted earlier in the judgment, default is defined under Section 3(12) of the IBC as the non-payment of the debt by the corporate debtor when it has become due. (Para 59) ***Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.***, [2022 LiveLaw \(SC\) 129](#) : (2022) 7 SCC 164

Limitation Act, 1963; Section 14, 18 - IBC does not exclude the application of Section 14 or 18 or any other provision of the Limitation Act. (Para 81) ***Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.***, [2022 LiveLaw \(SC\) 648](#) : AIR 2022 SC 3559

Limitation Act, 1963; Section 18 - The provisions of Section 18 of the Limitation Act are not alien to and are applicable to proceedings under the IBC; and (ii) An acknowledgement in a balance sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, so long as the acknowledgement was within a period of

three years from the original date of default. (Para 13) **State Bank of India v. Krishidhan Seeds**, [2022 LiveLaw \(SC\) 497](#) : 2022 (8) SCALE 253

Limitation Act, 1963; Section 3, 5 - The right of appeal is a statutory right, subject to the laws of limitation. The law of limitation is valid substantive law, which extinguishes the right to sue, and/or the right to appeal. Once an appeal is found to be barred by limitation, there can be no question of any obligation of the Court to consider the merits of the case of the Appellant. **State of Uttar Pradesh v. Satish Chand Shivhare**, [2022 LiveLaw \(SC\) 430](#)

Limitation Act, 1963; Section 3, 5 - The law of limitation binds everybody including the Government. The usual explanation of red tapism, pushing of files and the rigmarole of procedures cannot be accepted as sufficient cause - A different yardstick for condonation of delay cannot be laid down because the government is involved. (Para 17) **State of Uttar Pradesh v. Satish Chand Shivhare**, [2022 LiveLaw \(SC\) 430](#)

Limitation Act, 1961; Section 5 - Section 5 of Limitation Act is not applicable to condone the delay beyond the period prescribed under Section 34(3) of Act 1996. **Mahindra and Mahindra Financial Services Ltd. v. Maheshbhai Tinabhai Rathod**, [2022 LiveLaw \(SC\) 5](#) : (2022) 4 SCC 162

Limitation Act, 1961; Article 54 - Article 54 of the Limitation Act provides for two consequences based on the presence of fixed time period of performance. It is only in a case where the time period for performance is not fixed that the purchaser can take recourse to the notices issued and the vendors' reply thereto. (Para 37) **Katta Sujatha Reddy v. Siddamsetty Infra Projects Pvt. Ltd.**, [2022 LiveLaw \(SC\) 712](#) : AIR 2022 SC 5435

Limitation Act, 1961; Section 5 - Section 5 of the Limitation Act does not apply to the institution of civil suit in the Civil Court. (Para 12) **Sunil Kumar Maity v. State Bank of India**, [2022 LiveLaw \(SC\) 77](#) : AIR 2022 SC 577

Limitation Act, 1963 - Appeal against Gauhati High Court judgment which held that the Limitation Act was applicable in the State of Mizoram and that Section 5 did not apply to suits, but only to appeals and to applications except for applications under Order XXI of the Civil Procedure Code - Dismissed - The High Court rightly set-aside the impugned order of Trial Court holding that it could not have condoned the delay of 325 days in filing the Money Suit. **F. Liansanga v. Union of India**, [2022 LiveLaw \(SC\) 252](#)

Limitation Act, 1963 - Limitation Act applicable in the State of Mizoram with effect from 21.01.1972. **F. Liansanga v. Union of India**, [2022 LiveLaw \(SC\) 252](#)

Limitation Act, 1963 - Section 29(3) - The word 'proceedings' within the meaning of Section 29(3) is to be confined to the original proceeding and not appellate proceedings. (Para 21, 24) **N. Rajendran v. S. Valli**, [2022 LiveLaw \(SC\) 224](#) : 2022 (3) SCALE 275

Limitation Act, 1963 - Section 3 only bars the remedy, but when the right itself is extinguished, provisions of the Limitation Act have no application. (*Para 15.2*) ***Bhagwandas B. Ramchandani v. British Airways***, [2022 LiveLaw \(SC\) 645](#)

Limitation Act, 1963 - Section 4 - If the prescribed period for any suit/appeal/application expires on day when the Court is considered 'closed', such proceedings may be instituted on the re-opening day - A day when the Court may not as such be closed in physical sense, it would be 'deemed' to be closed, if during any part of its normal working hours, it remains closed on that day for any particular proceedings or work. (*Para 25.2.1*) ***Prakash Corporates v. Dee Vee Projects Ltd.***, [2022 LiveLaw \(SC\) 162](#) : AIR 2022 SC 946 : (2022) 5 SCC 112

Limitation Act, 1963 - Section 5 - Delay Condonation - SLP Against High Court order which set aside the Trial Court order condoning delay of 465 days even after finding that delay has not been properly explained - Dismissed - Once it was found even by the trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. ***Lingeswaran v. Thirunagalingam***, [2022 LiveLaw \(SC\) 227](#)

Limitation Act, 1963 - Section 5 - Delay Condonation - When it is found that the delay is not properly explained, the application to condone delay is required to be dismissed - the Court has no power to extend the period of limitation on equitable grounds - Still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. (*Para 5*) ***Lingeswaran v. Thirunagalingam***, [2022 LiveLaw \(SC\) 227](#)

Limitation Act, 1963 - Section 5 does not apply to suits, but only to appeals and to applications except for applications under Order XXI of the Civil Procedure Code - Limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds, even though the statutory provision may sometimes cause hardship or inconvenience to a particular party. The Court has no choice, but to enforce it giving full effect to the same. ***F. Liansanga v. Union of India***, [2022 LiveLaw \(SC\) 252](#)

Limitation Act, 1963; Article 109 - Article 109 is the special Article to apply where the alienation of the father is challenged by the son and the property is ancestral and the parties are governed by Mitakshara law - The word 'alienation' in this article includes 'gift' - In order to attract Article 109, the following conditions have to be fulfilled: 1) The parties must be Hindus governed by Mitakshara; (2) the suit is for setting aside the alienation by the father at the instance of the son; (3) the property relates to ancestral property; and (4) the alienee has taken over possession of the property alienated by the father. (*Para 8 - 9*) ***K.C. Laxmana v. K.C. Chandrappa Gowda***, [2022 LiveLaw \(SC\) 381](#) : 2022 (6) SCALE 315

Limitation Act, 1963; Article 136 - Article 136 applies only when an application for execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court is to be filed. (Para 20) ***Sukhbiri Devi v. Union of India***, [2022 LiveLaw \(SC\) 810](#) : AIR 2022 SC 5058

Limitation Act, 1963; Section 14 - Exclusion of time is different, and cannot be equated with condonation of delay. The period once excluded, cannot be counted for the purpose of computing the period for which delay can be condoned - For exclusion of time under Section 14, the conditions stipulated in Section 14 have to be satisfied. ***Laxmi Srinivasa R and P Boiled Rice Mill v. State of Andhra Pradesh***, [2022 LiveLaw \(SC\) 964](#)

Limitation Act, 1963; Section 18 - Acknowledgment in writing of liability, signed by the party against whom such property or right is claimed - Even if the writing containing the acknowledgment is undated, evidence might be given of the time when it was signed - An acknowledgment may be sufficient even though it is accompanied by refusal to pay, deliver, perform or permit to enjoy or is coupled with claim to set off, or is addressed to a person other than a person entitled to the property or right. 'Signed' is to be construed to mean signed personally or by an authorised agent. (Para 93) ***Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.***, [2022 LiveLaw \(SC\) 648](#) : AIR 2022 SC 3559

Limitation Act, 1963; Section 18 - As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired. (Para 62) ***Kotak Mahindra Bank Limited v. Kew Precision Parts Pvt. Ltd.***, [2022 LiveLaw \(SC\) 673](#) : (2022) 9 SCC 364

Limitation Act, 1963; Section 29(2) - Express empowerment is to be gathered from the provisions of the statute - Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. (Para 48) ***Bhagwandas B. Ramchandani v. British Airways***, [2022 LiveLaw \(SC\) 645](#)

Local Body Elections - Ongoing activity of delimitation or formation of ward cannot be a legitimate ground to be set forth by any authority much less the State Election Commission - to not discharge its constitutional obligation in notifying the election programme at the opportune time and to ensure that the elected body is installed before the expiry of 5 (five) years term of the outgoing elected body. (Para 11) ***Suresh Mahajan v. State of Madhya Pradesh***, [2022 LiveLaw \(SC\) 463](#) : AIR 2022 SC 2739

M

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

Maintenance and Welfare of Parents and Senior Citizens Act, 2007; Section 23 - Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor – senior citizen is sine qua non for applicability of Section 23(1) - When it is alleged that the conditions mentioned in Section 23(1) are attached to a transfer, existence of such conditions must be established before the Tribunal. (Para 13-14) **Sudesh Chhikara v. Ramti Devi**, [2022 LiveLaw \(SC\) 1011](#)

Marine Policy

Marine Policy - Marine Insurance Act, 1963; Section 4 - A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage - warehouse risks, combined with voyage and other marine risks, are considered as part of marine insurance policies in India. (Para 19) **United India Insurance Co. Ltd. v. Levis Strauss (India) Pvt. Ltd.**, [2022 LiveLaw \(SC\) 487](#) : (2022) 6 SCC 1

Mediation

Mediation - All States are mandated to set up the mediation cells - A direction is made for the e-filing system to be made operational. **In Re: Inaction Of The Governments In Appointing President And Members/staff Of Districts And State Consumer Disputes Redressal Commission And Inadequate Infrastructure Across India v. Union of India**, [2022 LiveLaw \(SC\) 371](#)

Mediation - Concerns regarding dearth of trained and skilled mediators and lack of infrastructure - Knowledge of the laws, which are the subject matter of the suits under the Act, is indispensable for a Mediator to effectively discharge his duties. His role is supreme and it is largely shaped by his own knowledge of the law that governs commercial cases - The effective participation of the bar which must be adequately remunerated for its service will assist in mediation evolving. The concerned High Court may also undertake periodic exercise to establish a panel of trained mediators in District and Taluka levels as per need. (Para 74) **Patil Automation Pvt. Ltd. v. Rakheja Engineers Private Ltd.**, [2022 LiveLaw \(SC\) 678](#) : AIR 2022 SC 3848 : (2022) 10 SCC 1

Mediation - Mediation is an important, if not at times a better method of resolution of disputes. **In Re: Inaction Of The Governments In Appointing President And Members/staff Of Districts And State Consumer Disputes**

***Redressal Commission And Inadequate Infrastructure Across India v. Union of India*, [2022 LiveLaw \(SC\) 371](#)**

Mediation - Taking on record the comments made during the course of mediation or settlement proceedings impedes conciliation and impinges on the principle of confidentiality. (Para 3) ***Arjab Jena @ Arjab Kumar Jena v. Utsa Jena @ Pattnaik*, [2022 LiveLaw \(SC\) 21](#)**

Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 - Regulation 6.8 - Acceptance of freebies given by pharmaceutical companies is clearly an offence on part of the medical practitioner, punishable with varying consequences. (Para 18) ***Apex Laboratories Pvt. Ltd. v. Deputy Commissioner*, [2022 LiveLaw \(SC\) 195](#) : (2022) 7 SCC 98**

Medical Course

Medical Course - Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 - National Medical Commission is not bound to grant provisional registration to the student who has not completed the entire duration of the course from the Foreign Institute including the clinical training. (Para 15) ***National Medical Commission v. Pooja Thandu Naresh*, [2022 LiveLaw \(SC\) 426](#) : AIR 2022 SC 2956**

Medical Course - Screening Test Regulations, 2002 - Granting provisional registration to complete internship to a student who has not undergone clinical training would be compromising with the health of the citizens of any country and the health infrastructure at large - The decision of the National Medical Commission not to grant provisional registration cannot be said to be arbitrary - Qualifying in the Screening Regulations is no proof of the clinical experience, if any, gained by the students. (Para 16-21) ***National Medical Commission v. Pooja Thandu Naresh*, [2022 LiveLaw \(SC\) 426](#) : AIR 2022 SC 2956**

Medical Negligence

Medical Negligence - A medical practitioner is not to be held liable simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another - He/she would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field - Merely because he/she could not save the patient, that could not be considered to be a case of medical negligence. (Para 21-27) ***Dr. Chanda Rani Akhouri v. Dr. M.A. Methusethupathi*, [2022 LiveLaw \(SC\) 391](#) : 2022 (6) SCALE 546**

Medical Negligence - Appeal against NCDRC which dismissed appellant's complaint of medical negligence - Dismissed - Commission has not committed any manifest error in arriving to a conclusion that in post operative medical

negligence or follow up care, there was no negligence being committed by the respondents which may be a foundation for entertaining the complaint filed by the appellants. ***Dr. Chanda Rani Akhouri v. Dr. M.A. Methusethupathi***, [2022 LiveLaw \(SC\) 391](#) : 2022 (6) SCALE 546

Medical Negligence - Every death in an institutionalized environment of a hospital does not necessarily amount to medical negligence on a hypothetical assumption of lack of due medical care - It would not be possible for the Court to second-guess the medical judgment of the doctors on the line of medical treatment. ***Devarakonda Surya Sesa Mani v. Care Hospital, Institute of Medical Sciences***, [2022 LiveLaw \(SC\) 753](#)

Medical Negligence - In the proceedings for damages due to professional negligence, the question of intention does not arise. (Para 29) ***Harnek Singh v. Gurmit Singh***, [2022 LiveLaw \(SC\) 511](#) : AIR 2022 SC 2643 : (2022) 7 SCC 685

Medical Negligence - Opinion and findings of the MCI regarding the professional conduct of a doctor have great relevance while considering claim for compensation on the basis of medical negligence. (Para 35) ***Harnek Singh v. Gurmit Singh***, [2022 LiveLaw \(SC\) 511](#) : AIR 2022 SC 2643 : (2022) 7 SCC 685

Medical Termination of Pregnancy Act, 1971

Medical Termination of Pregnancy Act, 1971 - All women are entitled to safe and legal abortions (Para 56) - There is no rationale in excluding unmarried women from the ambit of Rule 3B of MTP Rules which mentions the categories of women who can seek abortion of pregnancy in the term 20-24 weeks. (Para 121) ***X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi***, [2022 LiveLaw \(SC\) 809](#) : AIR 2022 SC 4917

Medical Termination of Pregnancy Act, 1971 - Effect of 2021 amendment - Parliamentary intent to cover unmarried woman too-After 2021 amendment, the word "married woman" has been substituted with "any woman" and "husband" with "partner"-The Parliamentary intent, therefore, is clearly not to confine the beneficial provisions of the MTP Act only to a situation involving a matrimonial relationship. [Para 16 & 18] ***X v. Principal Secretary, Health & Family Welfare Department***, [2022 LiveLaw \(SC\) 621](#)

Medical Termination of Pregnancy Act, 1971 - Gap in the law exists between MTP Act and MTP Rules -Evidently, there is a gap in the law : while Section 3 travels beyond conventional relationships based on marriage, Rule 3B of the MTP Rules does not envisage a situation involving unmarried women, but recognizes other categories of women such as divorcees, widows, minors, disabled and mentally ill women and survivors of sexual assault or rape. [Para 18] ***X v. Principal Secretary, Health & Family Welfare Department***, [2022 LiveLaw \(SC\) 621](#)

Medical Termination of Pregnancy Act, 1971 - Supreme Court passes ad-interim order allowing unmarried woman to terminate pregnancy of 24-week term arising out of a consensual relationship - Prima facie observes the case is covered under Section 3(2)(b). *X v. Principal Secretary, Health & Family Welfare Department*, [2022 LiveLaw \(SC\) 621](#)

Medical Termination of Pregnancy Act, 1971 - There is no basis to deny unmarried women the right to medically terminate the pregnancy, when the same choice is available to other categories of women -Denying an unmarried woman the right to a safe abortion violates her personal autonomy and freedom- The distinction between a married and unmarried woman does not bear a nexus to the basic purpose and object which is sought to be achieved by Parliament which is conveyed specifically by the provisions of Explanation 1 to Section 3 of the Act. [Para 18, 20, 21] *X v. Principal Secretary, Health & Family Welfare Department*, [2022 LiveLaw \(SC\) 621](#)

Medical Termination of Pregnancy Act, 1971; Section 3(2)(b) - Termination of a pregnancy till twenty-four weeks of women if it causes risk of injury to the mental health – unwanted pregnancy can be construed as injury to mental health. (Para 62, 63, 64) *X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi*, [2022 LiveLaw \(SC\) 809](#) : AIR 2022 SC 4917

Medical Termination of Pregnancy Rules, 2003 - Rule 3B (categories of women who can seek abortion of pregnancy of 20-24 weeks) - A narrow interpretation of Rule 3B, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution. Prohibiting unmarried or single pregnant women (whose pregnancies are between twenty and twenty-four weeks) from accessing abortion while allowing married women to access them during the same period would fall foul of the spirit guiding Article 14 - Purposive interpretation given to Rule 3B to include unmarried women whose pregnancy arise out of consensual relationship. (Para 121) *X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi*, [2022 LiveLaw \(SC\) 809](#) : AIR 2022 SC 4917

Medical Termination of Pregnancy Rules, 2003

Medical Termination of Pregnancy Rules, 2003; Rule 3B(b) - Rule 3B(b) includes minors within the category of women who may terminate their pregnancy up to twenty-four weeks – the RMP need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act. (Para 81) *X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi*, [2022 LiveLaw \(SC\) 809](#) : AIR 2022 SC 4917

Medical Termination of Pregnancy Rules, 2003; Rule 3B(c) - Women going through a change of marital status during the ongoing pregnancy shall be considered eligible for termination of pregnancy – distinction between married

and single women is not constitutionally sustainable – benefits in law extend equally to both single and married women. (Para 90, 92) **X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi**, [2022 LiveLaw \(SC\) 809](#) : AIR 2022 SC 4917

Meerut Fire Tragedy (2006)

Meerut Fire Tragedy (2006) - 40:60 Liability On State & Organizers To Compensate Victims - Allahabad High Court Chief Justice to nominate within two weeks a District Judge or Additional District Judge to work on a day to day basis for determining the compensation payable to the families of the victims of the fire that broke out during a consumer fair in Meerut in 2006 - Computation of compensation in accordance with the principles of just compensation as in the case of accident under the Motor Vehicle Act, 1988 by the Motor Accidents Claims Tribunal. **Sanjay Gupta v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 368](#) : (2022) 7 SCC 203

Mercy Petition

Mercy Petition - Procedure governing petitions for mercy in death sentence cases provides the mercy petition must be filed within seven days of the disposal of the appeal or dismissal of special leave petition - The concerned instruction requires suitable modification so as to enable the convicted accused to file mercy petition after exhaustion of remedies in Court of law. (Para 29) **B.A. Umesh v. Union of India**, [2022 LiveLaw \(SC\) 907](#)

Micro, Small and Medium Enterprise Development Act, 2006

Micro, Small and Medium Enterprise Development Act, 2006; Section 19 - Arbitration and Conciliation Act, 1996; Section 34 - Pre-deposit of 75% of the awarded amount under section 19 of the MSMED Act, 2006 is a mandatory requirement to challenge the award under section 34 of the Arbitration and Conciliation Act. (Para 4) **Tirupati Steels v. Shubh Industrial Component**, [2022 LiveLaw \(SC\) 383](#) : AIR 2022 SC 1939 : (2022) 7 SCC 429

Micro, Small and Medium Enterprises Development Act, 2006; Section 18, 19 - MSMED Act does not empower the Facilitation Council to review its own decisions - i) that to begin with, the Facilitation Council should conduct conciliation; (ii) that upon failure of conciliation, the dispute is to be arbitrated either by the Facilitation council itself or by an institution to which it is referred; and (iii) that the decision arrived at thereto, constitutes an award. (Para 14-16) **Bajaj Auto Ltd. v. Ajanta Press and Mechanical Works**, [2022 LiveLaw \(SC\) 769](#)

Micro, Small and Medium Enterprises Development Act, 2006; Section 8(1) - MSMED Act is not applicable to transactions which took place even before the Act was enacted and that by taking recourse to Section 8(1) of the Act and filing a memorandum, a person cannot assume the legal status conferred under the Act to claim retrospectively - MSMED Act was not intended to provide a gateway

for hopelessly time barred claims. (Para 12, 17) ***Bajaj Auto Ltd. v. Ajanta Press and Mechanical Works***, [2022 LiveLaw \(SC\) 769](#)

Micro, Small and Medium Enterprises Development Act, 2006; Section 17, 18 - Arbitration and Conciliation Act, 1996; Section 80 - No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties - Chapter-V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996 - The Facilitation Council, which had initiated the Conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act - Such proceedings would be governed by the Arbitration Act, 1996 -The Facilitation Council / institute /centre acting as an arbitral tribunal would be competent to rule on its own jurisdiction as also the other issues. (Para 34) ***Gujarat State Civil Supplies Corporation v. Mahakali Foods Pvt. Ltd.***, [2022 LiveLaw \(SC\) 893](#) : AIR 2022 SC 5545

Micro, Small and Medium Enterprises Development Act, 2006; Section 2(n) - A party who was not the 'supplier' as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the 'supplier' under the MSMED Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration. (Para 34) ***Gujarat State Civil Supplies Corporation v. Mahakali Foods Pvt. Ltd.***, [2022 LiveLaw \(SC\) 893](#) : AIR 2022 SC 5545

Mines and Mineral (Development and Regulation) Act, 1957

Mines and Mineral (Development and Regulation) Act, 1957 - Imposed a cost of Rupees one lakh on the Union Government for incorrectly mentioning the name of a coal mining company in the list of the illegal coal block allotments made in the "Coalgate" scam. ***BLA Industries Pvt Ltd v. Union of India***, [2022 LiveLaw \(SC\) 683](#) : AIR 2022 SC 3805

Mines and Minerals (Development and Regulation) Act, 1957 - Supreme Court lifts curbs on iron sale and export from mines in Karnataka - Relaxes the directions issued in 2011. ***Samaj Parivarthana Samudaya v. State of Karnataka***, [2022 LiveLaw \(SC\) 509](#) : 2022 (9) SCALE 39

Minimum Wages Act, 1948

Minimum Wages Act, 1948; Section 10 - Only the clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages can be corrected - An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless or inadvertent mistake or omission unintentionally made. (Para 7.1-7.2) ***Gomantak Mazdoor Sangh v. State of Goa***, [2022 LiveLaw \(SC\) 466](#) : 2022 (7) SCALE 789

Minimum Wages Act, 1948; Section 3-5, 10 - Errata Notification dated 14.07.2016 issued by the State of Goa modifying/correcting its earlier notification dated 23/24.05.2016 by which it fixed the rates of minimum wages in various sectors - Wholly without jurisdiction and contrary to the relevant provisions of the Minimum Wages Act, 1948 - The minimum wages were revised and determined even after consultation with the Minimum Wage Advisory Board as required under Section 5 of the Act, 1948. Therefore, once there was no mistake, the same could not have been corrected in exercise of powers under Section 10 of the Act, 1948. **Gomantak Mazdoor Sangh v. State of Goa**, [2022 LiveLaw \(SC\) 466](#) : 2022 (7) SCALE 789

Monopolies and Restrictive Trade Practices Act, 1969

Monopolies and Restrictive Trade Practices Act, 1969; Section 12B - Section 12B of MRTP Act empowers the Commission to grant compensation only when any loss or damage is caused to a consumer as a result of a monopolistic, restrictive or unfair trade practice. (Para 124) **B.B. Patel v. DLF Universal Ltd**; [2022 LiveLaw \(SC\) 90](#) : AIR 2022 SC 683 : (2022) 6 SCC 742

Monopolies and Restrictive Trade Practices Act, 1969; Section 2(u) - Unfair Trade Practice - Five ingredients to constitute an offence of unfair trade practice: (1) There must be a trade practice (within the meaning of section 2(u) of the Monopolies and Restrictive Trade Practices Act); (2) The trade practice must be employed for the purpose of promoting the sale, use or supply of any goods or the provision of any services;(3) The trade practice should fall within the ambit of one or more of the categories enumerated in clauses (1) to (5) of Section 36A; (4) The trade practice should cause loss or injury to the consumers of goods or services; (5) The trade practice under clause (1) should involve making a “statement” orally or in writing or by visible representation. (Para 20) **B.B. Patel v. DLF Universal Ltd**; [2022 LiveLaw \(SC\) 90](#) : AIR 2022 SC 683 : (2022) 6 SCC 742

Moral Policing

Moral Policing - Supreme Court upholds dismissal of a CISF personnel who was found to have harassed a couple at night - Condemns moral policing by police. **CISF v. Santosh Kumar Pandey**, [2022 LiveLaw \(SC\) 1036](#)

Motor Accident

Motor Accident Claims - Motor Vehicles Act, 1988; Section 168 - the Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased. Where positive evidence has been led, no reliance on the Notification could be placed, particularly when it was nobody's case that the deceased was a labourer as presumed by the High Court. (Para 9) **Gurpreet Kaur v. United India Insurance Company**, [2022 LiveLaw \(SC\) 821](#)

Motor Accident Claims - The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of

the driving license before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver. (Para 10) **Rishi Pal Singh v. New India Assurance Co Ltd.**, [2022 LiveLaw \(SC\) 646](#)

Motor Accident Compensation - Dependents entitled to compensation for loss of income even if businesses & properties of deceased were bequeathed to them. [Para 14,17 & 22] **K. Ramya v. National Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 816](#) : AIR 2022 SC 4802

Motor Accident Compensation - Documents such as income tax returns and audit reports are reliable evidence to determine the income of the deceased. [Para 14] **K. Ramya v. National Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 816](#) : AIR 2022 SC 4802

Motor Accident Compensation - Entire amount under 'Income from House Property and Agricultural Land' need not be deducted merely because properties have been bequeathed to dependents- compensation towards loss of managerial skills can be awarded. [Para 22] **K. Ramya v. National Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 816](#) : AIR 2022 SC 4802

Motor Accident Compensation - Mere fact that the Deceased's share of ownership in these businesses ventures was transferred to the Deceased's minor children just before his death or to the dependents after his death is not a sufficient justification to conclude that the benefits of these businesses continue to accrue to his dependents. [Para 17] **K. Ramya v. National Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 816](#) : AIR 2022 SC 4802

Motor Accident Compensation Claims - Enhanced the compensation payable to over Rupees 50 Lakhs in a motor accident case where appellant has been rendered paralysed for life after he met with an accident as a 5 year old boy in 2010 - The appellant is not able to move his both legs and had complete sensory loss in the legs, urinary incontinence and bowel constipation and bed sore. **Master Ayush v. Reliance General Insurance**, [2022 LiveLaw \(SC\) 330](#) : (2022) 7 SCC 738

Motor Accident Compensation Claims - Even if the income of the claimant had increased after the accident, it would not be enough grounds to disable him from claiming compensation for future prospect as the rise in income may be attributed to multiple other factors - In cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects - "Just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place. (Para 18-20) **Mohd Sabeer @ Shabir Hussain v. Regional Manager UPSRTC**, [2022 LiveLaw \(SC\) 1017](#)

Motor Accident Compensation Claims - Even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects

as well - Law regarding determination of compensation discussed - "Just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident - Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. (Para 29-32, 139) **Sidram v. Divisional Manager United India Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 968](#)

Motor Accident Compensation Claims - Fixing of notional income - In the absence of a salary certificate, the minimum wages notification along with some amount of guesswork that is not completely detached from reality shall act as a yardstick to determine the income of the deceased - *Referred to Chandra Alias Chanda Chandram and Anr. v. Mukesh Kumar Yadav and Ors; (2022) 1 SCC 198* - High Court fixed the notional income of the Deceased driver as 10,000/- As per notification issued under Kerala Fair Wages Act, a 'driver' in Kerala earned a minimum of Rs. 15,600/- in 2015 - Thus Supreme Court fixed income of the Deceased notionally at Rs. 15,600/- per month. (Para 19-22) **Manusha Sreekumar v. United India Insurance Co. Ltd;** [2022 LiveLaw \(SC\) 858](#) : AIR 2022 SC 5161

Motor Accident Compensation Claims - If the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to "pay and recover" - In all cases such order of "pay and recover" would not arise when the Insurance Company is not liable but would, in the facts and circumstances, be considered by this Court to meet the ends of justice. **Balu Krishna Chavan v. Reliance General Insurance Company Ltd.**, [2022 LiveLaw \(SC\) 932](#)

Motor Accident Compensation Claims - Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income of deceased. (Para 9) **Anjali v. Lokendra Rathod**, [2022 LiveLaw \(SC\) 1012](#)

Motor Accident Compensation Claims - Multiplier of victims upto the age group of 15 years should be taken as '15' - When there is clear prohibition under Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 for engagement of children and the definition of "child" therein takes in children who have not completed their fourteenth year of age within its fold, there is certainly justification for selecting a lower multiplier of '15' in the case of victims belonging to the age group upto 15 years. (Para 10.1.4) **Divya v. National Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 892](#)

Motor Accident Compensation Claims - Notional Income - It is not necessary to adduce any documentary evidence to prove the notional income of the victim and the Court can award the same even in the absence of any documentary evidence - The Court should ensure while choosing the method and fixing the notional income that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too

conservatively, nor too liberally. (Para 59) ***Sidram v. Divisional Manager United India Insurance Co. Ltd.***, [2022 LiveLaw \(SC\) 968](#)

Motor Accident Compensation Claims - Objective formula for calculating just compensation - Three factors that need to be established are: (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents - The issues that are to be determined by the Tribunal to arrive at the loss of dependency are: (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. (Para 17-18) ***Manusha Sreekumar v. United India Insurance Co. Ltd.***; [2022 LiveLaw \(SC\) 858](#) : AIR 2022 SC 5161

Motor Accident Compensation Claims - Pecuniary Expenses and Non-Pecuniary Loss - "Future Medical Expenses" and "Attendant Charges" would fall within the ambit of Pecuniary Expenses - "Pain and suffering" would be categorized as a non-pecuniary loss as it is incapable of being arithmetically calculated. Therefore, when compensation is to be awarded for pain and suffering, special circumstances of the claimant have to be taken into account including the victim's age, the unusual deprivation the victim has suffered, the effect thereof on his or her future life. (Para 67, 93) ***Sidram v. Divisional Manager United India Insurance Co. Ltd.***, [2022 LiveLaw \(SC\) 968](#)

Motor Accident Compensation Claims - Socio-economic background of the claimants must be considered while awarding compensation in cases of permanent disability - Persons from marginalized sections of the society already face severe discrimination due to a lack of social capital, and a new disability more often than not compounds to such discrimination. (Para 27-29) ***Mohd Sabeer @ Shabir Hussain v. Regional Manager UPSRTC***, [2022 LiveLaw \(SC\) 1017](#)

Motor Accident Compensation Claims - Strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases - Disagreed with the view taken by the High Court while rejecting the salary certificate and pay slip of the deceased merely on the ground that the person issuing the two aforementioned documents was not examined before the Tribunal. ***Rajwati @ Rajjo v. United India Insurance Company Ltd.***, [2022 LiveLaw \(SC\) 1016](#)

Motor Accident Compensation Claims - The determination of damages in personal injury cases is not easy. The mental and physical loss cannot be computed in terms of money but there is no other way to compensate the victim except by payment of just compensation. (Para 12) ***Master Ayush v. Reliance General Insurance***, [2022 LiveLaw \(SC\) 330](#) : (2022) 7 SCC 738

Motor Accidents Compensation - Supreme Court grants relief to an advocate who had suffered 100% permanent disability due to an accident by enhancing the compensation awarded by the High Court from Rs 23,20,000/- to Rs

51,62,000/- *Abhimanyu Partap Singh v. Namita Sekhon*, [2022 LiveLaw \(SC\) 569](#) : (2022) 8 SCC 489

Motor Vehicles Act, 1988

Motor Vehicles Act, 1988 - In case the claimant(s) or legal representative(s) of the deceased have filed separate claim petition(s) in the territorial jurisdiction of different High Courts, in the said situation, the first claim petition filed by the claimant(s)/legal representative(s) shall be maintained by the said Claims Tribunal and the subsequent claim petition(s) shall stand transferred to the Claims Tribunal where the first claim petition was filed and pending. It is made clear here that the claimant(s) are not required to apply before Supreme Court seeking transfer of other claim petition(s) though filed in the territorial jurisdiction of different High Courts. The Registrar Generals of the High Courts shall take appropriate steps and pass appropriate order in this regard in furtherance to the directions of this Court. *Gohar Mohammed v. Uttar Pradesh State Road Transport Corporation*, [2022 LiveLaw \(SC\) 1040](#)

Motor Vehicles Act 1988 - Motor Accident Compensation - the age of the deceased and not the age of the dependents in case of the death of a bachelor is to be the basis for multiplier. *Giasi Ram v. ICICI Lombard General Insurance Co.*, [2022 LiveLaw \(SC\) 828](#)

Motor Vehicles Act 1988 - Motor Accidents Claims Compensation - Multiplier Method - Multiplier method has been recognized as most realistic and reasonable because it has been decided by looking at the age, inflation rate, uncertainty of life and other realistic needs - Not only for determination of future loss of earning but for attendant charges also the multiplier method should be followed. (Para 14) *Abhimanyu Partap Singh v. Namita Sekhon*, [2022 LiveLaw \(SC\) 569](#) : (2022) 8 SCC 489

Motor Vehicles Act, 1988 - Motor Accident Claims- Does third party insurance cover pillion rider of a motor cycle? Supreme Court refers to larger bench. *Mohana Krishnan S. v. K. Balasubramaniam*, [2022 LiveLaw \(SC\) 726](#)

Motor Vehicles Act, 1988 - Motor Accident Compensation - Awarding compensation on the head of pain, shock and suffering - Factors to be considered - Prolonged hospitalization; the grievous injuries sustained; the operations underwent and the consequent pain, discomfort and suffering - There cannot be straight jacket formula. It depends upon the facts and circumstances of each case and it varies from person to person who has suffered due to the accident. (Para 8) *Benson George v. Reliance General Insurance Co. Ltd.*, [2022 LiveLaw \(SC\) 214](#) : AIR 2022 SC 1216

Motor Vehicles Act, 1988 - Motor Accident Compensation - Awarding compensation on the head of Loss of amenities and happiness suffered by the claimant and his family members - Factors - The position of the claimant post-accident and whether, he is in a position to enjoy life and/or happiness which he was enjoying prior to the accident. To what extent the claimant has lost the amenities in life and the happiness will depend on the facts of each case. (Para

8.1) **Benson George v. Reliance General Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 214](#) : AIR 2022 SC 1216

Motor Vehicles Act, 1988 - Motor Accident Compensation - Claimant is in coma even after a period of eight long years and that he will have to be permanently bedridden during his entire life - The amount of compensation awarded under the head loss of amenities and happiness of Rs.1,00,000/- only is unreasonable and meagre - Enhanced to Rs.10,00,000/- - The pain, suffering and trauma suffered by the claimant cannot be compensated in terms of the money. However, still it will be a solace to award suitable compensation under different heads including the pain, shock and suffering, loss of amenities and happiness of life - The amount of compensation under the head of pain, shock and suffering is enhanced to Rs.10,00,000/- -. (Para 7, 8.1) **Benson George v. Reliance General Insurance Co. Ltd.**, [2022 LiveLaw \(SC\) 214](#) : AIR 2022 SC 1216

Motor Vehicles Act, 1988 - Motor Accident Compensation - In the matter of compensation, the amount actually due and payable is to be awarded despite the claimants having sought for a lesser amount and the claim petition being valued at a lesser value. **Mona Baghel v. Sajjan Singh Yadav**, [2022 LiveLaw \(SC\) 734](#)

Motor Vehicles Act, 1988 - Motor Accident Compensation - Method of determination of compensation applying two multipliers is clearly erroneous - The age of the deceased should be the basis for applying the multiplier. **R. Valli v. Tamil Nadu State Transport Corporation Ltd.**, [2022 LiveLaw \(SC\) 152](#) : AIR 2022 SC 1096 : (2022) 5 SCC 107

Motor Vehicles Act, 1988 - Motor Accident Compensation Claims - There is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award 'just' compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the Claim Petition would not be impediment to award just compensation exceeding the claimed amount. (Para 14) **Meena Devi v. Nunu Chand Mahto @ Nemchand Mahto**, [2022 LiveLaw \(SC\) 841](#) : AIR 2022 SC 5006

Motor Vehicles Act, 1988 - Section 2(30) - U.P. Motor Vehicles Taxation Act, 1997 - Section 2(h) - A financier who is in possession of the transport vehicle owing to non -payment of the loan amount is an "owner". (Para 8.3) **Mahindra and Mahindra Financial Services Ltd. v. State of U.P.**, [2022 LiveLaw \(SC\) 198](#) : AIR 2022 SC 1197 : (2022) 5 SCC 525

Motor Vehicles Act, 1988 - Section 56, 59 and 83 - Kerala Motor Vehicle Rules, 1989 - Rule 174(2)(c) - Rule 174 (2) (c) made by the State Government to enable replacement of the vehicle under a Transport permit, does not impinge upon the powers of the Central Government with respect to fixation of the age of the vehicle, or fitness of the vehicle conferred upon it under Sections 56 and 59 in Chapter IV. The scrutiny under Rule 174 is only to enable the Authority to

ensure that the subsisting permit is not interrupted and at the same time public interest is not compromised by deviating from the permit. The Rule will have no bearing on the power of the Central Government and as such it would not be ultra vires the provisions of the Act. (Para 13.6) **Regional Transport Authority v. Shaju, [2022 LiveLaw \(SC\) 174](#) : 2022 (3) SCALE 554**

Motor Vehicles Act, 1988 - Section 72 - Grant of a transport permit is an important function that the statutory authority under the Act would perform. (Para 18.1) **Regional Transport Authority v. Shaju, [2022 LiveLaw \(SC\) 174](#) : 2022 (3) SCALE 554**

Motor Vehicles Act, 1988 - Section 83 - A scrutiny of the vehicle, stand alone, irrespective of its relation with the permit becomes an irrelevant consideration for the purpose of Section 83 - the scope of scrutiny is limited only to examining if the vehicle is of same nature as in the permit. (Para 13.2,13.3) **Regional Transport Authority v. Shaju, [2022 LiveLaw \(SC\) 174](#) : 2022 (3) SCALE 554**

Motor Vehicles Act, 1988 - Section 83 - Kerala Motor Vehicle Rules,1989 - Rule 174(2)(c) - Rule 174(2)(c) [which enables road transport authority to reject an application for replacement if the proposed vehicle is older than the one covered under the existing permit] is valid - Rule 174 (2) (c) is neither ultra vires the Act, nor has overridden Section 83 - Kerala HC Judgment in Regional Transport Authority vs. Shaju [ILR 2017 (3) Ker. 720] set aside. (Para 1, 23, 24) **Regional Transport Authority v. Shaju, [2022 LiveLaw \(SC\) 174](#) : 2022 (3) SCALE 554**

Motor Vehicles Act, 1988 - Section 83 - Kerala Motor Vehicle Rules,1989 - Rule 174(2)(c) - The purpose and object of mandating replacement by a vehicle of the same nature in Section 83 is only to ensure that the scrutiny and the conditions that were undertaken and imposed at the time of the grant continue even during the subsistence of the permit Rule 174 (2) (c) is intended to ensure that the conditions under which a transport permit is granted is not diluted when the vehicle covered by the permit is sought to be replaced by a new vehicle. (Para 15) **Regional Transport Authority v. Shaju, [2022 LiveLaw \(SC\) 174](#) : 2022 (3) SCALE 554**

Motor Vehicles Act, 1988 - Section 83 - Kerala Motor Vehicle Rules,1989 - Rule 174(2)(c) - The vehicle which the Authority may not approve for replacement under section 83 on the ground that it is older than the vehicle covered under the permit, can be used as a transport vehicle within the State. There is no prohibition for such a usage as the said vehicle may continue to be fit and within the age limit prescribed by the Central Government. The rigour of Rule 174 (2) (c) is only in the context of a subsisting transport permit and not as a condition for transport vehicles as such. (Para 13.7) **Regional Transport Authority v. Shaju, [2022 LiveLaw \(SC\) 174](#) : 2022 (3) SCALE 554**

Motor Vehicles Act, 1988 - Section 83 - Kerala Motor Vehicle Rules,1989 - Rule 174(2)(c) - Replacement of a vehicle during the subsistence and continuation of a transport permit is only an incident in the working of a transport

permit. While addressing such an incident, the Authority cannot be oblivious of the history and background in which the permit is granted. (Para 21.2) **Regional Transport Authority v. Shaju**, [2022 LiveLaw \(SC\) 174](#) : 2022 (3) SCALE 554

Motor Vehicles Act, 1988 - Section 83 - The expression "same nature" is confined only to, mean "a bus by bus, a mini -bus by mini -bus and not bus by a minibus...." is not a correct way to read the provision. There is no need to restrict the meaning of an expression same nature - The phrase, of the same nature seen in the context of provisions proximate to Sections 83, relating to duration and renewals of permits (Section 81), transfer of permits (Section 82) lend clarity to the meaning of the expression. Same nature must necessarily relate to the same nature of the vehicle in the permit. The question to be asked is the nature of the vehicle under the permit. What kind of a vehicle was that? How was that connected to the permit granted? Does the new vehicle serve the same purpose as the old vehicle was serving under the permit? (Para 21.3, 13.4) **Regional Transport Authority v. Shaju**, [2022 LiveLaw \(SC\) 174](#) : 2022 (3) SCALE 554

Motor Vehicles Act, 1988 - The Madras High Court affirmed the findings recorded by the Motor Accidents Claim Tribunal, in respect of multiplier of 3 upto the date of superannuation and thereafter multiplier of 8 keeping in view the dependency of life for 10 years. Allowing appeal, the Supreme Court set aside the High Court judgment and held that the claimants are entitled to compensation of Rs. 24,33,064/- with interest @ 9% from the date of filing of the claim application till realisation. **R. Valli v. Tamil Nadu State Transport Corporation Ltd.**, [2022 LiveLaw \(SC\) 152](#) : AIR 2022 SC 1096 : (2022) 5 SCC 107

Motor Vehicles Act, 1988 - Whether a person holding a driving licence in respect of "light motor vehicle", could on the strength of that licence, be entitled to drive a "transport vehicle of light motor vehicle class" having unladen weight not exceeding 7500 kgs.? - Certain provisions were not noticed by the court in Mukund Dewangan v. Oriental Insurance Company Limited (2017) 14 SCC 663 - The controversy in question needs to be revisited - referred to larger bench of more than Three Judges. **Bajaj Alliance General Insurance v Rambha Devi**, [2022 LiveLaw \(SC\) 270](#) : 2022 (4) SCALE 554

Motor Vehicles Act 1988; Section 149 - The General Insurance Council and all insurance companies are directed to issue appropriate directions to follow the mandate of Section 149 of the M.V. Amendment Act and the amended Rules. **Gohar Mohammed v. Uttar Pradesh State Road Transport Corporation**, [2022 LiveLaw \(SC\) 1040](#)

Motor Vehicles Act, 1988; Section 159 - Supreme Court issues a slew of directions for immediate registration of First Accident Report by the Police immediately after a motor vehicle accident -The Court directed the Police department of all states to develop a specialized unit and post trained police officers in every police station within three months for the effective implementation of the MV Amendment Act and the Rules framed thereunder.

Gohar Mohammed v. Uttar Pradesh State Road Transport Corporation,
[2022 LiveLaw \(SC\) 1040](#)

Motor Vehicles Act, 1988; Section 166 - If the daughters of the deceased have not been impleaded as claimants, it is immaterial as the amount of compensation payable by the tortfeasor will not get enhanced because of the daughters being party to the claim application. It is since the daughters are married, the mother has not impleaded, the daughters as the claimants. It is not really of any consequence. (Para 11) ***Janabai Dinkarrao Ghorpade v. ICICI Lambord Insurance Company Ltd.,*** **[2022 LiveLaw \(SC\) 666](#)** : AIR 2022 SC 3731

Motor Vehicles Act, 1988; Section 166 - Rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 - It has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial. (Para 10) ***Janabai Dinkarrao Ghorpade v. ICICI Lambord Insurance Company Ltd.,*** **[2022 LiveLaw \(SC\) 666](#)** : AIR 2022 SC 3731

Motor Vehicles Act, 1988; Section 166 - The compensation under the head on account of loss of love and affection is not permissible but compensation on account of spousal consortium for wife and for the parental consortium for children is admissible. (Para 13) ***Janabai Dinkarrao Ghorpade v. ICICI Lambord Insurance Company Ltd.,*** **[2022 LiveLaw \(SC\) 666](#)** : AIR 2022 SC 3731

Motor Vehicles Act, 1988; Section 168 - Concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability - Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the applicant/s. (Para 10) ***Anjali v. Lokendra Rathod,*** **[2022 LiveLaw \(SC\) 1012](#)**

Motor Vehicles Act, 1988; Section 168 - Motor Accident Claims - compensation must be fair, reasonable and equitable. Further, the determination of quantum is a fact-dependent exercise which must be liberal and not parsimonious - Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking. [Paras 11, 12] ***K. Ramya v. National Insurance Co. Ltd.,*** **[2022 LiveLaw \(SC\) 816](#)** : AIR 2022 SC 4802

Motor Vehicles Act, 1988; Section 168 - Motor Accident Compensation Claims - While determining compensation under the Act, section 168 of the Act makes it imperative to grant compensation that appears to be just. The Act being a social welfare legislation operates through economic conception in the form of compensation, which renders way to corrective justice. Compensation acts as a fulcrum to bring equality between the wrongdoer and the victim, whenever the equality gets disturbed by the wrongdoer's harm to the victim. It

also endeavors to make good the human suffering to the extent possible and to also save families which have lost their breadwinners from being pushed to vagrancy. Adequate compensation is considered to be fair and equitable compensation. Courts shoulder the responsibility of deciding adequate compensation on a case-to-case basis. However, it is imperative for the courts to grant such compensation which has nexus to the actual loss. (Para 16) ***Manusha Sreekumar v. United India Insurance Co. Ltd;*** [2022 LiveLaw \(SC\) 858](#) : AIR 2022 SC 5161

Motor Vehicles Taxation Act, 1976

Motor Vehicles Taxation Act, 1976; Section 4(7), 4(8), 15 - Kerala Motor Transport Workers' Welfare Fund Act, 1985; Section 8A - Constitutional validity upheld -There is nothing wrong in State Legislature making it compulsory to pay outstanding welfare fund contribution first before accepting the vehicle tax which had become due and payable - These provisions are in no way in conflict with Motor Vehicles Act, 1988 - The real intent and purpose behind these provisions is to restate the mandate stated in the 1988 Act that the vehicle cannot be used on road without a valid permit and payment of vehicle tax up to date. (Para 40) ***All Kerala Distributors Association v. State of Kerala,*** [2022 LiveLaw \(SC\) 639](#)

Motor Vehicles Taxation Act, 1997 (U.P.) - Section 9 - The requirement under law is to first pay the tax in advance as provided under Section 9 and thereafter to use the vehicle - It is 'pay the tax and use' and not 'use and pay the tax'. (Para 9) ***Mahindra and Mahindra Financial Services Ltd. v. State of U.P.,*** [2022 LiveLaw \(SC\) 198](#) : AIR 2022 SC 1197 : (2022) 5 SCC 525

Motor Vehicles Taxation Act, 1997 (U.P.) - Sections 2(g), 2(h), 4, 9, 10, 12, 13, 14 and 20A - A financier of a motor vehicle/transport vehicle in respect of which a hire -purchase or lease or hypothecation agreement has been entered, is liable to tax from the date of taking possession of the said vehicle under the said agreement. (Para 12) ***Mahindra and Mahindra Financial Services Ltd. v. State of U.P.,*** [2022 LiveLaw \(SC\) 198](#) : AIR 2022 SC 1197 : (2022) 5 SCC 525

Motor Vehicles Taxation Act, 1997 (U.P.) - Sections 2(g), 2(h), 4, 9, 10, 12, 13, 14 and 20A - If, after the payment of tax, the vehicle is not used for a month or more, then such an owner may apply for refund under Section 12 of the Act, 1997 and has to comply with all the requirements for seeking the refund as mentioned in Section 12, and 26 on fulfilling and/or complying with all the conditions mentioned in Section 12(1), he may get the refund to the extent provided in sub -section (1) of Section 12, as even under Section 12(1), the owner / operator shall not be entitled to the full refund but shall be entitled to the refund of an amount equal to one -third of the rate of quarterly tax or one twelfth of the yearly tax, as the case may be, payable in respect of such vehicle for each thirty days of such period for which such tax has been paid. However, only in a case, which falls under sub -section (2) of Section 12 and subject to surrender of the necessary documents as mentioned in sub -section (2) of

Section 12, the liability to pay the tax shall not arise, otherwise the liability to pay the tax by such owner/operator shall continue. (Para 12) ***Mahindra and Mahindra Financial Services Ltd. v. State of U.P.***, [2022 LiveLaw \(SC\) 198](#) : AIR 2022 SC 1197 : (2022) 5 SCC 525

Municipal Corporation Act, 1888 (Mumbai)

Municipal Corporation Act, 1888 (Mumbai); Section 154 - Capital Value Rules - Rule 20 of the Capital Value Rules of 2010 and 2015 empower the Commissioner to consider the capability of the open land of utilizing more than 1 floor space index (FSI) or any transfer of development right (TDR), would go well beyond the permissible scope delineated by the provisions of Section 154 of the MMC Act - Rule 20 of the Capital Value Rules of 2010 and the Capital Value Rules of 2015 would be ultra vires the provisions of sub-Sections (1A) and (1B) of Section 154 of the MMC Act - There being no empowerment to compute and/or levy property tax with retrospective effect by the statute itself, the rule making power, in any view of the matter, could not have created a liability pertaining to the period well before the Rules came into effect. (Para 38-39) ***Municipal Corporation of Greater Mumbai v. Property Owners Association***, [2022 LiveLaw \(SC\) 927](#)

Municipal Corporation Act, 1888 (Mumbai); Section 154 - Imposition of property tax on the capital value - For the purpose of determining capital value, only the present physical attributes and status of the land and building can be considered and not the future prospects of the land - Statutory provisions do not contemplate any likelihood of exploitation of capacity in future - The capital value of the land and building must be based on situation "in presenti" - In projects which are in progress, the value addition to the property would be ongoing feature. (Para 36-40) ***Municipal Corporation of Greater Mumbai v. Property Owners Association***, [2022 LiveLaw \(SC\) 927](#)

Municipal Corporation Act, 1949 (Maharashtra)

Municipal Corporation Act, 1949 (Maharashtra); Section 39A - Appointment of the Additional Municipal Commissioners - State Government created post and made appointment, but for Kalyan Dombivali Municipal Corporation - Additional Municipal Commissioner to exercise power subject to the control of the Commissioner - Respondent no. 1 was an employee of the Kalyan Dombivali Municipal Corporation. ***Kalyan Dombivali Municipal Corporation v. Sanjay Gajanan Gharat***, [2022 LiveLaw \(SC\) 337](#) : AIR 2022 SC 1618

Municipal Corporation Act, 1949 (Maharashtra); Section 39A - Appointment of the Additional Municipal Commissioners - State Government created post and made appointment, but for Kalyan Dombivali Municipal Corporation - Additional Municipal Commissioner to exercise power subject to the control of the Commissioner - Respondent no. 1 was an employee of the Kalyan Dombivali Municipal Corporation. ***Kalyan Dombivali Municipal Corporation v. Sanjay Gajanan Gharat***, [2022 LiveLaw \(SC\) 337](#) : AIR 2022 SC 1618

Municipal Corporation Act, 1949 (Maharashtra); Section 56 - Imposition of

penalties on municipal officer and servants - the Commissioner was empowered to suspend any officer, whether appointed by the Corporation or any other competent authority - In case of 'post equivalent to or higher in rank than the post of Assistant Commissioner', in terms of Section 56(1)(a) it is required to take prior approval from the Corporation - When a Transport Manager or officers appointed under Section 45 of the MMC Act is suspended by the Commissioner they are to inform the Corporation, which is to confirm suspension within a period of six months or else the suspension would come to an end - the Commissioner of the Municipal Corporation will have the power to suspend or initiate departmental proceedings against an AMC, who is an officer superior in rank to the Assistant Commissioner. ***Kalyan Dombivali Municipal Corporation v. Sanjay Gajanan Gharat***, [2022 LiveLaw \(SC\) 337](#) : AIR 2022 SC 1618

Municipal Corporation Act, 1949 (Maharashtra); Section 56 - Imposition of penalties on municipal officer and servants - the Commissioner was empowered to suspend any officer, whether appointed by the Corporation or any other competent authority - In case of 'post equivalent to or higher in rank than the post of Assistant Commissioner', in terms of Section 56(1)(a) it is required to take prior approval from the Corporation - When a Transport Manager or officers appointed under Section 45 of the MMC Act is suspended by the Commissioner they are to inform the Corporation, which is to confirm suspension within a period of six months or else the suspension would come to an end - the Commissioner of the Municipal Corporation will have the power to suspend or initiate departmental proceedings against an AMC, who is an officer superior in rank to the Assistant Commissioner. ***Kalyan Dombivali Municipal Corporation v. Sanjay Gajanan Gharat***, [2022 LiveLaw \(SC\) 337](#) : AIR 2022 SC 1618

Municipal Corporation Act, 1957 (Delhi)

Municipal Corporation Act, 1957 (Delhi); Sections 42(f), 390 391 - Until and unless the conditions as mentioned in Section 391 are satisfied and it is specifically found that any burning or burial ground has become offensive, or dangerous to the health of the persons residing at neighbourhood, the burning and burial ground can be ordered to be closed with the previous sanction of the Standing Committee - Subsequent settlement of residents in city/town by itself not a ground to shift crematorium - It is the duty cast upon the Municipal Corporation to make provision for regulation of places for the disposal of dead and the provision of maintenance of said places is an obligatory function of Municipal Corporation. (Para 5-6) ***South Delhi Municipal Corporation v. Federation of Residents Welfare Association Vasant Kunj***, [2022 LiveLaw \(SC\) 883](#) : AIR 2022 SC 5409

Municipal Corporation Act, 1976 (Karnataka) - Karnataka Municipal Corporation (Election) Rules, 1979 - No legal or normative impediment for the State Election Commission to issue directions requiring disclosure of assets of the candidate, his/her spouse and dependent associates by way of affidavit -

Purity of election at all levels, be it election to the Union Parliament or a State Legislature or a Municipal Corporation or a Panchayat is a matter of national importance in which a uniform policy is desirable in the interest of all the States. A hypertechnical view of the omission to incorporate any specific provision in the KMC Election Rules, similar to the 1961 Rules, expressly requiring disclosure of assets, to condone dishonesty and corrupt practice would be against the spirit of the Constitution and public interest. (Para 70-74) **S. Rukmini Madegowda v. State Election Commission**, [2022 LiveLaw \(SC\) 766](#) : AIR 2022 SC 4347

Municipal Corporation Act, 1976 (Karnataka); Section 39 - The non-disclosure of assets would therefore, also amount to 'undue influence' and consequently to 'corrupt practices' under the KMC Act. (Para 62) **S. Rukmini Madegowda v. State Election Commission**, [2022 LiveLaw \(SC\) 766](#) : AIR 2022 SC 4347

Municipal Corporations Act, 1949 (Maharashtra); Sections 6, 6A, 20(3) Proviso - Standing Committee stands dissolved along with the completion of the term of the Corporation -The proviso cannot be read to mean that notwithstanding the expiration of the duration of a Corporation and thereby, termination of the term of office of the Councillors, there could still be any Standing Committee in existence. (Para 13-15) **Hemant Narayan Rasne v. Commissioner and Administrator of Pune Municipal Corporation**, [2022 LiveLaw \(SC\) 895](#)

Municipalities Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1998 (Chhattisgarh); Rule 7 - Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 - A Shiksha Karmi cannot claim parity in pay-scale with that of Municipal teachers on the principle of equal pay for equal work - They are governed by the Shiksha Karmis Rules, 1998 under which they were appointed, are entitled to pay-scales under the Shiksha Karmis Rules, 1998 only. (Para 7) **Dr. K.M. Sharma v. State of Chhattisgarh**, [2022 LiveLaw \(SC\) 512](#) : 2022 (9) SCALE 30

N

National Council for Teachers Education Regulations, 2014

National Council for Teachers Education Regulations, 2014; Rule 7(5) - Recognition of B.Ed Colleges - State is well within its right to make suitable recommendations - When the State Government is required to provide detailed reasons against grant of recognition with necessary statistics, it includes the need and/or requirement. Therefore, the State Government was well within its right to recommend and/or opine that the State Government is not in favour of

granting further recognition to the new B.Ed. colleges as against the need of annually 2500 teachers approximately 13000 students would be passing out every year, therefore, for the remaining students, there will be unemployment - The need of the new colleges looking to the requirement can be said to be a relevant consideration and a decision not to recommend further recognition to the new B.Ed. colleges on the need basis cannot be said to be arbitrary. (Para 8) **State of Uttarakhand v. Nalanda College of Education**, [2022 LiveLaw \(SC\) 943](#) : AIR 2022 SC 5681

National Food Security Act, 2013

National Food Security Act, 2013 - There is a paradigm shift in addressing the problem of food security from the current welfare approach to a right based approach. The Act confers legal right on the eligible beneficiaries to get the essential commodities through fair price shops at a highly subsidized price. The Act also envisages reforms necessary for distribution of essential commodities to the ration card holders - The Act is a social welfare legislation and its provisions are mandatory. (Para 15-20) **State of West Bengal v. Gitashree Dutta (Dey)**, [2022 LiveLaw \(SC\) 527](#)

National Green Tribunal Act, 2010

National Green Tribunal Act, 2010 - Appeal against NGT order that directed the State of Uttar Pradesh to not proceed with the proposal for establishment of new wood-based industries till an assessment of the actual availability of timber was done - Allowed - The Courts should not enter into an area that is the domain of the experts. FSI, an expert body, had arrived at its estimation based on the scientific method - NGT could not have sat in appeal over the opinion of the expert - While protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck - NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State which had emphasized many advantages of granting new licenses to WBIs - While setting aside NGT orders, the following directions are issued (1) while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. (2) The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years. **State of Uttar Pradesh v. Uday Education and Welfare Trust**, [2022 LiveLaw \(SC\) 868](#)

National Green Tribunal Act, 2010 - Establishment of NGT - The role of the NGT was not simply adjudicatory, but it also had the equally vital role which is preventive, ameliorative, or of the remedial category. (Para 6-10) **Madhya Pradesh High Court Advocates Bar Association v. Union of India**, [2022 LiveLaw \(SC\) 495](#) : AIR 2022 SC 2713

National Green Tribunal Act, 2010 – NGT cannot refuse to hear a challenge to an Environmental Clearance under Section 16(h) of the NGT Act and delegate the process of adjudicating on compliance to an expert committee. (Para 16) **Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat**, [2022 LiveLaw \(SC\) 124](#) : 2022 (2) SCALE 826

National Green Tribunal Act, 2010 – Section 14 and 15 - An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. **Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat**, [2022 LiveLaw \(SC\) 124](#) : 2022 (2) SCALE 826

National Green Tribunal Act, 2010 – Section 14 and 15 - Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees. (Para 16) **Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat**, [2022 LiveLaw \(SC\) 124](#) : 2022 (2) SCALE 826

National Green Tribunal Act, 2010 – Section 14 and 15 - Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. (Para 15) **Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat**, [2022 LiveLaw \(SC\) 124](#) : 2022 (2) SCALE 826

National Green Tribunal Act, 2010 – Section 14 and 15 - The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. (Para 16) **Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat**, [2022 LiveLaw \(SC\) 124](#) : 2022 (2) SCALE 826

National Green Tribunal Act, 2010 - When the credentials and bonafides of a litigant approaching the NGT are seriously raised, the same cannot be ignored. Before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the applicants must be tested. (Para 98-99) **State**

of Uttar Pradesh v. Uday Education and Welfare Trust, [2022 LiveLaw \(SC\) 868](#)

National Green Tribunal Act, 2010; Section 14 and 22 - NGT under Section 14 & 22 of the NGT Act does not oust the High Court's jurisdiction under Article 226 & 227 as the same is a part of the basic structure of the Constitution. (Para 38(A), 12-15) *Madhya Pradesh High Court Advocates Bar Association v. Union of India*, [2022 LiveLaw \(SC\) 495](#) : AIR 2022 SC 2713

National Green Tribunal Act, 2010; Section 22 - The remedy of direct appeal to the Supreme Court under Section 22 of the NGT Act is intra vires the Constitution of India - It cannot be seen as denial of access to justice to the litigants in the field of environmental law. (Para 38(B), 24-31) *Madhya Pradesh High Court Advocates Bar Association v. Union of India*, [2022 LiveLaw \(SC\) 495](#) : AIR 2022 SC 2713

National Green Tribunal Act, 2010; Section 3 - Establishment of NGT - Constitutional validity upheld - Section 3 of the NGT Act is not a case of excessive delegation of power to the Central Government. (Para 38(C), 32-37) *Madhya Pradesh High Court Advocates Bar Association v. Union of India*, [2022 LiveLaw \(SC\) 495](#) : AIR 2022 SC 2713

National Green Tribunal Act, 2010; Section 3, 4 - The seat of the NGT benches can be located as per Page 37 of 37 exigencies and it is not necessary to locate them in every State - Prayer for relocating the Bhopal NGT to Jabalpur is unmerited and is rejected. (Para 38(D), 16-23) *Madhya Pradesh High Court Advocates Bar Association v. Union of India*, [2022 LiveLaw \(SC\) 495](#) : AIR 2022 SC 2713

National Green Tribunal Act, 2010; Section 4 - NGT (Practice and Procedure) Rules, 2011; Rule 3 - In view of the proviso to Section 4(4)(c) of the NGT Act 2010 which states that the number of expert members hearing the appeal or application shall be equal to the number of judicial members, mandating that there shall be at least one expert member on the Bench. *Talli Gram Panchayat v. Union of India*, [2022 LiveLaw \(SC\) 614](#)

National Health Mission

National Health Mission - Ayurvedic doctors will be entitled to be treated at par with Allopathic Medical Officers and Dental Medical Officers under the National Rural Health Mission (NRHM/NHM) Scheme - Upheld Uttarakhand High Court judgment that under the NRHM/NHM Scheme, Ayurvedic Doctors will be entitled to parity in salary with Allopathic Medical Officers and Dental Medical Officers. *State of Uttarakhand v. Sanjay Singh Chauhan*, [2022 LiveLaw \(SC\) 320](#)

National Highways Act, 1956

National Highways Act, 1956; Section 3G(5) - While examining the award within the parameters permissible under Section 34 of the Arbitration and Conciliation Act, 1996 and while examining the determination of compensation

as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the award for the ultimate conclusion. (Para 24) **National Highways Authority of India v. P. Nagaraju @ Cheluvaiah**, [2022 LiveLaw \(SC\) 584](#) : 2022 (9) SCALE 823

National Medical Commission

National Medical Commission (Foreign Medical Graduate Licentiate) Regulations 2021; Regulations 4(a)(i), 4(a)(ii), 4(b) & 4(c) - National Medical Commission (Compulsory Rotating Medical Internship) Regulations, 2021; Schedule -II 2(a) and 2(c)(i) - Constitutional validity upheld - NMC has the power to frame the Regulations - Regulations not arbitrary - Not necessary for the NMC and the Central Government to recognise foreign medical degrees of a lesser duration - The prescription of an internship for a minimum duration of 12 months in the same foreign medical institution cannot also be said to be a duplication of internships. **Aravindh R.A. v. Secretary to Government of India, [2022 LiveLaw \(SC\) 473](#)**

National Security Act, 1980

National Security Act, 1980 - Section 8 - The failure of the Central and the State governments to communicate the rejection of the representation in a time bound manner would vitiate the order of detention. (Para 10) **Devesh Chourasia v. District Magistrate**, [2022 LiveLaw \(SC\) 122](#) : 2022 (2) SCALE 330

Natural Justice

Natural Justice - It is well known that natural justice is the sworn enemy of unfairness - It is expected of the Courts to be cautious and afford a reasonable opportunity to parties, especially in commercial matters having a serious impact on the economy and employment of thousands of people. (Para 37) **Future Coupons Pvt. Ltd. v. Amazon.com NV Investment Holdings LLC**, [2022 LiveLaw \(SC\) 114](#) : (2022) 6 SCC 121

Natural Justice - Principles of - Quasi Judicial Authority - A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication - An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority - The actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure. (Para 39) **T. Takano v. Securities and Exchange Board of India**, [2022 LiveLaw \(SC\) 180](#) : AIR 2022 SC 1153 : (2022) 8 SCC 162

Natural Justice - Principles of - Quasi Judicial Authority - The disclosure of material serves a three - fold purpose of decreasing the error in the verdict,

protecting the fairness of the proceedings, and enhancing the transparency of the investigatory bodies and judicial institutions. (Para 51) **T. Takano v. Securities and Exchange Board of India**, [2022 LiveLaw \(SC\) 180](#) : AIR 2022 SC 1153 : (2022) 8 SCC 162

Natural Justice - The principles of natural justice is a part of the mandate of Article 14 itself - An exception to the principle would be a case where it is entirely futile to provide an opportunity. (Para 16) **Jayashree v. Director Collegiate Education**, [2022 LiveLaw \(SC\) 237](#) : 2022 (4) SCALE 267

NEET

NEET - Post Graduate Medical Courses - Admission - The schedule for admission to the post-graduate medical courses must be followed strictly leaving no discretion to any authority to permit admissions over the cut-off date under schedule for admission to post-graduate medical courses. (Para 20) **Board of Governors of Medical Council of India v. Dr. Priyambada Sharma**, [2022 LiveLaw \(SC\) 855](#)

NEET - The validity of the OBC reservation in the AIQ seats in NEET-PG and NEET-UG is upheld - Operative directions issued - Counselling on the basis of NEET-PG 2021 and NEET- UG 2021 shall be conducted by giving effect to the reservation as provided by the notice dated 29 July 2021, including the 27 per cent reservation for the OBC category and 10 per cent reservation for EWS category in the AIQ seats - The criteria for the determination of the EWS notified by OM 2019 shall be used for identifying the EWS category for candidates who appeared for the NEET-PG 2021 and NEET-UG 2021 examinations. (Para 6, 7) **Neil Aurelio Nunes v. Union of India**, [2022 LiveLaw \(SC\) 17](#) : (2022) 4 SCC 95

NEET Admissions - Court cannot issue a mandamus directing the respondent to conduct admissions through institutional preference. The decision of whether or not to provide institutional preference solely lies with the respondent-authority since it falls within the realm of policy. (Para 9) **Hemant Kumar Verma v. Employee State Insurance Corporation**, [2022 LiveLaw \(SC\) 641](#)

NEET In-Service Quota - Junior Resident Doctors serving in Employee State Insurance Corporation (ESIC) run hospitals as part of their bond period cannot claim 50% in-service quota for Post Graduate courses at par with Insurance Medical Officers-There is a clear distinction in law between junior resident doctors and regularly recruited ESIC doctors. The in-service quota is, therefore, justifiably made available to the latter category. The petitioners cannot claim parity with regularly recruited insurance medical officers in seeking the benefit of the in-service quota. (Para 10) **Hemant Kumar Verma v. Employee State Insurance Corporation**, [2022 LiveLaw \(SC\) 641](#)

NEET-PG - Plea to postpone NEET-PG 2022 scheduled for May 21 rejected - Postponement will create chaos and uncertainty and will impact patient care and will cause prejudice to over 2 lakh students who have prepared. **Dr. R.**

***Dinesh Kumar Reddy v. Medical Counselling Committee*, [2022 LiveLaw \(SC\) 486](#) : AIR 2022 SC 2306**

NEET-PG 2021 - The decision of the Union Government and the Medical Counselling Committee not to have Special Stray Round of counselling is in the interest of Medical Education and Public Health. There cannot be any compromise with the merits and/or quality of Medical Education, which may ultimately affect the Public Health. (Para 10.4) ***Astha Goel v. Medical Counselling Committee*, [2022 LiveLaw \(SC\) 548](#) : AIR 2022 SC 2766**

Newspaper Reports

Newspaper Reports - Courts cannot take judicial notice of facts stated in a news item published in a newspaper. A statement of fact contained in a newspaper is merely hearsay and therefore, inadmissible in evidence, unless proved by the maker of the statement appearing in court and deposing to have perceived the fact reported. (Para 70) ***Jacob Puliyel v. Union of India*, [2022 LiveLaw \(SC\) 439](#) : 2022 (7) SCALE 256**



One Time Settlement Scheme - The borrower as a matter of right cannot claim that though it has not made the payment as per the sanctioned OTS Scheme still it be granted further extension as a matter of right - Bank mutually can agree to extend the time which is permissible under Section 62 of the 18 Indian Contract Act. ***State Bank of India v. Arvindra Electronics Pvt. Ltd.*, [2022 LiveLaw \(SC\) 908](#) : AIR 2022 SC 5517**

Orders - Conditional Order - CAT while setting aside disciplinary proceedings directed the disciplinary authority to complete the fresh proceedings within two months - The fresh proceedings was not completed within this stipulated time and an order was passed by the authority later - CAT rejected employee's challenge against this order - Allowing writ petition filed by employee, the High Court held that Disciplinary Authority had no jurisdiction or authority to complete the proceedings beyond the period prescribed by the Tribunal - Allowing appeal, Supreme Court observed: While treating the proceedings as having abated and as nullity, the High Court has ignored the fundamental principles that fixing of such time period was only a matter of procedure with an expectation of conclusion of the proceedings in an expeditious manner. This period of two months had not acquired any such mandatory statutory character so as to nullify the entire of the disciplinary proceedings with its expiry. ***Union of India v. Sharvan Kumar*, [2022 LiveLaw \(SC\) 595](#)**

Orders - Conditional Order - When a conditional order is passed by the Court/Tribunal to do a particular act or thing within a particular period but the

order does not provide anything as to the consequence of default, the Court/Tribunal fixing the time for doing a particular thing obviously retains the power to enlarge such time. As a corollary, even the Appellate Court/Tribunal or any higher forum would also be having the power to enlarge such time, if so required. In any case, it cannot be said that the proceedings would come to an end immediately after the expiry of the time fixed. (Para 9.2) **Union of India v. Sharvan Kumar**, [2022 LiveLaw \(SC\) 595](#)

Orissa Entry Tax Act, 1999 - U.P. Industrial Area Development Act, 1976 - UP Entry Tax Act, 2007 - Inclusion of industrial townships within the definition of the local area - Constitutional Validity upheld - The object of the levy, i.e., entry tax, is the regulation of entry of goods in a regular area for consumption, i.e., manufacture, use or sale. There is no dispute that entry of goods into an industrial area or estate is for their use for manufacturing or for processing or for the purposes of their delivery as their ultimate point of destination, i.e. for the purpose of their "consumption, use or sale" within that area. It could even be that the goods enter within the industrial area or estate, as the ultimate point of destination for their use. In any case, the levy would be attracted because the incidence is the entry into the local area. (Para 48) **OCL India Ltd. v. State of Orissa**, [2022 LiveLaw \(SC\) 911](#) : AIR 2022 SC 5609

Panchayat Raj (Maintenance of Family Register) Rules, 1970 (U.P.) - Family register does not only contain date of birth but also keeps the records of any additions in the family, though the evidentiary value needs to be examined in each case - It is a question of fact as to how much evidentiary value is to be attached to the family register, but to say that it is entirely not relevant would not be the correct enunciation of law. The register is being maintained in accordance with the rules framed under a statute. (Para 35 -36) **Manoj @ Monu @ Vishal Chaudhary v. State of Haryana**, [2022 LiveLaw \(SC\) 170](#) : AIR 2022 SC 1060 : (2022) 6 SCC 187

Panchayat Raj Act, 1994 (Kerala); Section 102(1)(ca) - The failure to make a true disclosure in Form 2A, regarding the past conviction, will certainly come within the meaning of the word 'fake', mentioned in Section 102 (1)(ca) - A person having criminal antecedents, poses himself to be one without any such antecedent, when he fails to make a true disclosure. In law, he passes off or comes out as a person without any criminal antecedent. (Para 33) **Ravi Namboothiri v. K.A. Baiju**, [2022 LiveLaw \(SC\) 933](#)

Panchayat Raj Act, 1994 (Kerala); Section 52(1A) - The words "involvement in a criminal case at the time of filing of the nomination" would only mean (i) cases where a criminal complaint is pending investigation/trial; (ii) cases where the conviction and/or sentence is current at the time of filing of the nomination; and (iii) cases where the conviction is the subject matter of any appeal or revision pending at the time of the nomination. (Para 37) **Ravi Namboothiri v. K.A. Baiju**, [2022 LiveLaw \(SC\) 933](#)

Panchayat Raj Act, 1994 (Kerala); Section 52(1A) and 102(1) - Police Act, 1960 (Kerala); Sections 38 and 52 - The failure of the elected candidate to

disclose (in nomination form) his conviction for an offence under the Kerala Police Act for holding a dharna in front of the Panchayat office, cannot be taken as a ground for declaring an election void. (Para 46) **Ravi Namboothiri v. K.A. Baiju**, [2022 LiveLaw \(SC\) 933](#)

Partition - It is not always necessary for a plaintiff in a suit for partition to seek the cancellation of the alienations- Alienees as well as the cosharer are still entitled to sustain the alienation to the extent of the share of the co-sharer. It may also be open to the alienee, in the final decree proceedings, to seek the allotment of the transferred property, to the share of the transferor, so that equities are worked out in a fair manner. (Para 15) **Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese**, [2022 LiveLaw \(SC\) 338](#) : AIR 2022 SC 1640 : (2022) 7 SCC 90

Partition - It is not always necessary for a plaintiff in a suit for partition to seek the cancellation of the alienations- Alienees as well as the cosharer are still entitled to sustain the alienation to the extent of the share of the co-sharer. It may also be open to the alienee, in the final decree proceedings, to seek the allotment of the transferred property, to the share of the transferor, so that equities are worked out in a fair manner. (Para 15) **Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese**, [2022 LiveLaw \(SC\) 338](#) : AIR 2022 SC 1640 : (2022) 7 SCC 90

Partition - it is not the law that a co -owner cannot acquire his own independent or separate properties. (Para 29) **B.R. Patil v. Talsa Y. Sawkar**, [2022 LiveLaw \(SC\) 165](#) : 2022 (4) SCALE 122

Partition - Ouster - The possession of a co -owner however long it may be, hardly by itself, will constitute ouster. In the case of a co -owner, it is presumed that he possesses the property on behalf of the entire body of co -owners. Even non -participation of rent and profits by itself need not amount to ouster. The proof of the ingredients of adverse possession are undoubtedly indispensable even in a plea of ouster. However, there is the additional requirement in the case of ouster that the elements of adverse possession must be shown to have been made known to the co -owner. This is apparently for the reason that the possession of a co -owner is treated as possession of other co -owners. While it may be true that it may not be necessary to actually drive out the co -owner from the property - Mere continuance in the possession of a co -owner does not suffice to set up a plea of ouster. The possession of the co -owner will also be referable to lawful title. (Para 24) **B.R. Patil v. Talsa Y. Sawkar**, [2022 LiveLaw \(SC\) 165](#) : 2022 (4) SCALE 122

Partition - Properties not in the possession of co -sharers/coparceners being omitted cannot result in a suit for the partition of the properties which are in their possession being rejected. (Para 11) **B.R. Patil v. Talsa Y. Sawkar**, [2022 LiveLaw \(SC\) 165](#) : 2022 (4) SCALE 122

Partition - The law looks with disfavor upon properties being partitioned partially. The principle that there cannot be a partial partition is not an absolute

one. It admits of exceptions. (Para 10) ***B.R. Patil v. Talsa Y. Sawkar***, [2022 LiveLaw \(SC\) 165](#) : 2022 (4) SCALE 122

Partition Suit - In a suit for partition, the position of the plaintiff and the defendant can be interchangeable. Each party adopts the same position with the other parties - So long as the suit is pending, a defendant can ask the Court to transpose him as a plaintiff and a plaintiff can ask for being transposed as a defendant. (Para 12) ***Azgar Barid v. Mazambi @ Pyaremabi***, [2022 LiveLaw \(SC\) 193](#) : AIR 2022 SC 1304 : (2022) 5 SCC 334

Partition Suit - Plaintiff is not disentitled to relief in the second appeal merely on the ground that they have not challenged the judgment and decree of the trial court which denied their claims before the First Appellate Court. ***Azgar Barid v. Mazambi @ Pyaremabi***, [2022 LiveLaw \(SC\) 193](#) : AIR 2022 SC 1304 : (2022) 5 SCC 334

Partnership Act, 1932 - Section 30(5) - Sub -Section (5) of Section 30 shall not be applicable to a minor partner who was not a partner at the time of his attaining the majority and, thereafter, he shall not be liable for any past dues of the partnership firm when he was a partner being a minor. (Para 6) ***State of Kerala v. Laxmi Vasanth***, [2022 LiveLaw \(SC\) 166](#)

Partnership Act, 1932 - Section 30(5) - Sub -Section (5) of Section 30 shall be applicable only in a case where a minor was inducted as a partner and thereafter at the time of attaining the majority he continued as a partner in that case such a partner who has been continued is required to give six months' notice as provided under sub -Section (5) of Section 30. If such a person who has been continued as a partner at the time of attaining the majority does not give six months notice as per sub -Section (5) of Section 30, in that case, he is deemed to have been and/or he shall be continued or treated to have been continued as a partner and the consequences and the liability as per sub -Section (7) of Section 30 shall follow. (Para 6) ***State of Kerala v. Laxmi Vasanth***, [2022 LiveLaw \(SC\) 166](#)

Partnership Act, 1932 - To attract the bar of Section 69(2) of the Act of 1932, the contract in question must be the one entered into by firm with the third-party defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings; and that Section 69(2) of the Act of 1932 is not a bar to a suit filed by an unregistered firm, if the same is for enforcement of a statutory right or a common law right. (Para 15) ***Shiv Developers v. Aksharay Developers***, [2022 LiveLaw \(SC\) 104](#) : AIR 2022 SC 772

Payment of Gratuity Act, 1972 - Anganwadi centres - Right of Children to Free and Compulsory Education Act, 2009; Section 11 - The activity of running a preschool for the children in the age group of 3 to 6 years is purely an educational activity. The job of teaching is done by AWWs and AWHs. The State Government is running pre-schools in Anganwadi centres in accordance with Section 11 of the RTE Act. (Para 30) ***Maniben Maganbhai Bhariya v.***

District Development Officer Dahod, [2022 LiveLaw \(SC\) 408](#) : AIR 2022 SC 2119

Payment of Gratuity Act, 1972 - The 1972 Act will apply to Anganwadi centres and in turn to Anganwadi workers (AWW) and Anganwadi helpers. (Para 31) **Maniben Maganbhai Bhariya v. District Development Officer Dahod, [2022 LiveLaw \(SC\) 408](#) : AIR 2022 SC 2119**

Payment of Gratuity Act, 1972; Section 2(s) - 'Wages' - Ad hoc payment made pursuant to the interim orders passed by Court does not form part of "wages" within the meaning of the expression under Section 2(s) of the Payment of Gratuity Act, 1972 for the purpose of calculating gratuity. (Para 17-22) **Fertilizer Corporation of India Ltd. v. Rajesh Chandra Shrivastava, [2022 LiveLaw \(SC\) 351](#) : AIR 2022 SC 1707**

Payment of Gratuity Act, 1972; Section 3(1)(b) - Anganwadi centres are establishments contemplated by clause (b) of sub-section (3) of Section 1 of the 1972 Act - 'Establishments' contemplated by clause (b) can be establishments within the meaning of any law for the time being in force in a State in relation to establishments. (Para 24) **Maniben Maganbhai Bhariya v. District Development Officer Dahod, [2022 LiveLaw \(SC\) 408](#) : AIR 2022 SC 2119**

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Payment of Gratuity Act, 1972

Payment of Gratuity Act, 1972; Sections 2(e) and 13A - Payment of Gratuity (Amendment) Act, 2009 - Constitutional validity of the amendment to Section 2(e) and insertion of Section 13A upheld - The amendment with retrospective effect is to make the benevolent provisions equally applicable to teachers - It seeks to bring equality and give fair treatment to the teachers. **Independent Schools Federation of India v. Union of India, [2022 LiveLaw \(SC\) 719](#) : 2022 (12) SCALE 463**

Pleadings

Pleadings - Fraud must be specifically pleaded - Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. (Para 7.8) **C.S. Ramaswamy v. V.K. Senthil, [2022 LiveLaw \(SC\) 822](#) : AIR 2022 SC 4724**

Pleadings - Misquoting or non-quoting of a provision by itself will not make an order bad so long as the relevant enabling provision is in existence and it was

correctly applied though without specifically mentioning it. (Para 25) **Sukhbiri Devi v. Union of India**, [2022 LiveLaw \(SC\) 810](#) : AIR 2022 SC 5058

Policy Decisions

Policy Decisions - A greater free play in the joints must be accorded to decisions of economic policy where the legislature or the executive is called upon to make complex choices which cannot always conform to a straitjacket or doctrinaire solution. (Para 58) **Loop Telecom and Trading Ltd. v. Union of India**, [2022 LiveLaw \(SC\) 238](#) : AIR 2022 SC 1441 : (2022) 6 SCC 762

Possession

Possession - Three types of possession - One as that of an owner, including co-owners; second as a tenant, when a right is created in the property; and thirdly permissive possession, the possession which otherwise would be illegal or that of as a trespasser. (Para 12) **Samarpan Varishtha Jan Parisar v. Rajendra Prasad Agarwal**, [2022 LiveLaw \(SC\) 460](#) : AIR 2022 SC 2209

Power of Attorney

Power of Attorney - The possession of an agent under a deed of Power of Attorney is also the possession of the Principal and that any unauthorized sale made by the agent will not tantamount to the Principal parting with possession. (Para 14) **Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese**, [2022 LiveLaw \(SC\) 338](#) : AIR 2022 SC 1640 : (2022) 7 SCC 90

Power of Attorney - The power to sell is not to be inferred from a document of Power of Attorney - Ordinarily a Power of Attorney is to be construed strictly by the Court - Cannot amplify or magnify the clauses contained in the deed of Power of Attorney - The document should expressly authorize the agent, (i) to execute a sale deed; (ii) to present it for registration; and (iii) to admit execution before the Registering Authority. (Para 9, 17-18) **Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese**, [2022 LiveLaw \(SC\) 338](#) : AIR 2022 SC 1640 : (2022) 7 SCC 90

Power Purchase Agreement

Power Purchase Agreement - Supreme Court holds that Uttar Haryana Bijli Vitran Nigam Ltd needs to pay compounded interest to Adani Power limited, on account of "change in law". **Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd.**, [2022 LiveLaw \(SC\) 711](#)

Practice and Procedure

Practice and Procedure - Party having the right of consideration of appeal does not have any corresponding right to insist for consideration of the appeal by a forum which is no longer in existence. **Abhyudaya Kumar Shahi v. Bharat Pradhan Filling Centre**, [2022 LiveLaw \(SC\) 625](#) : (2022) 6 SCC 522

Practice and Procedure - Appeal against Gujarat HC order in a dispute between Adani Ports Special Economic Zone Ltd (APSEZL) and Central Warehousing Corporation - Allowed - When an issue involved the balancing of

interests of a statutory Corporation and a private company, the approach of the High Court ought to have been a balanced one. The High Court ought to have taken into consideration that, unless all the three conditions were complied with, the interest of the appellant-CWC, which is a statutory Corporation, could not have been safeguarded. If a settlement was to be arrived at, unless the same was found to be in the interest of both the parties, it could not have been thrust upon a statutory Corporation to its detriment and to the advantage of a private entity. **Central Warehouse Corporation v. Adani Ports Special Economic Zone Ltd. (APSEZL)**, [2022 LiveLaw \(SC\) 839](#)

Practice and Procedure - Appeal against the High Court judgment which allowed writ petition answering only one issue, though four other issues were raised - Allowed - Remanded the matter to the Single Judge for deciding the writ petitions afresh and to adjudicate on all the other issues. **Agricultural Produce Marketing Committee Bangalore v. State of Karnataka**, [2022 LiveLaw \(SC\) 307](#) : (2022) 7 SCC 796

Practice and Procedure - Courts have to adjudicate on all the issues raised in a case and render findings and the judgment on all the issues involved - Adopting a shortcut approach and pronouncing the judgment on only one issue, would increase the burden on the appellate court and in many cases if the decision on the issue decided is found to be erroneous and on other issues there is no adjudication and no findings recorded by the court, the appellate court will have no option but to remand the matter for its fresh decision. (Para 8.4) **Agricultural Produce Marketing Committee Bangalore v. State of Karnataka**, [2022 LiveLaw \(SC\) 307](#) : (2022) 7 SCC 796

Practice and Procedure - Difference between expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute- The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them- Courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or mala fide. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory

for all stakeholders. (Para 14) **Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat**, [2022 LiveLaw \(SC\) 124](#) : 2022 (2) SCALE 826

Practice and Procedure - Even after more than three months from pronouncement of the order by the High Court, the reasons are not forthcoming and are not available with either of the parties - A party to the litigation cannot be expected to wait indefinitely for availability of the reasons for the order of the Court - Referred to *Anil Rai v. State of Bihar* (2001) 7 SCC 318 and *State of Punjab and Others v. Jagdev Singh Talwandi* (1984) 1 SCC 596 - Guidelines and observations therein remain fundamental to the course of dispensation of justice in any cause before the Court and the principle set out therein need to be applied with necessary variation, as may be necessary in the given fact situation of any particular case. **K. Madan Mohan Rao v. Bheemrao Baswanthrao Patil**, [2022 LiveLaw \(SC\) 803](#)

Practice and Procedure - Forum shopping - Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law. (Para 7-10) **Vijay Kumar Ghai v. State of West Bengal**, [2022 LiveLaw \(SC\) 305](#) : (2022) 7 SCC 124

Practice and Procedure - Frivolous appeals being filed against unappealable orders wasting precious judicial time - The courts in India are already over-burdened with huge pendency. Such unwarranted proceedings at the behest of the parties who can afford to bear the expenses of such litigations must be discouraged. (Para 37) **Shyam Sel and Power Ltd. v. Shyam Steel Industries Ltd.**; [2022 LiveLaw \(SC\) 282](#) : 2022 (4) SCALE 720

Practice and Procedure - Growing tendency of indirectly seeking review of the orders by filing applications either seeking modification or clarification of the orders - A total abuse of process of law - The valuable time of Court is spent in deciding such applications which time would otherwise be utilized for attending litigations of the litigants who are waiting in the corridors of justice for decades together - 10 Lakhs costs imposed on each applicants. (Para 4-6) **Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.**, [2022 LiveLaw \(SC\) 771](#)

Practice and Procedure - In some High Courts, a practice is followed, that whenever a Judicial Officer having good track record tenders his/her resignation, an attempt is made by the Senior Judges of the High Court to counsel and persuade him/her to withdraw the resignation. Valuable time and money is spent on training of a Judicial Officer. Losing a good Judicial Officer without counselling him/her and without giving him/her an opportunity to introspect and re-think, will not be in the interest of either the Judicial Officer or the Judiciary - It will be in the interest of judiciary that such a practice is followed by all the High Courts. (Para 86) **Ms. X v. Registrar General**, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Practice and Procedure - Interim order - In matters involving challenge to the constitutionality of a legislation or a rule, the Court must be wary to pass an

interim order, unless the Court is convinced that the rules are prima facie arbitrary. (Para 30) **Neil Aurelio Nunes v. Union of India**, [2022 LiveLaw \(SC\) 73](#) : (2022) 4 SCC 1

Practice and Procedure - It does not augur well for the Union of India to speak in two contradictory voices. The two departments of the Union of India cannot be permitted to take stands which are diagonally opposite - Union of India to evolve a mechanism to ensure that whenever such conflicting stands are taken by different departments, they should be resolved at the governmental level itself. (Para 52-53) **Central Warehouse Corporation v. Adani Ports Special Economic Zone Ltd. (APSEZL)**, [2022 LiveLaw \(SC\) 839](#)

Practice and Procedure - It is time that the authorities stop filing unnecessary special leave petitions only with the objective of attaining some kind of a final dismissal from this Court every time. **Inspector General of Registration v. G. Madhurambal**, [2022 LiveLaw \(SC\) 969](#)

Practice and Procedure - Judge who passed the impugned order had represented one of the opposite parties in certain collateral proceedings related to the subject property - Not only must justice be done; it must also be seen to be done" - In the present circumstances, it may have been more apposite for the concerned Judge to have recused from this case - The appellant should have brought it to the notice of the learned senior Judge at the very first instance, and not at this belated stage. (Para 38-39) **My Palace Mutually Aided Cooperative Society v. B. Mahesh**, [2022 LiveLaw \(SC\) 698](#) : 2022 (12) SCALE 230

Practice and Procedure - Judgment must have clarity on exact relief granted so as to avoid difficulty in execution. **Pramina Devi v. State of Jharkhand**, [2022 LiveLaw \(SC\) 273](#) : (2022) 6 SCC 581

Practice and Procedure - Long standing and consistent practice followed on the Original Side of the Bombay High Court - The advocates serve a notice of the proceedings filed in the Court even before it comes up before the Court - The Court acts upon such service effected by the advocate on proof thereof being produced in the form of an affidavit of service. (Para 8) **Mohammed Masroor Shaikh v. Bharat Bhushan Gupta**, [2022 LiveLaw \(SC\) 120](#) : AIR 2022 SC 1126 : (2022) 4 SCC 156

Practice and Procedure - Nowadays, there is a tendency to make such allegations against the judicial Officers whenever the orders are passed against a litigant and the orders are not liked by the concerned litigant. We deprecate such a practice. If such a practice is continued, it will ultimately demoralize the judicial officer. In fact, such an allegation can be said to be obstructing the administration of justice. **Anupam Ghosh v. Faiz Mohammed**, [2022 LiveLaw \(SC\) 751](#)

Practice and Procedure - Ordinarily, before passing any order for expeditious proceedings in a particular case, it would be appropriate for the higher Court to appreciate that any such order for one case, without cogent and extremely

compelling reasons, might upset the calendar and schedule of the subordinate Court; might result in assigning an unwarranted priority to that particular case over and above other cases pending in that Court; and progression of such other cases might suffer for no reason and none of the faults of the litigants involved therein. Moreover, such petitions, even when moved before the higher Court, need to be examined from all angles. (Para 4, 5) ***M. Gopalakrishnan v. Pasumpon Muthuramalingam***, [2022 LiveLaw \(SC\) 298](#)

Practice and Procedure - Practice of pronouncing the final orders without a reasoned judgment has to be stopped and discouraged. ***Indrajeet Yadav v. Santosh Singh***, [2022 LiveLaw \(SC\) 386](#) : AIR 2022 SC 1941

Practice and Procedure - Procedure adopted by the High Court which, on the 'special mentioning' made by the Additional Public Prosecutor, directed transfer of the cases/final reports filed/pending in the Special Courts exclusively to deal with the Land Grabbing Cases to the respective jurisdictional Courts is unknown to law - The practice of passing such orders on a 'special mentioning' that too, in a disposed of matter is to be deprecated. (Para 4) ***Registrar General v. State***, [2022 LiveLaw \(SC\) 204](#) : 2022 (5) SCALE 215

Practice and Procedure - Sealed Cover Procedure - The disclosure of relevant material to the adjudicating authority in a sealed cover sets a dangerous precedent and makes the process of adjudication vague and opaque - All material which is relied upon by either party in the course of a judicial proceeding must be disclosed - The measure of non - disclosure of sensitive information in exceptional circumstances must be proportionate to the purpose that the non-disclosure seeks to serve. The exceptions should not, however, become the norm. (Para 27, 28) ***Cdr Amit Kumar Sharma v. Union of India***, [2022 LiveLaw \(SC\) 951](#)

Practice and Procedure - Special Leave Petitions - Whenever documents/ additional documents are to be relied upon are to be produced and as far as possible, they must be filed along with the Special Leave Petition. If for any reason the same have not been filed along with the Special Leave Petition then in that case the same shall be filed well in advance before the Special Leave Petitions are heard by the Courts. By not filing the application for additional documents at the time of filing the Special Leave Petition but filing the same at the last moment and on the previous day of the posting of the Special Leave Petition and many a time late in the evening causes great inconvenience to the Court. (Para 2-4) ***Priyashi Aashi Developers Pvt. Ltd. v. Mitrajyoti Deka***, [2022 LiveLaw \(SC\) 231](#)

Practice and Procedure - Stay of Legislation - Stay of legislation can only be when the Court is of the opinion that it is manifestly unjust or glaringly unconstitutional - Sufficient reasons should be given for staying legislations. ***State of Haryana v. Faridabad Industries Association***, [2022 LiveLaw \(SC\) 178](#)

Practice and Procedure - The Delhi High Court made certain remarks on 'Make In India' while disposing a writ petition which it did not decide on merits - Partly allowing the appeal filed by Union of India, the Supreme Court expunged those remarks and observed: On the basis of a solitary case, general observations could not have been made by the High Court that the Indian bidders are being discriminated against. ***Union of India v. Bharat Fritz Werner Ltd.***, [2022 LiveLaw \(SC\) 175](#) : 2022 (3) SCALE 552

Practice and Procedure - The hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. If the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts. (Para 29) ***Shyam Sel and Power Ltd. v. Shyam Steel Industries Ltd.***; [2022 LiveLaw \(SC\) 282](#) : 2022 (4) SCALE 720

Practice and Procedure - The High Courts not to make general observations which are not warranted in the case. The High Courts shall refrain from making sweeping observations which are beyond the contours of the controversy and/or issues before them. (Para 3) ***Union of India v. Bharat Fritz Werner Ltd.***, [2022 LiveLaw \(SC\) 175](#) : 2022 (3) SCALE 552

Practice and Procedure - Whenever an order is struck down as invalid being in violation of the principles of natural justice, there is no final decision of the case and fresh proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect. Such proceedings are not terminated and are usually remitted back. ***Future Coupons Pvt. Ltd. v. Amazon.com NV Investment Holdings LLC***, [2022 LiveLaw \(SC\) 114](#) : (2022) 6 SCC 121

Practice and Procedure - Where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. (Para 14-17) ***Union of India v. Mahendra Singh***, [2022 LiveLaw \(SC\) 630](#)

Precedent

Precedent - A judgment cannot be interpreted and applied to fact situations by reading it as a statute. One cannot pick up a word or sentence from a judgment to construe that it is the ratio decidendi on the relevant aspects of the case. (Para 7) ***Balkrishna Rama Tarle v. Phoenix ARC Pvt. Ltd.***, [2022 LiveLaw \(SC\) 799](#) : AIR 2022 SC 4756

Precedent - A judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. (Para 79) ***Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.***, [2022 LiveLaw \(SC\) 648](#) : AIR 2022 SC 3559

Precedent - A judgment is a precedent for the issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute. It is only the law as interpreted by Court in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say. (Para 41) **S. Rukmini Madegowda v. State Election Commission**, [2022 LiveLaw \(SC\) 766](#) : AIR 2022 SC 4347

Precedent - A judgment of a Court is not to be read as the Euclid's Theorem shorn of the facts and the context in which the law has been declared. (Para 11) **Vinay Prakash Singh v. Sameer Gehlaut**, [2022 LiveLaw \(SC\) 974](#)

Precedent - Every judgment must be read as applicable to the particular facts proved, or assumed to be proved. The generality of the expressions which are found in a judgment cannot be considered to be intended to be exposition of the whole law. They will have to be governed and qualified by the particular facts of the case in which such expressions are to be found. (Para 31) **Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation**, [2022 LiveLaw \(SC\) 452](#) : AIR 2022 SC 2165 : (2022) 9 SCC 286

Precedent - High Court bound to follow subsequent decision of Supreme Court on the point/issue. **State Bank of India v. Arvindra Electronics Pvt. Ltd.**, [2022 LiveLaw \(SC\) 908](#) : AIR 2022 SC 5517

Precedent - Per Incuriam - “*Incuria*” literally means “carelessness”. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. It can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. (Para 67) **Kotak Mahindra Bank Ltd. v. A. Balakrishna**, [2022 LiveLaw \(SC\) 534](#) : AIR 2022 SC 2652 : (2022) 9 SCC 186

Precedent - Ratio Decidendi - Ratio decidendi is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. It has been held that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. (Para 33) **Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation**, [2022 LiveLaw \(SC\) 452](#) : AIR 2022 SC 2165 : (2022) 9 SCC 286

Precedent - Whenever the State or instrumentalities of State come up with appeals challenging small benefits granted to individual litigants, this Court applies the test of proportionality to see whether the quantum of benefits granted to the individual concerned, justifies the examination of the question of law, at the cost of that little man from a far off place. The refusal of this Court to go into the question of law in such cases, cannot be treated as tantamounting

to answering the question of law in a particular manner. (Para 15) **Fertilizer Corporation of India Ltd. v. Rajesh Chandra Shrivastava**, [2022 LiveLaw \(SC\) 351](#) : AIR 2022 SC 1707

Precedents - A decision of the Constitution Bench of this Court cannot be questioned on certain suggestions about different interpretation of the provisions under consideration - The binding effect of a decision of the Supreme Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced, was actually decided therein. **Amritlal v. Shantilal Soni**, [2022 LiveLaw \(SC\) 248](#) : 2022 (4) SCALE 500

Precedents - A judgment delivered by a larger bench will prevail irrespective of the number of judges constituting the majority-In view of Article 145(5) of the Constitution of India concurrence of a majority of the judges at the hearing will be considered as a judgment or opinion of the Court. It is settled that the majority decision of a Bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of Judges constituting the majority. (Para 19) **Trimurthi Fragrances (P) Ltd. v. Govt. of NCT of Delhi**, [2022 LiveLaw \(SC\) 778](#) : AIR 2022 SC 4868

Precedents - A judgment is a precedent for the issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute. It is only the law as interpreted by in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say. (Para 41) **Ravi Ranjan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee**, [2022 LiveLaw \(SC\) 329](#) : 2022 (5) SCALE 372

Precedents - A judgment is a precedent for the question of law that is raised and decided. The language used in a judgment cannot be read like a statute. In any case, words and phrases in the judgment cannot be construed in a truncated manner out of context. (Para 84) **Vidarbha Industries Power Ltd. v. Axis Bank Ltd.**, [2022 LiveLaw \(SC\) 587](#) : (2022) 8 SCC 352

Precedents - Judicial decorum demands that if judgments passed by two judges' bench of equal strength are conflicting, the issue of law involved must be referred to a larger bench as the same is desirable to avoid confusion and maintain consistency of law. (Para 12) **J. Vedhasingh v. R.M. Govindan**, [2022 LiveLaw \(SC\) 669](#) : AIR 2022 SC 3772

Pre-emption

Pre-emption - Maligned law. Such rights have been characterized as feudal, archaic and outmoded. Such right of pre-emption has been taken away and all proceedings pending before any authority have been ordered to be abated including proceedings in any other Court. Any other Court is wide enough to

include the Constitutional Courts i.e. the High Court and the Supreme Court. (Para 12) ***Punyadeo Sharma v. Kamla Devi***, [2022 LiveLaw \(SC\) 23](#)

Premature Release Policy

Premature Release Policy - Validity of clause prescribing a minimum age of 60 years which would imply that a young offender of 20 years will have to serve 40 years before his case for remission can be considered - Implies that a young offender of 20 years will have to serve 40 years before his case for remission can be considered - The State Government to re-examine this part of the Policy which prima-facie does not seem to be sustainable. ***Mata Prasad vs State of U.P.***, [2022 LiveLaw \(SC\) 118](#)

Press and Registration of Books Act, 1867

Press and Registration of Books Act, 1867; Section 7 - Though the benefit of presumption under Section 7 is not applicable so far as Chief Editors or Editors-in-Chief are concerned, the matter would be required to be considered purely from the perspective of the allegations made in the complaint. If the allegations are sufficient and specific, no benefit can be extended to such Chief Editor or Editor-in-Chief - If there are no specific and sufficient allegations, the matter would stand reinforced by reason of the fact that no presumption can be invoked against such Chief Editor or Editor-in-Chief. (Para 22) ***Aroon Purie v. State of Nct of Delhi***, [2022 LiveLaw \(SC\) 894](#)

Protection of Interest of Depositors

Protection of Interest of Depositors (in Financial Establishments) Act 1999 (Maharashtra); Section 2(c) - If the financial establishment is obligated to return the deposit without any increments, it shall still fall within the purview of Section 2(c) of the MPID Act, provided that the deposit does not fall within any of the exception. (Para 37) ***State of Maharashtra v. 63 Moons Technologies Ltd***; [2022 LiveLaw \(SC\) 400](#) : (2022) 9 SCC 457

Protection of Interest of Depositors (in Financial Establishments) Act 1999 (Maharashtra) - Constitutional Validity upheld - MPID Act is constitutionally valid on the grounds of legislative competence and when tested against the provisions of Part III of the Constitution. [Referred to KK Bhaskaran v. State (2011) 3 SCC 793, State of Maharashtra v. Vijay C. Puljal (2012) 10 SCC 599 and Sonal Hemant Joshi v. State of Maharashtra (2012) 10 SCC 601] (Para 54, 57) ***State of Maharashtra v. 63 Moons Technologies Ltd***; [2022 LiveLaw \(SC\) 400](#) : (2022) 9 SCC 457

Protection of Interest of Depositors (in Financial Establishments) Act 1999 (Maharashtra); Section 2(c) - National Spot Exchange Ltd - Settlement Guarantee Fund- Though the SGF is termed as a "security deposit" in nomenclature, its features do not represent a security deposit. Since NSEL receives 'money' in the form of that is returned in money and services, and is not covered by the exceptions, it would fall within the expression 'deposit' as defined in Section 2(c) of the Act - NSEL is a 'financial establishment' for the

purposes of the Act if it is a 'person accepting deposit'. (Para 41, 31) **State of Maharashtra v. 63 Moons Technologies Ltd**; [2022 LiveLaw \(SC\) 400](#) : (2022) 9 SCC 457

Protection of Interest of Depositors (in Financial Establishments) Act 1999 (Maharashtra); Section 2(c) - Deposit - Ingredients (i) Any receipt of money or the acceptance of a valuable commodity by a financial establishment; (ii) Such acceptance ought to be subject to the money or commodity being required to be returned after a specified period or otherwise; and (iii) The return of the money or commodity may be in cash, kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form. (Para 31) **State of Maharashtra v. 63 Moons Technologies Ltd**; [2022 LiveLaw \(SC\) 400](#) : (2022) 9 SCC 457

Protection of Interest of Depositors (in Financial Establishments) Act 1999 (Maharashtra); Section 2(c) - Valuable Commodity - Unlike many other state enactments which govern the field, clause (c) of Section 2 of the MPID Act comprehends within the meaning of a deposit not only the receipt of money but of any valuable commodity as well - The phrase 'valuable commodity' cannot be restricted to only mean precious metals. Agricultural commodities which NSEL trades in will fall within the purview of the term. (Para 35, 43) **State of Maharashtra v. 63 Moons Technologies Ltd**; [2022 LiveLaw \(SC\) 400](#) : (2022) 9 SCC 457

Protection of Interest of Depositors (in Financial Establishments) Act 1999 (Maharashtra) - Supreme Court set aside the Bombay High Court's order of freeing the attachment of assets of 63 Moons Technologies. **State of Maharashtra v. 63 Moons Technologies Ltd**; [2022 LiveLaw \(SC\) 400](#) : (2022) 9 SCC 457

Public Auction

Public Auction - Highest bidder has no vested right to have the auction concluded in his favour - State or authority is not bound to accept the highest tender of bid. The acceptance of the highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions in which the auction has been held. (Para 18, 26) **State of Punjab v. Mehar Din**, [2022 LiveLaw \(SC\) 235](#) : AIR 2022 SC 1413 : (2022) 5 SCC 648

Public Auction - The sale pursuant to the public auction can be set aside in an eventuality where it is found on the basis of material on record that the property had been sold away at a throw away price and/or on a wholly inadequate consideration because of the fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding the public auction. After the public auction is held and the highest bid is received and the property is sold in a public auction in favour of a highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently and that too when they did not participate in the auction proceedings and made any

offer and/or the offer is made only for the sake of making it and without any serious intent. - If the auction/sale pursuant to the public auction is set aside on the basis of frivolous and irresponsible representations made by such persons then the sanctity of a public auction would be frustrated and the rights of a genuine bidder would be adversely affected. (Para 8.2) ***K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple***, [2022 LiveLaw \(SC\) 182](#) : AIR 2022 SC 1220 : (2022) 5 SCC 710

Public Auction - Under normal circumstances, unless there are allegations of fraud and/or collusion and/or cartel and/or any other material irregularity or illegality, the highest offer received in the public auction may be accepted as a fair value. Otherwise, there shall not be any sanctity of a public auction. (Para 8.8) ***K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple***, [2022 LiveLaw \(SC\) 182](#) : AIR 2022 SC 1220 : (2022) 5 SCC 710

Public Employment

Public Employment - Appointment - Appeal against Bombay HC judgment which refused to interfere with cancellation of appointment of appellant judicial officer who could not join before prescribed date due to nationwide lockdown imposed in view of covid -19 pandemic - Allowed - It is not a case where there is a complete dearth of any explanation by the candidate - There was considerable confusion also about what a person could do and what a person could not do during the time of the lockdown. It was an unprecedented situation which affected the nation - Impugned notification quashed and appointment restored - The appellant will not be entitled to claim seniority/backwages. ***Rakesh Kumar v. State of Bihar***, [2022 LiveLaw \(SC\) 250](#)

Public Employment - Appointment - There is no absolute right with the candidate to insist that he should be permitted to join beyond the date - But there is no law which would support the cancellation of the candidature of the selected candidate if he seeks to join beyond a particular point of time. (Para 18, 16) ***Rakesh Kumar v. State of Bihar***, [2022 LiveLaw \(SC\) 250](#)

Public Employment - Direct Recruitment - A candidate who has applied does not have a legal right to insist that the recruitment process set in motion be carried to its logical end. Even inclusion of a candidate in the select list may not clothe the candidate with such a right. This is, however, different, from holding that the employer is free to act in an arbitrary manner. ***Employees State Insurance Corporation v. Dr. Vinay Kumar***, [2022 LiveLaw \(SC\) 514](#)

Public Employment - Examinations - The advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed - Candidate used different language for filling up of the application form and the OMR answer book, therefore, his candidature was rightly rejected. (Para 14-18) ***Union of India v. Mahendra Singh***, [2022 LiveLaw \(SC\) 630](#)

Public Employment - Fairness demands that public bodies, as model employers, do not pursue untenable submissions. In such cases, a concession,

which is based on law, and accords to a just interpretation of the concerned law and/or rules, is sustainable. However, it is altogether another thing for a public employer, whose conduct is questioned, and who has succeeded on the merits of the case before the lower forum to voluntarily agree, in an unreasoned manner, to a compromise. The harm and deleterious effect of such conduct is to prioritize the claim of those before the court, when it is apparent that a large body of others, waiting with a similar grievance (and some of whom probably have a better or legitimate claim on merits to be appointed) are not parties to the proceedings. In such cases, a compromise is not only unjustified, it is contrary to law and public interest. (Para 20) ***R. Muthukumar v. Chairman and Managing Director Tangedco***, [2022 LiveLaw \(SC\) 140](#) : 2022 (3) SCALE 241

Public Employment - Recruitment - The decisions made by expert bodies, including the Public Services Commissions, should not be lightly interfered with, unless instances of arbitrary and mala fide exercise of power are made out. (Para 53) ***State of Uttar Pradesh v. Atul Kumar Dwivedi***, [2022 LiveLaw \(SC\) 20](#) : AIR 2022 SC 973

Public Employment - Rejection of candidature on the ground that he was tried for the offence under Section 498A - The offence for which he was tried ultimately resulted into acquittal had arisen out of the matrimonial dispute which ultimately ended in settlement out of the court - There was no suppression of material fact - Candidate could not have been denied the appointment solely on the aforesaid ground. ***Pramod Singh Kirar v. State of Madhya Pradesh***, [2022 LiveLaw \(SC\) 1008](#)

Public Employment - Suppression of criminal proceedings - Principles to be applied - a) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials—more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. b) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post. c) The suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service. d) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided. e) The Court should inquire whether the Authority concerned whose action is being challenged acted mala

fide. f) Is there any element of bias in the decision of the Authority? g) Whether the procedure of inquiry adopted by the Authority concerned was fair and reasonable? (Para 69) **Satish Chandra Yadav v. Union of India**, [2022 LiveLaw \(SC\) 798](#) : 2022 (14) SCALE 270

Public Employment - The cut-off date for acquiring the qualification advertised is the last date of application. **Himachal Pradesh State Electricity Board Ltd. v. Dharminder Singh**, [2022 LiveLaw \(SC\) 999](#)

Public Interest Litigation

Public Interest Litigation - Frivolous PILs should be nipped in the bud - In the recent past, it is noticed that there is mushroom growth of public interest litigations. However, in many of such petitions, there is no public interest involved at all. The petitions are either publicity interest litigations or personal interest litigation. We highly deprecate practice of filing such frivolous petitions. They are nothing but abuse of process of law. They encroach upon a valuable judicial time which could be otherwise utilized for considering genuine issues. It is high time that such so-called public interest litigations are nipped in the bud so that the developmental activities in the larger public interest are not stalled. (Para 59) **Ardhendu Kumar Das v. State of Odisha**, [2022 LiveLaw \(SC\) 539](#) : AIR 2022 SC 2695

Public Order

Public Order - A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the "maintenance of public order" - The distinction between a disturbance to law and order and a disturbance to public order discussed. **Mallada K. Sri Ram v. State of Telangana**, [2022 LiveLaw \(SC\) 358](#) : 2022 (6) SCALE 50

Public Order & Law and order - Distinction - The distinction between law and order situation and a public order situation has been dealt with by the Supreme Court in a catena of decisions. (Para 15) **Shaik Nazneen v. State of Telangana**, [2022 LiveLaw \(SC\) 559](#)

Public Premises (Eviction of Unauthorised Occupants) Act, 1971

Public Premises (Eviction of Unauthorised Occupants) Act, 1971; Section 2(e)(2)(ii) - Even if CSIR is a Society under the Societies Registration Act, 1860, it is an authority owned or controlled by the Central Government within the meaning of Section 2(e)(2)(ii) of the Act. **Sharada Dayadhish Shetty v. Director CSIR-NCL**, [2022 LiveLaw \(SC\) 49](#)

Public Trust

Public Trusts - Any organization which is self-governed, cannot be subjected to overarching state control. As long as its decisions are well informed, and grounded on relevant considerations, the interests of the trust are those defined by its members. Any measure of public control enacted through express stipulations in law, should not be expanded to such an extent that the right to freedom of association, under Article 19 (1) (c), is reduced to an empty husk,

bereft of meaningful exercise of choice. ***Parsi Zoroastrian v. Sub-Divisional Officer***, [2022 LiveLaw \(SC\) 96](#) : 2022 (2) SCALE 482

Public Trusts - The aim of public control is to ensure that the trust is administered efficiently and smoothly. The state interest is that far, and no more; it cannot mean that the state can dictate what decisions can or cannot be taken. ***Parsi Zoroastrian v. Sub-Divisional Officer***, [2022 LiveLaw \(SC\) 96](#) : 2022 (2) SCALE 482

Public Trusts Act, 1951 (Madhya Pradesh); Section 14 - Powers of Registrar - When a Trust property is transferred without prior sanction of the Registrar under Section 14 and/or without following a fair and transparent process, it can be always said that the Trust property is not being properly managed or administered - The Registrar can refuse sanction only when he is satisfied that the transactions will be prejudicial to the interests of the Public Trust. (Para 43 - 47) ***Khasgi (Devi Ahilyabai Holkar Charities) Trust Indore v. Vipin Dhanaitkar***, [2022 LiveLaw \(SC\) 623](#)

Public Trusts Act, 1951 (Madhya Pradesh); Section 36 - Sub-Sections (1) and (2) of Section 36 operate in different fields. When sub-Section (1) is applicable to a Public Trust, none of the provisions of the Public Trusts Act is applicable to the Trust. Sub-Section (2) is an independent power of the State Government to issue a notification exempting certain Public Trusts from all or any of the provisions of the Public Trusts Act. (Para 39) ***Khasgi (Devi Ahilyabai Holkar Charities) Trust Indore v. Vipin Dhanaitkar***, [2022 LiveLaw \(SC\) 623](#)

R

Ratio Decidendi

Ratio Decidendi - Final relief granted need not be the natural consequences of the ratio decidendi of its judgment. (Para 26) ***B.B. Patel v. DLF Universal Ltd***; [2022 LiveLaw \(SC\) 90](#) : AIR 2022 SC 683 : (2022) 6 SCC 742

Real Estate (Regulation and Development) Act, 2016

Real Estate (Regulation and Development) Act, 2016 - Rajasthan Real Estate Regulatory Authority Regulations, 2017 - Regulation 9 - Regulation 9 of the Regulations of 2017 is not ultra vires the Act or is otherwise not invalid - The delegation of powers in the single member of RERA to decide complaints filed under the Act even otherwise flows from Section 81 of the Act and such delegation can be made in absence of Regulation 9 also. ***Union Bank of India v. Rajasthan Real Estate Regulatory Authority***, [2022 LiveLaw \(SC\) 171](#)

Real Estate (Regulation and Development) Act, 2016 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - RERA authority has the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act - This shall be applicable in a case where proceedings before the RERA authority are initiated by the home buyers to protect their rights. ***Union Bank***

of India v. Rajasthan Real Estate Regulatory Authority, [2022 LiveLaw \(SC\) 171](#)

Real Estate (Regulation and Development) Act, 2016 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - In the event of conflict between RERA and SARFAESI Act the provisions contained in RERA would prevail. *Union Bank of India v. Rajasthan Real Estate Regulatory Authority*, [2022 LiveLaw \(SC\) 171](#)

Real Estate (Regulation and Development) Act, 2016 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - RERA authority has the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act - This shall be applicable in a case where proceedings before the RERA authority are initiated by the home buyers to protect their rights. *Union Bank of India v. Rajasthan Real Estate Regulatory Authority*, [2022 LiveLaw \(SC\) 171](#)

Real Estate (Regulation and Development) Act, 2016 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - RERA would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest has been created by mortgaging the property prior to the introduction of the Act unless and until it is found that the creation of such mortgage or such transaction is fraudulent or collusive. *Union Bank of India v. Rajasthan Real Estate Regulatory Authority*, [2022 LiveLaw \(SC\) 171](#)

Real Estate (Regulation and Development) Act, 2016 - Consumer Protection Act and the RERA Act neither exclude nor contradict each other - They are concurrent remedies operating independently and without primacy. (Para 14.1) Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroom, [2022 LiveLaw \(SC\) 352](#) : AIR 2022 SC 1824

Recovery of Debts Due to Banks and Financial Institutions Act, 1993

Recovery of Debts Due to Banks and Financial Institutions Act, 1993; Section 19, 31 - An independent suit filed by the borrower against the bank or financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act - Since there is no such power, there is no question of transfer of the suit whether by consent or otherwise - Proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the Civil Court - It is not open to a defendant, who may have taken recourse to the Civil Court, to seek a stay on the decision of the DRT awaiting the verdict of his suit before the Civil Court as it is a matter of his choice. (Para 49- 56) *Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd.*, [2022 LiveLaw \(SC\) 941](#)

Recovery of Debts Due to Banks and Financial Institutions Act, 1993; Section 17, 18, 19 - Jurisdiction of a Civil Court to try a suit filed by a borrower

against a Bank or Financial Institution is not ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt - There is no provision in the RDB Act by which the remedy of a civil suit by a defendant in a claim by the bank is ousted, but it is the matter of choice of that defendant. Such a defendant may file a counterclaim, or may be desirous of availing of the more strenuous procedure established under the Code, and that is a choice which he takes with the consequences thereof. (*Para 45, 56*) **Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd.**, [2022 LiveLaw \(SC\) 941](#)

Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (Uttar Pradesh)

Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (Uttar Pradesh); Rule 5 - Suitable Employment - The words "suitable employment" must be understood with reference to the post held by the deceased employee. The superior qualification held by a dependent cannot determine the scope of the words "suitable employment". (*Para 10*) **Suneel Kumar v. State of U.P.**, [2022 LiveLaw \(SC\) 675](#) : AIR 2022 SC 5416

Red Fort Attack case 2000

Red Fort Attack case 2000 - Death penalty awarded to Lakshar-e-Toiba militant Mohammed Arif affirmed by dismissing Review Petition - Even after eschewing circumstances which were directly attributable to the CDRs relied upon by the prosecution, the other circumstances on record do clearly spell out and prove beyond any doubt his involvement in the crime in question - The suggestion that there is a possibility of retribution and rehabilitation, is not made out from and supported by any material on record - The aggravating circumstances evident from the record and specially the fact that there was a direct attack on the unity, integrity and sovereignty of India, completely outweigh the factors which may even remotely be brought into consideration as mitigating circumstances on record. **Mohd. Arif @ Ashfaq v. State (NCT Of Delhi)**, [2022 LiveLaw \(SC\) 902](#)

Regional and Town Planning Act, 1966 (Maharashtra)

Regional and Town Planning Act, 1966 (Maharashtra); Section 126 - Once the Act does not contemplate any further period for acquisition - The land owner cannot be deprived of the use of the land for years together. Once an embargo has been put on a land owner not to use the land in a particular manner, the said restriction cannot be kept open-ended for indefinite period. The Statute has provided a period of ten years to acquire the land under Section 126 of the Act. Additional one year is granted to the land owner to serve a notice for acquisition prior to the amendment by Maharashtra Act No. 42 of 2015. Such time line is sacrosanct and has to be adhered to by the State or by the Authorities under the State - The State or its functionaries cannot be directed to acquire the land as the acquisition is on its satisfaction that the land is required for a public purpose. If the State was inactive for long number of years, the Courts would not issue direction for acquisition of land, which is exercise of power of the State

to invoke its rights of eminent domain. (Para 7, 8) **Laxmikant v. State of Maharashtra**, [2022 LiveLaw \(SC\) 315](#) : (2022) 7 SCC 252

Regional and Town Planning Act, 1966 (Maharashtra); Section 126 - Appeal against judgment of Bombay High Court which gave planning Authority one year further time to acquire the land once reserved relying upon a Supreme Court judgment in *Municipal Corporation of Greater Mumbai & Ors. v. Hiran Sitaram Deorukhar & Ors* (2019) 14 SCC 411 - Allowed - The direction to acquire land within a period of one year is in fact contravening the time line fixed under the Statute. Consequently, the direction to acquire the land within one year is set aside. **Laxmikant v. State of Maharashtra**, [2022 LiveLaw \(SC\) 315](#) : (2022) 7 SCC 252

Registration Act, 1908

Registration Act, 1908 - If the Registering Officer under the Act is construed as performing only a mechanical role without any independent mind of his own, then even Government properties may be sold and the documents registered by unscrupulous persons driving the parties to go to civil court. Such an interpretation may not advance the cause of justice. **Asset Reconstruction Company v. SP Velayutham**, [2022 LiveLaw \(SC\) 445](#) : (2022) 8 SCC 210

Registration Act, 1908 - The registration by itself will not bring the curtains down on questions relating to title to the property. (Para 27) **Amar Nath v. Gian Chand**, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908 - There is and there can be no dispute about the fact that while the Registering Officer under the Registration Act, 1908, may not be competent to examine whether the executant of a document has any right, title or interest over the property which is the subject matter of the document presented for registration, he is obliged to strictly comply with the mandate of law contained in the various provisions of the Act. (Para 11) **Asset Reconstruction Company v. SP Velayutham**, [2022 LiveLaw \(SC\) 445](#) : (2022) 8 SCC 210

Registration Act, 1908; Section 17 (2) (v) - A document of partition which provides for effectuating a division of properties in future would be exempt from registration under section 17 (2) (v). The test in such a case is whether the document itself creates an interest in a specific immovable property or merely creates a right to obtain another document of title. If a document does not by itself create a right or interest in immovable property, but merely creates a right to obtain another document, which will, when executed create a right in the person claiming relief, the former document does not require registration and is accordingly admissible in evidence. (Para 24) **K. Arumuga Velaiah v. P.R. Ramasamy**, [2022 LiveLaw \(SC\) 92](#) : (2022) 3 SCC 757

Registration Act, 1908; Section 17, 18 - The very purport of the Law of Registration is to usher in and maintain a transparent system of maintaining documents relating to property rights. It puts the world on notice about certain transactions which are compulsorily registrable Section 17 inter alia. The law

also makes available facility of registering documents at the option of the person (Section 18). (Para 27) **Amar Nath v. Gian Chand**, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 18A - Section 18A was enacted only to ensure that the copying process is hastened, as noticed from the Objects and Reasons. It is concerned only with the document which is presented for registration. (Para 32) **Amar Nath v. Gian Chand**, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 32 - 35 - There is really no need for the production of the original power of attorney, when the document is presented for registration by the person who has executed the document on the strength of the power of attorney. (Para 25) **Amar Nath v. Gian Chand**, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 32 - Section 32(b) speaks about the representative or assignee of 'such a person'. The word such a person in Section 32(b) is intended to refer to the persons covered by Section 32(a). (Para 20) **Amar Nath v. Gian Chand**, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 32 - Section 32(c) must alone be read with Section 33 of the Act. Thus, when Section 32(c) of the Registration Act declares that a document, whether it is compulsorily or optionally registrable, is to be presented, inter alia, by the agent of such a person, representative or assignee, duly authorised by power of attorney, it must be executed and authenticated in the manner and hereinafter mentioned immediately in the next following section. (Para 20) **Amar Nath v. Gian Chand**, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 32 - Section 32(c) provides for the agent of 'such a person' which necessarily means the persons who are encompassed by Section 32(a). Besides agent of the person covered by Section 32(a), Section 32(c) also takes in the agent of the representative or assignee. Now the words representative or assignee are to be found in Section 32(b). Thus, Section 32(c) deals with agents of the persons covered by Section 32(a) and agents of the representative or assignee falling under Section 32(b). It is in respect of such an agent that there must be due authorisation by a power of attorney, which in turn, is to be executed and authenticated in the manner provided for in Section 33. (Para 20) **Amar Nath v. Gian Chand**, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 32 - The person, who has actually signed the document or executed the document for the purpose of Section 32(a) does not require a power of attorney to present the document. It may be open to the principal, who has entered obligations under the document, to present the document. (Para 20) **Amar Nath v. Gian Chand**, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 32 - The word 'agent' is to be understood as

a person who is authorised to present the document for registration. Such an agent would fall under Section 32(c). Thus, in regard to persons falling in Section 34(3)(c), it would, indeed, be incumbent on the agent, inter alia, to produce the power of attorney as such. (Para 22) ***Amar Nath v. Gian Chand***, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 32 - When a person empowers another to execute a document and the power of attorney, acting on the power, executes the document, the power of attorney holder can present the document for registration under Section 32(a). Section 32(a) of the Registration Act deals with the person executing a document and also the person claiming under the same. It also provides for persons claiming under a decree or an order being entitled to present a document. (Para 20) ***Amar Nath v. Gian Chand***, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 32 & 33 - Authentication of PoA does not mean registration - A careful look at Sections 32 and 33 will show that while speaking about PoA, these provisions do not use the word "registration". While Section 32(c) uses the words "executed and authenticated", Section 33(1) uses the words "recognised" and "authenticated". Therefore it is clear that the word "authenticated" is not to be understood to be the same as "registered. (Para 18, 20) ***Asset Reconstruction Company v. SP Velayutham***, [2022 LiveLaw \(SC\) 445](#) : (2022) 8 SCC 210

Registration Act, 1908; Section 32 and 33 - Section 33 by its very heading provides for power of attorney recognisable for the purpose of Section 32. Section 32(a) cannot be read with Section 33 of the Act. In other words, in a situation, if a document is executed by a person, it will be open to such a person to present the document for registration through his agent. The agency can be limited to authorising the agent for presenting the document for it is such a power of attorney, which is referred to in Section 32(c). It is in regard to a power of attorney holder, who is authorised to present the document for registration to whom Section 33 would apply. (Para 20) ***Amar Nath v. Gian Chand***, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521

Registration Act, 1908; Section 32 and 34 - Appearances under Section 34(1) may be simultaneous or at different times. Section 34(3)(a) enjoins upon the Registering Officer to enquire whether or not such document was executed by the persons by whom it purports to have been executed. Section 34(3)(b) further makes it his duty to satisfy himself as to the identity of a person's appearing before him and alleging that they have executed the document. It must be understood and read along with Section 32(a). Section 32(a) mandates presentation of the document for registration by some person executing or claiming under the same, inter alia. In respect of a person who presents the document, who claims to have executed the document, not only is he entitled to present the document for registration, in the inquiry under Section 34 34(3)(a) and 3(b), the duty of the Registering Officer extends only to enquire and find that such person is the person who has executed the document he has

presented and further be satisfied about the identity of the person. (Para 22) ***Amar Nath v. Gian Chand*, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521**

Registration Act, 1908; Section 32 and 34 - When it comes to Section 34(3)(c), the Registering Officer is duty-bound in respect of any person appearing as a representative, assign or agent to satisfy himself of a right of such a person to so appear. Section 34(3)(c) is relatable to persons covered by Section 32(b) and 32(c) of the Act. (Para 22) ***Amar Nath v. Gian Chand*, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521**

Registration Act, 1908; Section 32(c) - In cases where a document is presented for registration by the agent, (i) of the executant; or (ii) of the claimant; or (iii) of the representative or assign of the executant or claimant, the same cannot be accepted for registration unless the agent is duly authorized by a PoA executed and authenticated in the manner provided in the Act. (Para 16) ***Asset Reconstruction Company v. SP Velayutham*, [2022 LiveLaw \(SC\) 445](#) : (2022) 8 SCC 210**

Registration Act, 1908; Section 32, 33 and 34 - The inquiry contemplated under the Registration Act, cannot extend to question as to whether the person who executed the document in his capacity of the power of attorney holder of the principal, was indeed having a valid power of attorney or not to execute the document or not. (Para 25) ***Amar Nath v. Gian Chand*, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521**

Registration Act, 1908; Section 34 - Section 34 provides for the inquiry to be done by the Registering Office before he orders registration. It declares that no document shall be registered under the Act unless the persons executing such document or their representatives, assigns or agents authorised as aforesaid, appear before the Registering Authority before the time, allowed for presentation under Sections 23, 24, 25 and 26. This is, however, subject to Sections 41, 43, 45, 69, 75, 77, 83 and 89. (Para 22) ***Amar Nath v. Gian Chand*, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521**

Registration Act, 1908; Section 34 - Section 34(3)(c) imposes an obligation on the Registering Officer to satisfy himself about the right of a person appearing as a representative, assign or agent. (Para 29) ***Asset Reconstruction Company v. SP Velayutham*, [2022 LiveLaw \(SC\) 445](#) : (2022) 8 SCC 210**

Registration Act, 1908; Section 35 - Section 35 deals with situations in which the Registering Authority refuses the registration. If the registering Authority is satisfied about the identity of the person and that he admits the execution of the document, it may not be a 38 part of the Registrar's duty to enquire further. (Para 27) ***Amar Nath v. Gian Chand*, [2022 LiveLaw \(SC\) 98](#) : 2022 (2) SCALE 521**

Registration Act, 1908; Section 35 - The "execution" of a document does not stand admitted merely because a person admits to having signed the document - In a situation where an individual admits their signature on a document but

denies its execution, the Sub-Registrar is bound to refuse registration in accordance with Sections 35(3)(a). (Para 57, 64) **Veena Singh v. District Registrar / Additional Collector**, [2022 LiveLaw \(SC\) 462](#) : (2022) 7 SCC 1

Registration Act, 1908; Section 35, 73, 74 - While the Sub-Registrar under Section 35(3)(a) has to mandatorily refuse registration when the execution of a document is denied by the person purported to have executed the document, the Registrar is entrusted with the power to conduct an enquiry on an application under Section 73 by following the procedure under Section 74. (Para 35) **Veena Singh v. District Registrar / Additional Collector**, [2022 LiveLaw \(SC\) 462](#) : (2022) 7 SCC 1

Registration Act, 1908; Section 72 - If a person by whom the document is purported to be executed denies its execution and registration is refused on those grounds, an appeal against the order of the Sub-Registrar denying execution would not be maintainable under Section 72 of the Registration Act. (Para 33) **Veena Singh v. District Registrar / Additional Collector**, [2022 LiveLaw \(SC\) 462](#) : (2022) 7 SCC 1

Registration Act, 1908; Section 72, 73 - Mis-labelling of an application under Section 73 as an appeal under Section 72 would by itself not vitiate the proceedings before the Registrar. (Para 38) **Veena Singh v. District Registrar / Additional Collector**, [2022 LiveLaw \(SC\) 462](#) : (2022) 7 SCC 1

Registration Act, 1908; Section 89 - SLP against Madras High Court judgment holding that a registering authority cannot demand stamp duty to keep a copy of a sale certificate on the file of Book No.1 - Dismissed - Issue has been repeatedly settled and a consistent view has been followed for the last 150 years. **Inspector General of Registration v. G. Madhurambal**, [2022 LiveLaw \(SC\) 969](#)

Religious Endowment

Religious Endowment - Dedication of a property as religious endowment does not require an express dedication or document, and can be inferred from the circumstances - Extinction of private character of a property can be inferred from the circumstances and facts on record, including sufficient length of time, which shows user permitted for religious or public purposes. (Para 20-25) **R.M. Sundaram @ Meenakshisundaram v. Sri Kayarohanasamy and Neelayadhakshi Amman Temple**, [2022 LiveLaw \(SC\) 612](#)

Remand

Remand - An order of remand cannot be passed as a matter of course. An order of remand cannot also be passed for the mere purpose of remanding a proceeding to the lower court or the Tribunal. An endeavour has to be made by the Appellate Court to dispose of the case on merits. Where both the sides have led oral and documentary evidence, the Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court or the

Tribunal. (Para 25) *Nadakerappa v. Pillamma*, [2022 LiveLaw \(SC\) 332](#) : AIR 2022 SC 1609

Rent Control

Rent Control Act, 1958 (Delhi) - Appeal against Delhi HC judgment which allowed revision petition filed by a tenant under Section 25B(8) of the Act - Allowed - High Court proceeded to allow the revision by treating it like an appeal. *Abid-ul-Islam v. Inder Sain Dua*, [2022 LiveLaw \(SC\) 353](#) : AIR 2022 SC 1778 : (2022) 6 SCC 30

Rent Control Act, 1958 (Delhi); Section 14(1)(e) - Eviction on Bona fide need - There has to be satisfaction on two grounds, namely, (i) the requirement being bona fide and (ii) the non-availability of a reasonably suitable residential accommodation. Such reasonableness along with suitability is to be seen from the perspective of the landlord and not the tenant - Section 14(1)(e) creates a presumption subject to the satisfaction of the Rent Controller qua bona fide need in favour of the landlord which is obviously rebuttable with some material of substance to the extent of raising a triable issue- Before a presumption is drawn, the landlord is duty bound to place prima facie material supported by the adequate averments. It is only thereafter, the presumption gets attracted and the onus shifts on the tenant. (Para 12, 15) *Abid-ul-Islam v. Inder Sain Dua*, [2022 LiveLaw \(SC\) 353](#) : AIR 2022 SC 1778 : (2022) 6 SCC 30

Rent Control Act, 1958 (Delhi); Section 14(1)(e) and 25B(5) - For availing the leave to defend as envisaged under Section 25B(5), a mere assertion per se would not suffice - The satisfaction of the Rent Controller in deciding on an application seeking leave to defend is obviously subjective. The degree of probability is one of preponderance forming the subjective satisfaction of the Rent Controller. Thus, the quality of adjudication is between a mere moonshine and adequate material and evidence meant for the rejection of a normal application for eviction - The tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue. (Para 15-17) *Abid-ul-Islam v. Inder Sain Dua*, [2022 LiveLaw \(SC\) 353](#) : AIR 2022 SC 1778 : (2022) 6 SCC 30

Rent Control Act, 1958 (Delhi); Section 19 - Right to the dispossessed tenant for repossession if there is a non-compliance on the part of the landlord albeit after eviction, to put the premises to use for the intended purpose - Such a right is available only to a tenant who stood dispossessed on the application filed by the landlord invoking Section 14(1)(e) being allowed. (Para 16) *Abid-ul-Islam v. Inder Sain Dua*, [2022 LiveLaw \(SC\) 353](#) : AIR 2022 SC 1778 : (2022) 6 SCC 30

Rent Control Act, 1958 (Delhi); Section 25B - Legislative object - expeditious and effective remedy for a class of landlords, sans the normal procedural route. (Para 17) *Abid-ul-Islam v. Inder Sain Dua*, [2022 LiveLaw \(SC\) 353](#) : AIR 2022 SC 1778 : (2022) 6 SCC 30

Rent Control Act, 1958 (Delhi); Section 25B (8) - Revisional Jurisdiction - The High Court is not expected to substitute and supplant its views with that of the trial Court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature. (Para 20) **Abid-ul-Islam v. Inder Sain Dua**, [2022 LiveLaw \(SC\) 353](#) : AIR 2022 SC 1778 : (2022) 6 SCC 30

Rent Control Act, 2001 (Rajasthan) - A suit filed before the civil court prior to the applicability of the Act has to be decided by the civil court. A decree passed by the civil court is valid and executable- The Act is applicable to the area in question from the date the notification came into force and it does not bar the decree of the civil court or the pendency of such civil suit. (Para 28) **Shankarlal Nadani v. Sohanlal Jain**, [2022 LiveLaw \(SC\) 367](#) : AIR 2022 SC 1813

Rent Control Act, 2001 (Rajasthan) - Appeal against Rajasthan HC judgment which upheld decree passed by a Civil Court in a suit for possession filed by landlord- Dismissed - The Act has come into force in respect of the premises in question on 11.5.2015 i.e., after the civil suit was filed, therefore, the decree could validly be passed and executed. **Shankarlal Nadani v. Sohanlal Jain**, [2022 LiveLaw \(SC\) 367](#) : AIR 2022 SC 1813

Rent Control Laws - Jurisdiction of civil courts are excluded from landlord-tenant disputes when they are specifically covered by the provisions of the State Rent Acts, which are given an overriding effect over other laws. (Para 20) **Subhash Chander v. Bharat Petroleum Corporation**, [2022 LiveLaw \(SC\) 101](#) : AIR 2022 SC 660

Rent Restriction Act, 1949 (East Punjab); Section 13 - Demand of increase of rent is wholly irrelevant to determine the *bonafide* requirement of the premises of a landlord. **Surinder Singh Dhillon v. Vimal Jindal**, [2022 LiveLaw \(SC\) 713](#)

Rent Restriction Act, 1949 (East Punjab); Section 6 - The demand of rent beyond the agreed rent is not permissible. **Surinder Singh Dhillon v. Vimal Jindal**, [2022 LiveLaw \(SC\) 713](#)

Reorganization Act 2000 (Bihar)

Reorganization Act 2000 (Bihar); Section 73 - Employees who opt for service under a successor State after reorganization, their existing service conditions would not be varied to their disadvantage and would stand protected by virtue of Section 73 of the Act. Further, subject to the condition that such person would not be entitled to claim the benefit of reservation simultaneously in both the successor States, such employees would be entitled to claim not only the benefit of reservation in the service of the successor State to which they had

opted and were allocated, but they would also be entitled to participate in any subsequent open competition with the benefit of reservation. (*Justice Lalit, Para 17*) **Akhilesh Prasad v. Jharkhand Public Service Commission**, [2022 LiveLaw \(SC\) 434](#)

Repatriation of Prisoners Act, 2003

Repatriation of Prisoners Act, 2003 - The object is to provide an opportunity to the convicts to be repatriated to their country so that they can be closer to their families and have better chances of rehabilitation. (*Para 11*) **Union of India v. Shaikh Istiyaq Ahmed**, [2022 LiveLaw \(SC\) 41](#) : AIR 2022 SC 491

Repatriation of Prisoners Act, 2003; Sections 12, 13 - Agreement between the Government of India and Government of Mauritius on the Transfer of Prisoners - The question of adaptation of the sentence can only be when the Central Government is convinced that the sentence imposed by the Supreme Court of Mauritius is incompatible with Indian law - Incompatibility with Indian law is with reference to the enforcement of the sentence imposed by the Supreme Court of Mauritius being contrary to fundamental laws of India. It is only in case of such an exceptional situation, that it is open the Central Government to adapt the sentence imposed by the Supreme Court of Mauritius to be compatible to a sentence of imprisonment provided for the similar offence. Even in cases where adaptation is being considered by the Central Government, it does not necessarily have to adapt the sentence to be exactly in the nature and duration of imprisonment provided for in the similar offence in India. In this circumstance as well, the Central Government has to make sure that the sentence is made compatible with Indian law corresponding to the nature and duration of the sentence imposed by the Supreme Court of Mauritius, as far as possible. (*Para 15, 16*) **Union of India v. Shaikh Istiyaq Ahmed**, [2022 LiveLaw \(SC\) 41](#) : AIR 2022 SC 491

Repatriation of Prisoners Act, 2003; Sections 12, 13 - Agreement between the Government of India and Government of Mauritius on the Transfer of Prisoners - The sentence imposed by the Supreme Court of Mauritius in this case is binding on India. (*Para 15*) **Union of India v. Shaikh Istiyaq Ahmed**, [2022 LiveLaw \(SC\) 41](#) : AIR 2022 SC 491

Representation of People Act, 1950

Representation of People Act, 1950 - Conduct of Elections Rules, 1961 - The right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute - The name of a candidate to be proposed while filling the nomination form. Therefore, an individual cannot claim that he has a right to contest election and the said stipulation violates his fundamental right, so as to file his nomination without any proposer as is required under the Act. **Vishwanath Pratap Singh v. Election Commission of India**, [2022 LiveLaw \(SC\) 758](#)

Res Judicata

Res Judicata - Operation of the principles of res judicata in respect to the previous proceeding and judgment discussed. (Para 30) **K. Arumuga Velaiah v. P.R. Ramasamy**, [2022 LiveLaw \(SC\) 92](#) : (2022) 3 SCC 757

Reservation

Reservation - The reservation for OBC candidates in the AIQ seats for UG and PG medical and dental courses is constitutionally valid. (Para 59) **Neil Aurelio Nunes v. Union of India**, [2022 LiveLaw \(SC\) 73](#) : (2022) 4 SCC 1

Reservation - The reserved category candidates securing higher marks than the last of the general category candidates are entitled to get seat/post in unreserved categories - Even while applying horizontal reservation, merit must be given precedence and if the candidates, who belong to SCs, STs and OBCs have secured higher marks or are more meritorious, they must be considered against the seats meant for unreserved candidates - Candidates belonging to reserved categories can as well stake claim to seats in unreserved categories if their merit and position in the merit list entitles them to do so. (Para 8-9) **Bharat Sanchar Nigam Ltd. v. Sandeep Choudhary**, [2022 LiveLaw \(SC\) 419](#) : AIR 2022 SC 2975

Reservation - Vacating earlier interim order, the Court refused to stay the G.O. dated 07.11.2020 issued in the State of Tamil Nadu purporting to reserve 50% seats at the Super Specialty level in Government Medical Colleges to in-service doctors - Expressed a prima facie view that States are competent to provide such reservation. **N. Karthikeyan v. State of Tamil Nadu**, [2022 LiveLaw \(SC\) 294](#) : AIR 2022 SC 1543

Reservation in IITs

Reservation in IITs - Supreme Court directed the Central government and the Indian Institutes of Technology to follow the reservation policy for admission in research degree programmes and recruitment of faculty members as provided under the Central Educational Institutions (Reservation in Teachers' Cadre) Act, 2019 [2019 Act]. **Sachchida Nand Pandey v. Union of India**, [2022 LiveLaw \(SC\) 1037](#)

Reserve Bank of India

Reserve Bank of India - Right to Information Act, 2005 - Disclosure of defaulters list, inspection reports etc in relation to banks - Right to Privacy- Supreme Court expresses prima facie doubts about its 2015 judgment in the case Reserve Bank of India v Jayantilal N. Mistry which had held that the Reserve Bank of India was obliged to disclose defaulters list, inspection reports, annual statements etc., related to banks under the Right to Information Act - Says the judgment did not take into consideration the aspect of balancing the right to information and the right to privacy. **HDFC Bank v. Union of India**, [2022 LiveLaw \(SC\) 811](#)

Reserve Bank of India Act, 1934 - Banking Regulation Act, 1949 - RBI has wide supervisory jurisdiction over all Banking Institutions in the country- For 'public interest' the RBI is empowered to issue any directive to any banking institution, and to prohibit alienation of an NBFC's property. (Para 8.7) ***Small Industries Development Bank of India v. Sibco Investment Pvt. Ltd., 2022 LiveLaw (SC) 7 : (2022) 3 SCC 56***

Reserve Bank of India Act, 1934 - Banking Regulation Act, 1949 - RBI as was declared is not only vested with curative powers but also preventive powers, as was held in Ganesh Bank of Kurundwad Ltd. Vs. Union of India. Hence, it is not necessary for the bank to wait for a direction to be violated, and then launch penal actions against the offenders. But the RBI can also issue directions to ensure that the relevant orders/directions are effectively followed. (Para 8.13) ***Small Industries Development Bank of India v. Sibco Investment Pvt. Ltd., 2022 LiveLaw (SC) 7 : (2022) 3 SCC 56***

Reserve Bank of India Act, 1934; Chapter III B - Chapter III-B of the RBI Act provides a supervisory role for the RBI to oversee the functioning of NBFCs, from the time of their birth (by way of registration) till the time of their commercial death (by way of winding up), all activities of NBFCs automatically come under the scanner of RBI. (Para 6.19, 7) ***Nedumpilli Finance Company Ltd. v. State of Kerala, 2022 LiveLaw (SC) 464 : (2022) 7 SCC 394***

Reserve Bank of India Act, 1934; Chapter III B - Kerala Money Lenders Act, 1958- Gujarat Money Lenders Act, 2011 - The Kerala Act and the Gujarat Act will have no application to NBFCs registered under the RBI Act and regulated by RBI - Though the provisions of the Tamil Nadu Pawn Brokers Act and the Tamil Nadu Money Lenders Act not examined, the principles of law laid down herein, would apply equally to these State enactments also. (Para 11.2)) ***Nedumpilli Finance Company Ltd. v. State of Kerala, 2022 LiveLaw (SC) 464 : (2022) 7 SCC 394***

Reserve Bank of India Act, 1934; Section 45JA(1) - The words "relating to" appearing in Section 45-JA(1) can be taken to restrict the power of RBI to give directions, only in relation to the matters mentioned after the words "relating to" - The items mentioned after the words "relating to" can only be taken to be illustrative and not exhaustive. (Para 7.5-7.77) ***Nedumpilli Finance Company Ltd. v. State of Kerala, 2022 LiveLaw (SC) 464 : (2022) 7 SCC 394***

Reserve Bank of India Act, 1934; Section 45L(1)(b) - Power upon the RBI to give directions to NBFCs "relating to the conduct of business by them" - To say that RBI has no power in respect of such an important aspect such as the rate of interest chargeable on the loans, may not be correct. (Para 7.8) ***Nedumpilli Finance Company Ltd. v. State of Kerala, 2022 LiveLaw (SC) 464 : (2022) 7 SCC 394***

Restitution

Restitution - Advantages secured by a litigant, on account of orders of court, at his behest, should not be perpetuated - After the dismissal of the lis, the party

concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay - No one can be permitted to take the benefit of the wrong order passed by the court which has been subsequently set aside by the higher forum/court - No party should be prejudiced because of the order of the court. ***Mekha Ram v. State of Rajasthan***, [2022 LiveLaw \(SC\) 324](#) : AIR 2022 SC 1591

Review Jurisdiction

Review Jurisdiction - Appeal against High Court order allowing review petitions - Allowed - Impugned order, allowing the review application is a cryptic and non-reasoned order - Nothing has been mentioned and/or observed as to what was that error apparent on the face of the record which called for interference - Remanded. ***Ratan Lal Patel v. Dr. Hari Singh Gour Vishwavidyalaya***, [2022 LiveLaw \(SC\) 306](#) : (2022) 6 SCC 540

Review Jurisdiction - While exercising the review jurisdiction, the Court has to first satisfy itself on any error apparent on the face of the record which calls for exercise of the review jurisdiction. Merely stating that there is an error apparent on the face of the record is not sufficient. It must be demonstrated that in fact there was an error apparent on the face of the record. There must be a speaking and reasoned order as to what was that error apparent on the face of the record, which called for interference and therefore a reasoned order is required to be passed. Unless such reasons are given and unless what was that error apparent on the face of the record is stated and mentioned in the order, the higher forum would not be in a position to know what has weighed with the Court while exercising the review jurisdiction and what was that error apparent on the face of the record. (Para 4) ***Ratan Lal Patel v. Dr. Hari Singh Gour Vishwavidyalaya***, [2022 LiveLaw \(SC\) 306](#) : (2022) 6 SCC 540

Right of Children to Free and Compulsory Education Act, 2009

Right of Children to Free and Compulsory Education Act, 2009 - Chapter III of the Act incorporates the 'Duties of Appropriate Government, Local Authority and Parents'. Chapter IV, adopting the same rigour imposes 'Responsibilities of the Schools and Teachers'. This significant feature, imposing duties is over and above the Right to Free and Compulsory Education of every child provided in Chapter II of the Act. It is also the duty of the Constitutional Courts to recognize and interpret these Articles in the same spirit and give effect to the provisions of the Act. (Para 4.2) ***Pragya Higher Secondary School v. National Institute of Open Schooling***, [2022 LiveLaw \(SC\) 535](#)

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 13(2) - Land Acquisition Act, 1894; Section 48 - Once the High Court has passed an order of lapsing of the acquisition proceedings by virtue of Section 24(2) of the Act,

the landowners cannot revert back on the plea raised that they are entitled to seek release of land in terms of Section 48 of the Land Acquisition Act, 1894 since repealed. **Government of NCT of Delhi v. Om Prakash**, [2022 LiveLaw \(SC\) 47](#)

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 24 - Lapse of acquisition. (Para 9) **Agricultural Produce Marketing Committee Bangalore v. State of Karnataka**, [2022 LiveLaw \(SC\) 307](#) : (2022) 7 SCC 796

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 24 - Two conditions to be established for acquisition proceedings to lapse - possession not taken and/or compensation not paid - Purchaser has no right to claim lapsing of acquisition proceedings - Since the original land owner never filed any objections under Section 5-A of the Act, the purchaser cannot seek the relief which was not available even to the original land owner. [Para 29, 43, 37] **Delhi Development Authority v. Godfrey Phillips (I) Ltd.**, [2022 LiveLaw \(SC\) 476](#) : AIR 2022 SC 2282 : (2022) 8 SCC 771

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 24(1) - Land Acquisition Act, 1894; Section 11 - In a case where on the date of commencement of RFCTLARR Act, no award has been declared under Section 11 of the Act, 1894, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of 2013 Act and they shall be entitled to the compensation only under the 1894 Act - The landowners cannot be permitted to take advantage of the interim order obtained by them due to which the Authority could not declare the award under Section 11 of the Act, 1894 and thereafter contend that in that view of the matter, he/they shall be paid the compensation under Section 24(1) of the Act, 2013, under which a higher compensation will be available to them on determination of the compensation under the Act, 2013. (Para 16-17) **Faizabad-Ayodhya Development Authority v. Dr. Rajesh Kumar Pandey**, [2022 LiveLaw \(SC\) 504](#) : AIR 2022 SC 2558

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 24 - Observations made in Indore Development Authority Vs. Manoharlal and Ors., (2020) 8 SCC 129 summarized - These observations would be aptly applicable while interpreting and considering Section 24(1) of the 2013 Act. (Para 12-14) **Faizabad-Ayodhya Development Authority v. Dr. Rajesh Kumar Pandey**, [2022 LiveLaw \(SC\) 504](#) : AIR 2022 SC 2558

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 24(1) - Land Acquisition Act, 1894; Section 4(1) - Meaning of 'Initiation' for the purpose of Section 24(1) of the 2013 Act - Issuance and publication of Section 4(1)

notification in the official gazette of the appropriate Government - When Section 24(1)(a) of the 2013 Act is applicable, the proceedings shall continue as per the L.A. Act - Only for the determination of compensation amount, the provisions of the 2013 Act shall be applied. (Para 27, 34) **Haryana State Industrial and Infrastructure Development Corporation v. Deepak Aggarwal**, [2022 LiveLaw \(SC\) 644](#)

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Jammu and Kashmir - State Land Acquisition Act, 1990 - The provisions of the Act, 2013 shall not be applicable with respect to the acquisition under the J & K Act, 1990. (Para 5.2) **Bharat Petroleum Corporation Ltd. v. Nisar Ahmed Ganai**, [2022 LiveLaw \(SC\) 837](#)

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 24(2) - Subsequent purchaser has no right to claim lapse of acquisition proceedings. (Para 7) **Delhi Development Authority v. Damini Wadhwa**, [2022 LiveLaw \(SC\) 913](#) : AIR 2022 SC 5489

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 24(2) - There cannot be any lapse of acquisition under Section 24(2) of the Act, 2013 on the ground of possession could not be taken over by the authority and/or the compensation could not be deposited / tendered due to the pending litigations. (Para 7.2) **Delhi Development Authority v. Damini Wadhwa**, [2022 LiveLaw \(SC\) 913](#) : AIR 2022 SC 5489

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - The provisions of the R&R Act, 2013 which replaced the old Land Acquisition Act, 1894 have for the first time cast obligations upon the State to ensure that resettlement and rehabilitation is provided in addition to compensation. These rehabilitation and resettlement provisions relate not only to a right to employment for at least one member of the displaced family but also other monetary and tangible benefits, such as land for construction of houses, cash assistance for construction; transportation cost; provision for temporary displacement; annuity and/or cash payment in lieu of employment benefits, etc. Furthermore, by provisions of the Third Schedule, elaborate provisions for the kind of public amenities which have to be provided, such as public health benefits, schools, community centres, roads and other basic necessities, have been obligated. All these are in furtherance of the displaced and the larger social justice obligations cast upon the State. (Para 43) **Mahanadi Coal Fields Ltd. v. Mathias Oram**, [2022 LiveLaw \(SC\) 916](#) : AIR 2022 SC 5723

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Section 108 - Wherever there are existing provisions that are more beneficial or provide better benefits to displaced persons, such families and individuals have the choice or option to

prefer either such policy or local law or the provisions of the R&R Act. (*Para 42*) ***Mahanadi Coal Fields Ltd. v. Mathias Oram*, [2022 LiveLaw \(SC\) 916](#) : AIR 2022 SC 5723**

Right to Information Act, 2005

Right to Information Act, 2005 - Discussions of Supreme Court collegium - Discussions of collegium are not required to be disclosed in public domain under the RTI Act - Whatever is discussed shall not be in the public domain - Petition seeking details of the collegium meeting of December 12, 2018 dismissed - Petitioner relied on news reports about the statements given by a former collegium member that certain decisions were finalized in the said collegium meeting, which were reversed after his retirement. (*Para 5, 5.1*) ***Anjali Bhardwaj v. CPIO, Supreme Court of India, (RTI Cell)*, [2022 LiveLaw \(SC\) 1015](#)**

Right to Privacy

Right to Privacy - In view of the judgment of this Court in the case of Jayantilal N. Mistry, the RBI is entitled to issue directions to the petitioners/Banks to disclose information even with regard to the individual customers of the Bank. In effect, it may adversely affect the individuals' fundamental right to privacy. (*Para 39*) ***HDFC Bank v. Union of India*, [2022 LiveLaw \(SC\) 811](#)**

Rights of Persons with Disabilities Act, 2016

Rights of Persons with Disabilities Act 2016 - Furthermore, the disabled are entitled to the fundamental right of equality enshrined in Articles 14 to 16 of the Constitution of India, the fundamental freedoms guaranteed under Article 19 including the right to carry out any occupation, profession, the right to life under Article 21, which has now been interpreted to mean the right to live with dignity, which has to be interpreted liberally in relation to the disabled. (*Para 30*) ***Net Ram Yadav v. State of Rajasthan*, [2022 LiveLaw \(SC\) 684](#)**

Rights of Persons with Disabilities Act, 2016 - A person appointed under quota for Persons With Disabilities was allowed to choose his place of posting as per a beneficial circular issued by the Government- Later, in the state seniority list, his seniority was downgraded for having opted for transfer - The State relied on a provision in the service rules as per which a person will choose seniority within a district on transfer as per his request - The Court held that provision cannot alter state wise seniority - Also, the Court held that the benefit given to disabled persons as per the circular cannot be rendered otiose by imposing conditions. ***Net Ram Yadav v. State of Rajasthan*, [2022 LiveLaw \(SC\) 684](#)**

Rights of Persons with Disabilities Act, 2016 - One of the hindrances / disadvantages faced by the physically disabled persons is the inability to move freely and easily. In consideration of the obstacles encountered by persons with disabilities, the State has issued the said notification/circular dated 20th July 2000 for posting disabled persons to places of their choice, to the extent

feasible. The object of this benefit to the physically disabled is to, inter alia, enable the physically disabled to be posted at a place where assistance may readily be available. The distance from the residence may be a relevant consideration to avoid commuting long distances. The benefit which has been given to the disabled through the Circular/Government Order cannot be taken away by subjecting the exercise of the right to avail of the benefit on such terms and conditions, as would render the benefit otiose. (Para 31) **Net Ram Yadav v. State of Rajasthan**, [2022 LiveLaw \(SC\) 684](#)

Rights of Persons with Disabilities Act, 2016 - The marginalization of the disabled/handicapped is a human rights issue, which has been the subject matter of deliberations and discussion all over the world. There is increasing global concern to ensure that the disabled are not sidelined on account of their disability. (Para 26) **Net Ram Yadav v. State of Rajasthan**, [2022 LiveLaw \(SC\) 684](#)

Rights of Persons with Disabilities Act, 2016 - UGC to ensure that the guidelines inspection of educational institutions to ensure implementation of RPWD Act are finalized. **Disabled Rights Group v. Union of India**, [2022 LiveLaw \(SC\) 50](#)

Riot Victims

Riot Victims - Supreme Court issues a slew of directions to the State for payment of compensation to the legal heirs of riot victims who have not yet been compensated - Also issues directions for revival of dormant riot cases. **Shakeel Ahmed vs Union of India**, [2022 LiveLaw \(SC\) 910](#)

Rule of Law

Rule of Law - Nobody can be deprived of liberty or property without due process, or authorization of law - Rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law. (Para 14) **Sukh Dutt Ratra v. State of Himachal Pradesh**, [2022 LiveLaw \(SC\) 347](#) : (2022) 7 SCC 508

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Sale of Goods Act, 1930

Sale of Goods Act, 1930; Section 2(7) - Vehicles are goods within the meaning of Section 2(7) of The Sale of Goods Act, 1930 and they carry implied conditions as to their fitness. (Para 7) **Hyundai Motor India Ltd. v. Shailendra Bhatnagar**, [2022 LiveLaw \(SC\) 399](#) : 2022 (6) SCALE 587

Schedule Castes and Backward Classes

Schedule Castes and Backward Classes (Reservation in Service) Act, 2006 (Punjab); Section 7 - De-reservation for the reserved vacancy by the appointing authority is restricted. The said de-reservation may be possibly directed by the Department of Welfare of Scheduled Castes and Backward

Classes if it is expedient in public interest after recording satisfaction for such de-reservation. In the said contingency the department shall pass an order assigning those reasons. Thus, in the context of 2006 Act also the de-reservation or interchangeability may be possible with a rigour to exercise such power by the department, namely; Department of Scheduled Castes and Backward Classes and not by appointing authority. (Para 20) **Mandeep Kumar v. U.T. Chandigarh**, [2022 LiveLaw \(SC\) 262](#) : (2022) 5 SCC 800

Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 (Karnataka) - Section 4 - Appointments to the reserved vacancies are meant only for those who are deserving by being members of the said community alone. If any person other than a member of the reserved community is appointed, it would clearly constitute an infringement of the rights of the genuinely deserving members of the said community - Even the applicants applying under the general categories could be adversely affected. (Para 9) **Jayashree v. Director Collegiate Education**, [2022 LiveLaw \(SC\) 237](#) : 2022 (4) SCALE 267

Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 (Karnataka) - Section 4 - The mere fact that the Law Giver has used the word 'voidable', cannot, in the context, detract from the gravity of the matter. The matter is not to be judged from the need for an act by the employer - In a situation where the law provides that the appointment is voidable, an act of the employer seeking to avoid the appointment is all that is required. (Para 9, 16) **Jayashree v. Director Collegiate Education**, [2022 LiveLaw \(SC\) 237](#) : 2022 (4) SCALE 267

Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990 (Karnataka) - Section 4 - Appeal against High Court judgment which refused to interfere with order terminating services of appellant after finding that she does not belong to the Scheduled Tribe community to which she applied and was given appointment - Disposed of - To allow an usurper to continue being a palpable illegality and a constitutional sin, in the context, action by the competent authority terminating the services is perfectly valid - However, amounts sought to be recovered shall not be recovered from the appellant. **Jayashree v. Director Collegiate Education**, [2022 LiveLaw \(SC\) 237](#) : 2022 (4) SCALE 267

SEBI

SEBI - Regulators should act fairly - SEBI is a regulator and has a duty to act fairly, while conducting proceedings or initiating any action against the parties. Being a quasi-judicial body, the constitutional mandate of SEBI is to act fairly, in accordance with the rules prescribed by law. The role of a Regulator is to deal with complaints and parties in a fair manner, and not to circumvent the rule of law for getting successful convictions. There is a substantive duty on the Regulators to show fairness, in the form of public co-operation and deference. (Para 42) **Reliance Industries Ltd. v. Securities and Exchange Board of India**, [2022 LiveLaw \(SC\) 659](#) : AIR 2022 SC 3690 : (2022) 10 SCC 181

SEBI - Regulators should avoid frivolous criminal actions against large corporations - Initiation of criminal action in commercial transactions, should take place with a lot of circumspection and the Courts ought to act as gate keepers for the same. Initiating frivolous criminal actions against large corporations, would give rise to adverse economic consequences for the country in the long run. Therefore, the Regulator must be cautious in initiating such an action and carefully weigh each factor. (Para 29) **Reliance Industries Ltd. v. Securities and Exchange Board of India**, [2022 LiveLaw \(SC\) 659](#) : AIR 2022 SC 3690 : (2022) 10 SCC 181

SEBI - Supreme Court directs Securities and Exchange Board of India (SEBI) to disclose to Reliance Industries Ltd the documents relied on by the SEBI to file a criminal complaint against RIL over alleged irregularities in a share transaction in 1994. **Reliance Industries Ltd. v. Securities and Exchange Board of India**, [2022 LiveLaw \(SC\) 659](#) : AIR 2022 SC 3690 : (2022) 10 SCC 181

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 - Regulation 9, 10 - Consideration of the report of the investigating authority which is submitted under Regulation 9 is one of the components guiding the Board's satisfaction on the violation of the regulations - the investigation report is not merely an internal document - The Board forms an opinion regarding the violation of Regulations after considering the investigation report prepared under Regulation 9. (Para 21, 51) **T. Takano v. Securities and Exchange Board of India**, [2022 LiveLaw \(SC\) 180](#) : AIR 2022 SC 1153 : (2022) 8 SCC 162

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 - Regulation 9 - Whether an investigation report under Regulation 9 of the PFUTP Regulations must be disclosed to the person to whom a notice to show cause is issued? - The Board shall be duty -bound to provide copies of such parts of the report which concern the specific allegations which have been levelled in show cause notice. (Para 52) **T. Takano v. Securities and Exchange Board of India**, [2022 LiveLaw \(SC\) 180](#) : AIR 2022 SC 1153 : (2022) 8 SCC 162

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 - Where some portions of the enquiry report involve information on third parties or confidential information on the securities market, the Board cannot for that reason assert a privilege against disclosing any part of the report - Board can withhold disclosure of those sections of the report which deal with third - party personal information and strategic information bearing upon the stable and orderly functioning of the securities market. (Para 51) **T. Takano v. Securities and Exchange Board of India**, [2022 LiveLaw \(SC\) 180](#) : AIR 2022 SC 1153 : (2022) 8 SCC 162

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 - The right to disclosure is not absolute. The disclosure of information may affect other third -party interests and the stability and orderly functioning of the

securities market. It should prima facie established that the disclosure of the report would affect third -party rights and the stability and orderly functioning of the securities market. The onus then shifts to the noticee to prove that the information is necessary to defend his case appropriately. (Para 51) ***T. Takano v. Securities and Exchange Board of India***, [2022 LiveLaw \(SC\) 180](#) : AIR 2022 SC 1153 : (2022) 8 SCC 162

SEBI circular on standardisation of procedure for debenture trustees has retroactive application. ***Securities and Exchange Board of India v. Rajkumar Nagpal***, [2022 LiveLaw \(SC\) 738](#) : AIR 2022 SC 5180

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 - Onus is on SEBI to prove communication of Unpublished Price Sensitive Information. (Para 32) ***Balram Garg v. Securities and Exchange Board of India***, [2022 LiveLaw \(SC\) 397](#) : (2022) 9 SCC 425

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015; Regulation 3 - Regulation 3 does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties. (Para 40) ***Balram Garg v. Securities and Exchange Board of India***, [2022 LiveLaw \(SC\) 397](#) : (2022) 9 SCC 425

Securities and Exchange Board of India Act, 1992 - Appeal against Securities Appellate Tribunal which set aside the order passed by SEBI restricting the respondent-company from accessing the capital market for one year etc - Dismissed - The general observations of the Tribunal that there is a right of cross-examination set aside. ***Securities and Exchange Board of India v. Mega Corporation Ltd.***, [2022 LiveLaw \(SC\) 319](#) : 2022 (5) SCALE 340

Securities and Exchange Board of India Act, 1992 - SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 - There is a right of disclosure of the relevant material. However, such a right is not absolute and is subject to other considerations as indicated under paragraph 62(v) of the judgment in *T. Takano v. Securities and Exchange Board of India*, [2022 LiveLaw \(SC\) 180](#). In this judgment, there is no specific discussion on the issue of a right to cross-examination but the broad principles laid down therein are sufficient guidance for the Tribunal to follow. (Para 35) ***Securities and Exchange Board of India v. Mega Corporation Ltd.***, [2022 LiveLaw \(SC\) 319](#) : 2022 (5) SCALE 340

Securities and Exchange Board of India Act, 1992; Section 12(1) - Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 - Stock broker not only has to obtain a certificate of registration from SEBI for each of the stock exchange where he operates, at the same time, has to pay ad valorem fee prescribed in terms of Part III annexed to Regulation 10 of the Regulations, 1992 in reference to each certificate of registration from SEBI in terms of the computation prescribed under Circular

dated 28th March, 2002 and fee is to be paid as a guiding principle by the stock broker which is in conformity with the scheme of Regulations 1992 - After the expiry of five financial years from the date of initial registration, in reference to the stock exchange, the fee has to be deposited for the purpose of sixth financial year to keep his registration in force. (*Para 47-48*) ***Securities and Exchange Board of India v. National Stock Exchange Members Association*, [2022 LiveLaw \(SC\) 840](#) : AIR 2022 SC 5213**

Securities and Exchange Board of India Act, 1992; Section 15T - It is the duty of the first court of appeal to deal with all the issues and evidence led by the parties on both, the questions of law as well as questions of fact and then decide the issue by providing adequate reasons for its findings. (*Para 24*) ***Balram Garg v. Securities and Exchange Board of India*, [2022 LiveLaw \(SC\) 397](#) : (2022) 9 SCC 425**

Securities and Exchange Board of India Act, 1992; Section 15Z - Scope and ambit of Statutory appeal against Securities Appellate Tribunal orders to Supreme Court - The Supreme Court will exercise jurisdiction only when there is a question of law arising for consideration from the decision of the Tribunal. A question of law may arise when there is an erroneous construction of the legal provisions of the statute or the general principles of law. In such cases, the Supreme Court in exercise of its jurisdiction of Section 15Z may substitute its decision on any question of law that it considers appropriate. (*Para 20.1*) ***Securities and Exchange Board of India v. Mega Corporation Ltd.*, [2022 LiveLaw \(SC\) 319](#) : 2022 (5) SCALE 340**

Securities and Exchange Board of India Act, 1992; Section 15Z, 15T - Question of law - Not every interpretation of the law would amount to a question of law warranting exercise of jurisdiction under Section 15Z. The Tribunal while exercising jurisdiction under Section 15T, apart from acting as an appellate authority on fact, also interprets the Act, Rules and Regulations made thereunder and systematically evolves a legal regime. These very principles are applied consistently for structural evolution of the sectorial laws. This freedom to evolve and interpret laws must belong to the Tribunal to subserve the Regulatory regime for clarity and consistency. These are policy and functional considerations which the Supreme Court will keep in mind while exercising its jurisdiction under Section 15Z. (*Para 20.2*) ***Securities and Exchange Board of India v. Mega Corporation Ltd.*, [2022 LiveLaw \(SC\) 319](#) : 2022 (5) SCALE 340**

Secondment Agreements

Secondment Agreements - explained - Employees of overseas entities are deputed to the host entity (Indian associate) on the latter's request to meet its specific needs and requirements of the Indian associate - during the arrangement, the secondees work under the control and supervision of the Indian company and in relation to the work responsibilities of the Indian affiliate - social security laws of the home country (of the secondees) and business considerations result in payroll retention and salary payment by the foreign

entity, which is claimed as reimbursement from the host entity - in the event the overseas entity is treated as the employer, the arrangement would be treated as service by the overseas entity and taxed. [Para 34] **C.C. C.E. & S.T., Bangalore (Adjudication) Etc. v. M/s. Northern Operating Systems Pvt. Ltd.**, [2022 LiveLaw \(SC\) 526](#) : AIR 2022 SC 2450

Secularism & Fraternity

Secularism & Fraternity - The Constitution of India envisages Bharat as a secular nation and fraternity assuring the dignity of the individual and unity and the integrity of the country is the guiding principle enshrined in the Preamble. There cannot be fraternity unless members of community drawn from different religions or castes of the country are able to live in harmony. **Shaheen Abdullah v. Union of India**, [2022 LiveLaw \(SC\) 872](#)

Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Central Excise Act, 1944 - Section 11E - Provisions contained in the SARFAESI Act, 2002 will have an overriding effect on the provisions of the Central Excise Act of 1944 - secured creditor will have priority over the dues of the Central Excise Department. (Para 43, 44, 47) **Punjab National Bank v. Union of India**, [2022 LiveLaw \(SC\) 208](#) : AIR 2022 SC 1475 : (2022) 7 SCC 260

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 14(1) - It is open to the District Magistrate or the Chief Metropolitan Magistrate can appoint an advocate commissioner to assist him/her in execution of the order passed under Section 14(1) - Advocate must be regarded as an officer of the court and, in law, subordinate to the concerned CMM/DM within their jurisdiction. (Para 44) **NKGSB Cooperative Bank Ltd. v. Subir Chakravarty**, [2022 LiveLaw \(SC\) 212](#) : AIR 2022 SC 1325 : (2022) 10 SCC 286

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 14(1) - Being an officer of the court and appointed by the CMM/DM, the acts done by the Advocate Commissioner would receive immunity under Section 14(3) of the 2002 Act — as an officer authorised by the CMM/DM - There must be a presumption that if an advocate is appointed as commissioner for execution of the orders passed by the CMM/DM under Section 14(1) of the 2002 Act, that responsibility and duty will be discharged honestly and in accordance with rules of law. (Para 42) **NKGSB Cooperative Bank Ltd. v. Subir Chakravarty**, [2022 LiveLaw \(SC\) 212](#) : AIR 2022 SC 1325 : (2022) 10 SCC 286

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 14(1A) - Officer subordinate - "Functional subordination" test applied - There is intrinsic de jure functional subordinate relationship between the CMM/DM and the advocate being an

officer of the court - It does not follow that the advocate so appointed needs to be on the rolls in the Office of the CMM/DM or in public service. (Para 42) ***NKGSB Cooperative Bank Ltd. v. Subir Chakravarty***, [2022 LiveLaw \(SC\) 212](#) : AIR 2022 SC 1325 : (2022) 10 SCC 286

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 14 - Taking of possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity is a ministerial act. (Para 28) ***NKGSB Cooperative Bank Ltd. v. Subir Chakravarty***, [2022 LiveLaw \(SC\) 212](#) : AIR 2022 SC 1325 : (2022) 10 SCC 286

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 14 - While entrusting the act of taking possession of the secured assets consequent to the order passed under Section 14(1) of the 2002 Act to any officer subordinate to him, the CMM/DM ought to exercise prudence in appointing such person who will be capable of executing the orders passed by him. Merely because he has power to appoint "any" officer subordinate to him, it would not permit him to appoint a peon or clerk, who is incapable of handling the situation. (Para 30) ***NKGSB Cooperative Bank Ltd. v. Subir Chakravarty***, [2022 LiveLaw \(SC\) 212](#) : AIR 2022 SC 1325 : (2022) 10 SCC 286

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 13 (8) - By paying the highest bid amount / reserve price, the borrower cannot be discharged of its liability of the outstanding due to be paid to the bank - Unless and until he was ready to deposit / pay the entire amount payable together with all costs and expenses with the secured creditor, the borrower cannot be discharged from the entire liability outstanding. (Para 7.1) ***Bank of Baroda v. Karwa Trading Company***, [2022 LiveLaw \(SC\) 253](#) : AIR 2022 SC 1209 : (2022) 5 SCC 168

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - The High Court overlooked the fact that there was no independent instrument of PoA and that in any case, the power of sale of a secured asset flowed out of the provisions of the Securitisation Act, 2002 and not out of an independent instrument of PoA. Section 2(zd) of the Securitisation Act, 2002 defines a 'secured creditor' to mean and include an Asset Reconstruction Company. The appellant has acquired the financial assets of OBC in terms of Section 5(1)(b) of the Securitisation Act, 2002. Therefore, under sub-section (2) of Section 5 of the Securitisation Act, 2002, the appellant shall be deemed to be the lender and all the rights of the Bank vested in them. (Para 9) ***Asset Reconstruction Co. v. Chief Controlling Revenue Authority***, [2022 LiveLaw \(SC\) 415](#) : 2022 (6) SCALE 657

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Section 14 - The District Magistrate, Chief Metropolitan Magistrate is not a persona designata for the purposes of Section 14 of the SARFAESI Act - Additional District Magistrate and Additional Chief

Metropolitan Magistrate can exercise powers under Section 14. (Para 9-12) **R.D. Jain and Co. v. Capital First Ltd.**, [2022 LiveLaw \(SC\) 634](#) : AIR 2022 SC 4820

Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002; Section 14 - Step to be taken by the CMM/DM under Section 14 is a ministerial step. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasi-judicial function or application of mind would require -The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets. (Para 8) **R.D. Jain and Co. v. Capital First Ltd.**, [2022 LiveLaw \(SC\) 634](#) : AIR 2022 SC 4820

Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002; Section 14 (1A) - it is open to the CMM/DM to appoint an advocate and authorise him/her to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor under Section 14(1A) of the SARFAESI Act. (Para 6.2) **R.D. Jain and Co. v. Capital First Ltd.**, [2022 LiveLaw \(SC\) 634](#) : AIR 2022 SC 4820

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Section 17 - The reason for providing a time limit of 45 days for filing an application under Section 17 can easily be inferred from the purpose and object of the enactment - SARFAESI Act is enacted for quick enforcement of the security. (Para 12) **Bank of Baroda v. Parasaadilal Tursiram Sheetgrah Pvt. Ltd.**, [2022 LiveLaw \(SC\) 671](#) : AIR 2022 SC 3803

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Section 14 - The powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial step and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets - Once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner- At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before Debts Recovery Tribunal. (Para 5.2) **Balkrishna Rama Tarle v. Phoenix ARC Pvt. Ltd.**, [2022 LiveLaw \(SC\) 799](#) : AIR 2022 SC 4756

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Section 13(2) - Security Interest

(Enforcement) Rules, 2002 - It is true that the secured creditor is under an obligation to undertake the exercise and cross-check the description of the mortgaged property at the stage when the initial proceedings under Section 13(2) are initiated or in the later consequential proceedings, but at the same time, mere typographical error due to inadvertence which has not caused any prejudice to the borrowers, that in itself could not be considered to be the ground to annul the process held by the secured creditor which, in our view, is in due compliance with the requirement as contemplated under the provisions of Rules, 2002. (Para 37) *Varimadugu Obi Reddy v. B. Sreenivasulu*, [2022 LiveLaw \(SC\) 967](#)

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Section 34 - Section 34 shall be applicable only in a case where the Debt Recovery Tribunal and/or Appellate Tribunal is empowered to decide the matter under the SARFAESI Act. The plaintiff was not challenging the sale/sale certificate. (Para 5.2) *Leelamma Mathew v. Indian Overseas Bank*, [2022 LiveLaw \(SC\) 973](#)

Security Interest (Enforcement) Rules, 2002

Security Interest (Enforcement) Rules, 2002; Rule 8 - Duty of the authorized officer to take all precautions before putting the secured asset to sell - Before effecting sale of the immovable property (secured assets) the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor and fix the reserve price of the property and may sell the whole or any part of such immovable secured asset. As per Section 54 of the Transfer of Property Act the seller was bound to disclose any buyer any material defect in the property of which the buyer is not aware and which the buyer could not ordinarily discover. (Para 5.4) *Leelamma Mathew v. Indian Overseas Bank*, [2022 LiveLaw \(SC\) 973](#)

Security Interest (Enforcement) Rules, 2002; Rules 8, 9 - The sale would be complete only when the auction purchaser makes the entire payment and the authorised officer, exercising the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the Form given in Appendix V to the said Rules - The sale certificate does not require registration and the sale process is complete on issuance of the sale certificate. (Para 32-33) *Indian Overseas Bank v. RCM Infrastructure Ltd*; [2022 LiveLaw \(SC\) 496](#) : AIR 2022 SC 2687 : (2022) 8 SCC 516

Service Law

Acquittal in Criminal Case

Disciplinary Proceedings - Acquittal in Criminal Case - The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction - In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an

employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. (Para 13) **State of Karnataka v. Umesh**, [2022 LiveLaw \(SC\) 304](#) : (2022) 6 SCC 563

Disciplinary Proceedings - Effect of Acquittal - An acquittal in a criminal trial has no bearing or relevance on the disciplinary proceedings as the standard of proof in both the cases are different and the proceedings operate in different fields and with different objectives. (Para 10.4) **Maharashtra State Road Transport Corporation v. Dilip Uttam Jayabhai**, [2022 LiveLaw \(SC\) 3](#) : AIR 2022 SC 238 : (2022) 2 SCC 696

Service Law - Appeal against the High Court judgment which upheld the cancellation of appointment of the appellant on the premise of non-disclosure of criminal case being instituted against him in the year 1997, when he was a juvenile - Allowed - the appellant was a juvenile when a criminal case was registered against him and was also a juvenile when the order of discharge was passed - This was indisputedly a special circumstance indeed which was not taken into consideration by the authority while passing the order of cancellation of his appointment - The seriatim of facts cumulatively indicate that the nature of information which was not disclosed by the appellant, in any manner, could be considered to be a suppression of material information. **Umesh Chandra Yadav v. Inspector General and Chief Security Commissioner**, [2022 LiveLaw \(SC\) 300](#) : 2022 (4) SCALE 680

Ad hoc employee

Service Law - An ad hoc employee cannot be replaced by another ad hoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed. (Para 12) **Manish Gupta v. Jan Bhagidari Samiti**, [2022 LiveLaw \(SC\) 406](#) : 2022 (6) SCALE 780

Advertisement

Service Law - In the event of a conflict between a statement in an advertisement and service regulations, the latter shall prevail - an erroneous advertisement would not create a right in favour of applicants who act on such representation. (Para 20) **Employees State Insurance Co. v. Union of India**, [2022 LiveLaw \(SC\) 78](#) : AIR 2022 SC 1017

Age

Service Law - The prescription of a rule providing for a minimum age requirement or maximum age for entry into service is essentially a matter of policy - Determination of cut-offs lies in the realm of policy. (Para 25) **High**

Court of Delhi v. Devina Sharma, [2022 LiveLaw \(SC\) 286](#) : (2022) 4 SCC 643

All India Service

Service Law - All India Service is an incident of service. Whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service. An employee has no fundamental right or, for that matter, a vested right to claim a transfer or posting of their choice. (Para 24) **S.K. Nausad Rahman v. Union of India, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494**

Amendment

Service Law - An amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution. (Para 47) **Punjab State Co. Agri. Bank Ltd. v. Registrar, [2022 LiveLaw \(SC\) 42](#) : AIR 2022 SC 1349 : (2022) 4 SCC 363**

Appointment

Service Law - Appointment as Management Trainee (Technical), cannot be compared to the education and appointment of a medical doctor. (Para 12) **Chief Executive Officer Bhilai Steel Plant Bhilai v. Mahesh Kumar Gonnade, [2022 LiveLaw \(SC\) 572](#) : AIR 2022 SC 3356**

Service Law - Appointment to senior positions through limited departmental competitive examinations is one through promotion channel - In order to encourage meritorious candidates who may be comparatively junior in service, a window of opportunity is opened through limited departmental examination. Those who pass the examination are entitled to have an accelerated promotion. This process does not change the character of movement to the higher post and it continues to be a promotional channel. (Justice Lalit, Para 20) **Akhilesh Prasad v. Jharkhand Public Service Commission, [2022 LiveLaw \(SC\) 434](#)**

Service Law - Appointments made in contravention of the statutory provisions are void ab initio. (Para 32) **State of Odisha v. Sulekh Chandra Pradhan, [2022 LiveLaw \(SC\) 393](#) : AIR 2022 SC 2030 : (2022) 7 SCC 482**

Service Law - There is difference between void and illegal appointments- Void appointments cannot be regularized. **Satyajit Kumar v. State of Jharkhand, [2022 LiveLaw \(SC\) 651](#)**

Autonomous Bodies

Service Law - The employees of the autonomous bodies cannot claim, as a matter of right, the same service benefits on par with the Government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a

representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and the Autonomous Board/Body cannot be put on par. (*Para 10.2*) ***State of Maharashtra v. Bhagwan***, [2022 LiveLaw \(SC\) 28](#) : AIR 2022 SC 345 : (2022) 4 SCC 193

Back-Door Entry

Service Law - LIC as a statutory corporation is bound by the mandate of Articles 14 and 16 of the Constitution. As a public employer, the recruitment process of the corporation must meet the constitutional standard of a fair and open process. Allowing for back-door entries into service is an anathema to public service. (*Para 72*) ***Ranbir Singh v. S.K. Roy***, [2022 LiveLaw \(SC\) 417](#) : 2022 (7) SCALE 110

Caste Certificate

Service Law - Caste Certificate - When a person secures appointment on the basis of a false certificate, he cannot be permitted to retain the benefit of wrongful appointment. (*Para 14*) ***Chief Executive Officer Bhilai Steel Plant Bhilai v. Mahesh Kumar Gonnade***, [2022 LiveLaw \(SC\) 572](#) : AIR 2022 SC 3356

Central Civil Service

Central Civil Service Rules - Rule 43 - Maternity Leave - Unless a purposive interpretation were to be adopted in the present case, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave under Rules of 1972 is intended to facilitate the continuance of women in the workplace. It is a harsh reality that but for such provisions, many women would be compelled by social circumstances to give up work on the birth of a child, if they are not granted leave and other facilitative measures. No employer can perceive child birth as detracting from the purpose of employment. Child birth has to be construed in the context of employment as a natural incident of life and hence, the provisions for maternity leave must be construed in that perspective. (*Para 25*) ***Deepika Singh v. Central Administrative Tribunal***, [2022 LiveLaw \(SC\) 718](#) : AIR 2022 SC 4108

Central Civil Services (Fixation of Pay of Re-employed Pensioners) Order, 1986; Para 8 - On re-employment in the government service, an employee who was serving in the Indian Army/in the Armed Forces not entitled to his pay scales at par with his last drawn pay - The reference to the last drawn pay in the armed forces is only to ensure that the pay computed in the civil post in the manner envisaged in para 8 of CCS Order does not exceed the basic pay (including the deferred pay but excluding other emoluments) last drawn by the personnel in the armed forces. (*Para 5-6*) ***Union of India v. Anil Prasad***, [2022 LiveLaw \(SC\) 513](#) : 2022 (9) SCALE 34

Service Law - Norms applicable to the recruitment and conditions of service of officers belonging to the civil services can be stipulated in: (i) A law enacted by the competent legislature; (ii) Rules made under the proviso to Article 309 of the Constitution; and (iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of civil services under the States. (Para 28) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Compassionate Appointment

Service Law - Compassionate Appointments - The authorities must consider and decide applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications. (Para 9) **Malaya Nanda Sethy v. State of Orissa**, [2022 LiveLaw \(SC\) 522](#) : AIR 2022 SC 2836

Service Law - Compassionate Appointments restricted to Class III/IV (group C/D) Posts - SC pulls up TN Govt over Group B Appointments. **M. Kendra Devi v. Government of Tamil Nadu**, [2022 LiveLaw \(SC\) 274](#) : 2022 (4) SCALE 607

Constitution of India, 1950; Article 16(2) - Compassionate Appointment Policy - Descent cannot be a ground for denying employment under the scheme of compassionate appointments - A policy for compassionate appointment, which has the force of law, must not discriminate on any of the grounds mentioned in Article 16(2), including that of descent by classifying children of the deceased employee as legitimate and illegitimate and recognizing only the right of legitimate descendant. (Para 9, 10) **Mukesh Kumar v. Union of India**, [2022 LiveLaw \(SC\) 205](#) : 2022 (4) SCALE 103

Compassionate Appointment - After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided - The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased. [Para 9.1, 9.2] **Fertilizers and Chemicals Travancore Ltd. v. Anusree K.B.**, [2022 LiveLaw \(SC\) 819](#) : AIR 2022 SC 4766

Compassionate Appointment - Appointment on compassionate grounds cannot be extended to the heirs of the employees on their superannuation and/or retirement. If such an appointment is permitted, in that case, outsiders shall never get an appointment and only the heirs of the employees on their superannuation and/or retirement shall get an appointment and those who are the outsiders shall never get an opportunity to get an appointment though they may be more meritorious and/or well educated and/or more qualified - Compassionate appointment shall always be treated as an exception to the normal method of recruitment. The appointment on compassionate grounds is

provided upon the death of an employee in harness without any kind of security whatsoever. The appointment on compassionate grounds is not automatic and shall be subject to the strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. No one can claim to have a vested right for appointment on compassionate grounds. (Para 8) **Ahmednagar Mahanagar Palika v. Ahmednagar Mahanagar Palika Kamgar Union**, [2022 LiveLaw \(SC\) 739](#) : AIR 2022 SC 4101 : (2022) 10 SCC 172

Compassionate Appointment - Financial criteria for compassionate appointment given in a Compassionate Appointment Scheme cannot be ignored - Rules which provide for a financial criteria for appointment on Compassionate ground are valid and lawful rules which have to be construed strictly, as otherwise the quota reserved for compassionate appointment would be filled up excluding others who might be in greater and/or far more acute financial distress. (Para 20-22) **Central Bank of India v. Nitin**, [2022 LiveLaw \(SC\) 690](#) : AIR 2022 SC 3779 : (2022) 8 SCC 378

Compassionate Appointment - Married daughter can't be held to be dependent of mother for the purpose of compassionate appointment- The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased. (Para 7, 7.1) **State of Maharashtra v. Madhuri Maruti Vidhate**, [2022 LiveLaw \(SC\) 820](#) : AIR 2022 SC 5176

Compassionate Appointment - Qualification prevailing on the date of applying for compassionate appointment is to be considered and not the date on which the application for compassionate appointment is considered. (Para 6-7) **Delhi Jal Board v. Nirmala Devi**, [2022 LiveLaw \(SC\) 863](#) : AIR 2022 SC 5167

Compulsory Retirement

Constitution of India, 1950; Article 226 - Appeal against Karnataka High Court judgment which set aside the judgment of the Karnataka Administrative Tribunal directing the compulsory retirement of the respondent employee from service following a disciplinary enquiry on charges of bribery - Allowed - High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employee - The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding. **State of Karnataka v. Umesh**, [2022 LiveLaw \(SC\) 304](#) : (2022) 6 SCC 563

Date of Birth

Service Law - There are several authorities in which this Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth that would have the effect of extension of the length of their service. The very reasoning on which an

employee is not permitted to raise age - correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. (Para 21) **Shankar Lal v. Hindustan Copper Ltd.**, [2022 LiveLaw \(SC\) 407](#) : (2022) 6 SCC 211

Death-cum-Retirement Gratuity

Service Rules (Kerala); Rule 3 and 3A- Death Cum Retirement Gratuity - The pendency of the appeal cannot disentitle the State from withholding the DCRG - Rule 3A cannot be read in isolation 25 nor the latter part of it struck down as done by the High Court. Rule 3, Note 2, Ruling 3, and Rule 3A have to be read in conjunction as they provide for the treatment of the DCRG in case of disciplinary or judicial proceedings pending at the stage of retirement. Even in the absence of these proceedings in certain eventualities the amounts can be recovered from the DCRG - Set aside Full Bench judgment of Kerala High Court in K. Chandran vs Local Self Government Department 2020 (5) KLT 669 (FB) (Para 37, 39) **Local Self Government Department v. K. Chandran**, [2022 LiveLaw \(SC\) 285](#)

Deputation

Service Law - Deputation involves a tripartite consensual agreement between the lending employer, borrowing employer and the employee. Specific rights and obligations would bind the parties and govern their conduct. A transient business visit without any written agreement detailing terms of deputation will not qualify as a deputation unless the respondent were to lead cogent evidence to indicate that the appellant was seconded to work overseas on deputation. **Sarita Singh v. Shree Infosoft**, [2022 LiveLaw \(SC\) 67](#) : 2022 (2) SCALE 19

Direct Recruitment

Service Law - Direct Recruitment - The preparation of inter se merit list of the selected candidates is inevitable, even in the absence of an explicit provision in the rule or policy, the recruitment authority cannot place the candidates inter se in the select list under the rule of thumb or by adopting the methodology which is inconsistent with the spirit of Articles 14 and 16 of the Constitution. The inter se merit list of the selected candidates can be prepared as a combined effect of several factors like written test, objective test, viva-voce and/or other parameters as may have been prescribed keeping in view the special requirement of service. (Para 16) **Manoj Parihar v. State of Jammu and Kashmir**, [2022 LiveLaw \(SC\) 560](#)

Disability

Rights of Persons with Disabilities Act, 2016 - A person appointed under quota for Persons With Disabilities was allowed to choose his place of posting as per a beneficial circular issued by the Government- Later, in the state seniority list, his seniority was downgraded for having opted for transfer - The State relied on a provision in the service rules as per which a person will choose seniority within a district on transfer as per his request - The Court held that

provision cannot alter state wise seniority - Also, the Court held that the benefit given to disabled persons as per the circular cannot be rendered otiose by imposing conditions. ***Net Ram Yadav v. State of Rajasthan***, [2022 LiveLaw \(SC\) 684](#)

Disciplinary Proceedings

Disciplinary Proceedings - Bank employee was dismissed after conducting a disciplinary proceedings - Appellate authority dismissed his appeal - Industrial Tribunal held that the punishment awarded to the employee of dismissal is not commensurate with the charge levelled against him - In writ petition filed against Tribunal order, the High Court refused to interfere with the Order for the reason that the respondent employee by that time had retired on attaining the age of superannuation in 2007. Allowing appeal, the Supreme Court upheld the dismissal order and observed: Merely because the employee stood superannuated in the meanwhile, will not absolve him from the misconduct which he had committed in discharge of his duties and looking into the nature of misconduct which he had committed, he was not entitled for any indulgence. (Para 11) ***United Bank of India v. Bachan Prasad Lall***, [2022 LiveLaw \(SC\) 164](#) : AIR 2022 SC 943 : (2022) 4 SCC 358

Disciplinary Proceedings - Criminal and departmental, are entirely different and merely because one has been acquitted in a criminal trial that itself will not result in the reinstatement in service when one has been found guilty in a departmental proceeding - When it is not an honourable acquittal, but an acquittal given due to a "benefit of doubt", there cannot be reinstatement. (Para 8-14) ***State of Rajasthan v. Phool Singh***, [2022 LiveLaw \(SC\) 735](#) : AIR 2022 SC 4176

Disciplinary Proceedings - If the Court finds that furnishing of the enquiry report would have made a difference to the result, in such case it should set aside the order of punishment. Where the Court sets aside the order of punishment, the proper relief which should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. (Para 7) ***State of Uttar Pradesh v. Prabhat Kumar***, [2022 LiveLaw \(SC\) 736](#)

Disciplinary Proceedings - Merely because one of the employees was inflicted with a lesser punishment cannot be a ground to hold the punishment imposed on another employee as disproportionate, if in case of another employee higher punishment is warranted and inflicted by the disciplinary authority after due application of mind. There cannot be any negative discrimination. The punishment/penalty to be imposed on a particular employee depends upon various factors, like the position of the employee in the

department, role attributed to him and the nature of allegations against him. (Para 11) **Anil Kumar Upadhyay v. Director General, SSB**, [2022 LiveLaw \(SC\) 392](#) : AIR 2022 SC 2008

Disciplinary Proceedings - Once the Court set aside an order of punishment on the ground that the enquiry was not properly conducted, the Court should not preclude the employer from holding the inquiry in accordance with law. It must remit the case concerned to the disciplinary authority to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. (Para 6) **State of Uttar Pradesh v. Prabhat Kumar**, [2022 LiveLaw \(SC\) 736](#)

Disciplinary Proceedings - The only requirement is that a delinquent officer must be given fair opportunity to represent his case and that there is no absolute right in his favour to be represented through the agent of his choice. (Para 8) **Rajasthan Marudhara Gramin Bank (RMGB) v. Ramesh Chandra Meena**, [2022 LiveLaw \(SC\) 6](#) : AIR 2022 SC 392 : (2022) 3 SCC 44

Disciplinary Proceedings - The standard of proof in departmental proceedings, being based on preponderance of probability, is somewhat lower than the standard of proof in criminal proceedings where the case has to be proved beyond reasonable doubt - The test of criminal proceedings ought not to be applied in departmental proceedings to call for handwriting experts to examine signatures. **Indian Overseas Bank v. Om Prakash Lal**, [2022 LiveLaw \(SC\) 66](#) : (2022) 3 SCC 803

Disciplinary Proceedings - There is no absolute right in favour of the delinquent officer's to be represented in the departmental proceedings through the agent of his choice and the same can be restricted by the employer. (Para 7) **Rajasthan Marudhara Gramin Bank (RMGB) v. Ramesh Chandra Meena**, [2022 LiveLaw \(SC\) 6](#) : AIR 2022 SC 392 : (2022) 3 SCC 44

Service Law - Disciplinary Proceedings - Driving a vehicle under the influence of alcohol is not only a misconduct but it is an offence also. Nobody can be permitted to drive the vehicle under the influence of alcohol. Such a misconduct of driving a vehicle under the influence of alcohol and playing with the life of the others is a very serious misconduct. - Merely because there was no major loss and it was a minor accident cannot be a ground to show leniency. (Para 11, 10) **Brijesh Chandra Dwivedi v. Sanya Sahayak**, [2022 LiveLaw \(SC\) 81](#) : AIR 2022 SC 667 : (2022) 4 SCC 189

Service Law - Disciplinary Proceedings - Mere non-supply of the documents which may not have resulted any prejudice caused to the employee, the order passed by the disciplinary authority cannot be set aside. **State of Punjab v. Nachhattar Singh**, [2022 LiveLaw \(SC\) 901](#)

Service Law - Disciplinary Proceedings - Merely because subsequently the employee had deposited the defrauded amount and therefore there was no loss caused to the department cannot be a ground to take a lenient view and/or to

show undue sympathy in favour of such an employee. ***Union of India v. M. Duraisamy***, [2022 LiveLaw \(SC\) 404](#) : AIR 2022 SC 2002 : (2022) 7 SCC 475

Service Law - Interference with disciplinary proceedings under Article 226 of the Constitution -The writ court, when disciplinary action is challenged, is primarily concerned with examination of the decision making process, which requires satisfaction that the competent authorities have held inquiry as per the prescribed procedure, and have duly applied their mind to the evidence and material placed on record, without extraneous matters being given undue consideration, and the relevant factors have been cogitated. The conclusions of fact, which are based upon evaluation and appreciation of evidence, when meticulously reached by the authorities, should not be interfered with merely because the court may have reached at a different conclusion. (Para 17) ***CISF v. Santosh Kumar Pandey***, [2022 LiveLaw \(SC\) 1036](#)

Dismissal

Service Law - Appeal against High Court judgment setting aside punishment of dismissal awarded by appellate authority and restoring lesser punishment awarded by disciplinary authority - Partly allowed - Punishment of dismissal imposed by the Appellate Authority was not grossly disproportionate to the quantum of the offence. ***Union of India v. Managobinda Samantaray***, [2022 LiveLaw \(SC\) 244](#) : 2022 (4) SCALE 667

Equal pay for equal work

Service Law - "Equal pay for equal work" is not a fundamental right vested in any employee, though it is a constitutional goal to be achieved by the Government." (Para 14) ***State of Madhya Pradesh v. R.D. Sharma***, [2022 LiveLaw \(SC\) 97](#) : 2022 (2) SCALE 398

Service Law - The doctrine of equal pay for equal work could only be invoked when the employees were similarly circumstanced in every way. Mere similarity of designation or similarity or quantum of work was not determinative of equality in the matter of pay scales. The Court had to consider all the relevant factors such as the mode of recruitment, qualifications for the post, the nature of work, the value of work, responsibilities involved and various other factors. (Para 18) ***State of Madhya Pradesh v. Seema Sharma***, [2022 LiveLaw \(SC\) 571](#)

Entitlement Rules for Casualty Pensionary Awards, 1982

Entitlement Rules for Casualty Pensionary Awards, 1982; Rule 14(b) - the Rule is only attracted when a disease leads to an individual's discharge or death - such disease is ordinarily to be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service, but not always - in any case, the presumption under Rule 14(b) of the Entitlement Rules is rebuttable - if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during

service. [Para 20] **Union of India v. Ex Sep. R. Munusamy**, [2022 LiveLaw \(SC\) 619](#) : AIR 2022 SC 3449

Entitlement Rules for Casualty Pensionary Awards, 1982; Rule 14(c) - If a disease were accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service - reason for disability or ailment - reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed and the connection between the cause/aggravation of the ailment/disability and the conditions and/or requirements of service. [Para 23, 25] **Union of India v. Ex Sep. R. Munusamy**, [2022 LiveLaw \(SC\) 619](#) : AIR 2022 SC 3449

Excess Payment

Service Law - If the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered - if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess. **Thomas Daniel v. State of Kerala**, [2022 LiveLaw \(SC\) 438](#) : 2022 (7) SCALE 179

Grace Mark Policy

CBDT Departmental Examination - Grace mark policy - The benefit of the grace marks was not to allow the reserved category candidate to switch over to general category - Only in a case where any candidate belonging to any category is marginally failing to pass the examination, he is/was to be allowed the grace marks so as to allow him to obtain the minimum passing marks required and that too by allowing upto five grace marks - It was never meant for a person, who has passed in his own category. **Union of India v. Mukesh Kumar Meena**, [2022 LiveLaw \(SC\) 420](#) : AIR 2022 SC 2055

Judicial Service

Constitution of India, 1950; Article 233, 235 - The High Courts are well within their domain in prescribing a requirement which ensures that candidates with sufficient maturity enter the fold of the higher judiciary. The requirement that a candidate should be at least 35 years of age is intended to sub-serve this - The

Constitution does not preclude the exercise of the rule making power by the High Courts to regulate the conditions of service or appointment - Age is not extraneous to the acquisition of maturity and experience, especially in judicial institutions which handle real problems and confront challenges to liberty and justice. (Para 26) **High Court of Delhi v. Devina Sharma**, [2022 LiveLaw \(SC\) 286](#) : (2022) 4 SCC 643

Constitution of India, 1950; Article 311(2) - Judicial Service - When the Government had, on enquiry, come to the conclusion, rightly or wrongly, that the appellant was unsuitable for the post he held on probation, this was clearly by way of punishment and, hence, the appellant would be entitled to the protection of Article 311(2) of the Constitution. (Para 50) **Abhay Jain v. High Court of Judicature for Rajasthan**, [2022 LiveLaw \(SC\) 284](#) : 2022 (4) SCALE 784

Judges Appointment - Collegium reiterations are binding - Supreme Court asks Centre to explain by reiterated names are sent back to the collegium- 10 names reiterated by the Supreme Court collegium sent back by the Central Government- SC asks Attorney General as to how under the Scheme of law prevalent, are reiterated names sent back - Refers to para 486, clause 5 of the second Judges case reported in 1993 (4) SCC 441 - sending back a second time reiterated names would be in breach of this direction. **Advocates Association Bengaluru v. Barun Mitra**, [2022 LiveLaw \(SC\) 1013](#)

Judges Appointment - Delay in finalizing the appointments discouraging eminent lawyers from joining the bench-There has been reluctance on the part of the successful lawyers to accept the honour and what we have stated in our last order is out of the experience of not being able to persuade such eminent people to join the Bench with one factor largely weighing in with them apart from any other issue, i.e. the long prolonged process of appointment and putting their career on hold. Thus on one hand, they are making a monetary sacrifice to come on to the Bench in a larger cause of justice but in that process they do not want their life to be dragged into an uncertainty. This has also resulted in at times, persons withdrawing their consent who are recommended to be elevated. **Advocates Association Bengaluru v. Barun Mitra**, [2022 LiveLaw \(SC\) 1013](#)

Judges Appointment - Delays in appointment will discourage competent lawyers in opting for judgeship - With the expanding opportunities to prominent lawyers, it is as it is a challenge to persuade persons of eminence to be invited to the Bench. On top of that if the process takes ages, there is a further discouragement to them to accept the invitation and this is undoubtedly weighing with the members of the Bar in accepting the invitation to adorn the Bench-unless the Bench is adorned by competent lawyers very concept of Rule of Law and Justice suffers. **Advocates Association Bengaluru v. Barun Mitra**, [2022 LiveLaw \(SC\) 949](#)

Judges Appointment - Memorandum of Procedure is final - The final view of the collegium was expressed in the MoP which was received by the Govt. on 13.03.2017- The undisputed legal position that the MoP is final. That this does

not mean that if the Government suggests some changes or improvements in the MoP, that cannot be looked into but till that happens, the MoP as existing would apply. ***Advocates Association Bengaluru v. Barun Mitra, 2022 LiveLaw (SC) 1013***

Judges Appointment - Supreme Court disapproves Centre splitting up collegium recommendation - When the recommendations are cleared by the Supreme Court, the seniority set out therein must be followed. ***Advocates Association Bengaluru v. Barun Mitra, 2022 LiveLaw (SC) 1013***

Judicial Appointment - Supreme Court issues notice to the Secretary (Justice) and the current Additional Secretary (Administration and Appointment) over delays in clearing collegium reiterations. ***Advocates Association Bengaluru v. Barun Mitra, 2022 LiveLaw (SC) 949***

Judicial Appointments - Once the Government has expressed its reservation and that has been dealt with by the Collegium, post second reiteration, only the appointment has to take place. Thus, keeping the names pending is something not acceptable. ***Advocates Association Bengaluru v. Barun Mitra, 2022 LiveLaw (SC) 949***

Judicial Appointments - Selection to the post of Civil Judge (Junior Division) in Bihar - Decision of Bihar Public Service Commission to reject the applications of 8 candidates for not submitting originals of the certificates at the time of interview set aside - The rejection of the candidates was improper, unjustified and not warranted - 8 appellants who were duly qualified and duly selected have been deprived of their appointment as Judicial Officers. ***Aarav Jain v. Bihar Public Service Commission, 2022 LiveLaw (SC) 521 : AIR 2022 SC 2525***

Judicial Appointments - Supreme Court criticises Centre keeping the recommendations pending - We find the method of keeping the names on hold whether duly recommended or reiterated is becoming some sort of a device to compel these persons to withdraw their names as has happened. ***Advocates Association Bengaluru v. Barun Mitra, 2022 LiveLaw (SC) 949***

Judicial Appointments - Supreme Court makes critical remarks against the Union Government over delay in clearing names reiterated by the Collegium. ***Advocates Association Bengaluru v. Barun Mitra, 2022 LiveLaw (SC) 949***

Judicial Service - Appeal against Bombay HC judgment which refused to interfere with cancellation of appointment of appellant judicial officer who could not join before prescribed date due to nationwide lockdown imposed in view of covid-19 pandemic - Allowed - It is not a case where there is a complete dearth of any explanation by the candidate - There was considerable confusion also about what a person could do and what a person could not do during the time of the lockdown. It was an unprecedented situation which affected the nation - Impugned notification quashed and appointment restored - The appellant will not be entitled to claim seniority / backwages. ***Rakesh Kumar v. State of Bihar, 2022 LiveLaw (SC) 250***

Judicial Service - Appeal against High Court judgment which upheld discharge of a judicial officer - Allowed - Charges filed against the appellant are vague in nature and that absolutely no details have been provided regarding the said allegation of passing the bail order for extraneous considerations/ ulterior motive - Even if appellant's act is considered to be negligent, it cannot be treated as "misconduct" - The appellant be reinstated with all consequential benefits including continuity of service and seniority, but will be entitled to be paid only 50% backwages, which may be paid within a period of four months. **Abhay Jain v. High Court of Judicature for Rajasthan, [2022 LiveLaw \(SC\) 284](#) : 2022 (4) SCALE 784**

Judicial Service - Appellant had applied to the post of Additional District and Sessions Judge (in Bihar) - In the meantime, he also applied for post of Civil Judge (Junior Division) in State of Uttar Pradesh - After being successful in the selection process (UP), he was appointed on 16th January 2017 as a Civil Judge (Junior Division) in UP - After this, the selection process for recruitment in the Bihar Superior Judicial Services proceeded further. After obtaining the requisite permission from the Allahabad HC, he participated in the selection process conducted by the Patna High Court for the post of Additional District & Sessions Judge. After successfully clearing the selection process, he obtained permission from the Allahabad HC for resigning from the Uttar Pradesh Judicial Services, so as to join his service as Additional District and Sessions Judge in the State of Bihar. Thus he joined the Bihar Superior Judicial Service with effect from 21st August 2018 - Later the Patna HC terminated his service citing the decision in Dheeraj Mor v. High Court of Delhi (2020) 7 SCC 401 - His writ petition challenging this termination dismissed by Patna HC - Allowing appeal, the Supreme Court observed: He was neither in services of the Bihar Subordinate Judicial Services Cadre on the date on which he applied - Nor was he in the services of the Bihar Subordinate Judicial Officer Cadre on the date on which he was selected- He had also sought permission from Allahabad HC in this regard - directed reinstation. **Sunil Kumar Verma v. State of Bihar, [2022 LiveLaw \(SC\) 775](#)**

Judicial Service - Delhi Higher Judicial Service - In order to obviate any further litigation and uncertainty, we permit the High Court as a one-time measure to allow those candidates who were within the age cut-off of 45 years during the recruitment years 2020 and 2021 to participate in the ensuing DHJS examinations. (Para 29) **High Court of Delhi v. Devina Sharma, [2022 LiveLaw \(SC\) 286](#) : (2022) 4 SCC 643**

Judicial Service - Delhi Higher Judicial Service - The deletion of the minimum age requirement of 35 years in 2019 may have been guided by the need to attract a larger pool of applicants to DHJS. But the reinstatement of a minimum age requirement of 35 years is a matter of policy. This conforms to the recommendation of the Shetty Commission. (Para 27) **High Court of Delhi v. Devina Sharma, [2022 LiveLaw \(SC\) 286](#) : (2022) 4 SCC 643**

Judicial Service - Discharge of Judicial Officer - Negligence cannot be

treated to be misconduct - Relief-oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer- Every judicial officer is likely to commit mistake of some kind or the other in passing orders in the initial stage of his service, which a mature judicial officer would not do. However, if the orders are passed without there being any corrupt motive, the same should be over-looked by the High Court and proper guidance should be provided to him. (Para 69, 54) **Abhay Jain v. High Court of Judicature for Rajasthan**, [2022 LiveLaw \(SC\) 284](#) : 2022 (4) SCALE 784

Judicial Service - Inter-se seniority for Munsiffs appointed by way of direct recruitment on the recommendation of the State Public Service Commission is to be determined on the basis of their inter-se merit at the time of selection and not roster points. **Manoj Parihar v. State of Jammu and Kashmir**, [2022 LiveLaw \(SC\) 560](#)

Judicial Service - The writ petitioner alleged that hostile transfer orders were passed as she did not act as per the demands of the supervising High Court judge. She complained that was faced with transfer from a Category 'A' city to Category 'C' city and also a Naxal affected area, in violation of the extant transfer policy of the High Court. Since the transfer would have prevented her from being with her daughter who was then appearing for the board exams, she was faced with no option but to resign. Later, she approached the Supreme Court asserting her right to be reinstated. The Supreme Court Held: Though, it may not be possible to observe that the petitioner was forced to resign, however, the circumstances would clearly reveal that they were such, that out of frustration, the petitioner was left with no other alternative. The petitioner's resignation from the post of Additional District & Sessions Judge, Gwalior dated 15th July 2014, cannot be construed to be voluntary and as such, the order dated 17th July 2014, passed by the respondent No. 2, thereby accepting the resignation of the petitioner, is quashed and set aside; and the respondents are directed to re-instate the petitioner forthwith as an Additional District & Sessions Judge. Though the petitioner would not be entitled to back wages, she would be entitled for continuity in service with all consequential benefits with effect from 15th July 2014. **Ms. X v. Registrar General**, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Judicial Service - When the Government had, on enquiry, come to the conclusion, rightly or wrongly, that the appellant was unsuitable for the post he held on probation, this was clearly by way of punishment and, hence, the appellant would be entitled to the protection of Article 311(2) of the Constitution. (Para 50) **Abhay Jain v. High Court of Judicature for Rajasthan**, [2022 LiveLaw \(SC\) 284](#) : 2022 (4) SCALE 784

Judicial Service (Delhi) - Order dated 21st March 2002 modified - 25% by promotion strictly on the basis of merit through LDCE of Civil Judges having 7 years qualifying service [(5 years as Civil Judge (Junior Division) and 2 years as Civil Judge (Senior Division)] or 10 years qualifying service as Civil Judge (Junior Division) - Only 10% of the cadre strength of District Judges be filled up

by Limited Departmental competitive Examination with those candidates who have qualified service of 7 years [(5 years as Civil Judge (Junior Division) and 2 years as Civil Judge (Senior Division) or 10 years qualifying service as Civil Judge(Junior Division)]. (Para 17) **All India Judges Association v. Union of India**, [2022 LiveLaw \(SC\) 385](#) : AIR 2022 SC 1944 : (2022) 7 SCC 494

Judicial Service Examination - Particularly in such cases where there is a multiple choice question paper, it is always advisable that for such question papers, there shall always be an OMR sheet which may be provided to the candidates so that the question paper can be retained by each of the participants and after the examination is held, a provisional answer key is to be uploaded inviting objections from the candidates who had participated in the selection process, to be furnished within a reasonable time and after collating such objections, the same be placed before a subject expert committee to be constituted by the recruiting/competent authority and after the report is submitted by the subject expert committee, the same be examined by the recruiting authority and thereafter the final answer key is to be uploaded. We make it clear that no presumption is to be drawn that the result has to be declared, but at least the candidates may be provided the final answer keys to enable them to make their own assessment. (Para 26) **Harkirat Singh Ghuman v. Punjab & Haryana High Court**, [2022 LiveLaw \(SC\) 720](#) : AIR 2022 SC 4060

Judicial Service Examination - Punjab/Haryana Superior Judicial Service Examination, 2019 - High Court dismissed writ petition challenging the examination process - Allowing the appeal, the Supreme Court directed : Valuate the marks obtained of question nos. 1,2,3 and 5 of Paper V (Criminal Law) (out of total 160 marks) and after undertaking the process, a fresh result of the written examination be declared of the candidates in reference to Punjab/Haryana Superior Judicial Service Examination, 2019 and those who qualify and fall in the zone of three times the number of vacancies may be called for viva-voce and result of the selection process, thereafter be finally declared in accordance with the scheme of Rules, 2007. **Harkirat Singh Ghuman v. Punjab & Haryana High Court**, [2022 LiveLaw \(SC\) 720](#) : AIR 2022 SC 4060

Judicial Service Examination - Where the written examination is followed with viva-voce, declaration of result of the written examination before conducting viva-voce may not be valid and justified but in cases where determination of merit is based on written examination, it must be declared and made available to candidates without any loss of time and this Court can take a judicial notice of the fact that in such cases where the written examination is followed with interview / viva-voce and the members in the interview board are made aware of the marks secured by the candidates in the written examination that may likely to form bias affecting the impartial evaluation of the candidates in viva-voce and in our considered view, it may always be avoided. (Para 28-29) **Harkirat Singh Ghuman v. Punjab & Haryana High Court**, [2022 LiveLaw \(SC\) 720](#) : AIR 2022 SC 4060

Service Law - Judicial Service - Munisffs - The roster points do not determine the seniority of the appointees who gain simultaneous appointments; that is to say, those who are appointed collectively on the same date or are deemed to be appointed on the same date, irrespective when they joined their posts - The roster system is only for the purpose of ensuring that the quantum of reservation is reflected in the recruitment process. It has nothing to do with the inter- se seniority among those recruited. (Para 29) **Manoj Parihar v. State of Jammu and Kashmir**, [2022 LiveLaw \(SC\) 560](#)

Leave Encashment

Service Law - Leave encashment is part of salary. (Para 18) **Jagdish Prasad Saini v. State of Rajasthan**, [2022 LiveLaw \(SC\) 801](#) : AIR 2022 SC 5478

MACP Scheme

Service Law - MACP Scheme - Any revision of pay-structure or revision in other terms and conditions, of Central Government personnel cannot and do not automatically apply to the DDA; it has to consider the new or fresh scheme formulated by the Central Government, and adopt it, if necessary, after appropriate adaptation, to suit its needs. Therefore, the Central Government's MACP scheme did not apply to it automatically. (Para 29) **Vice Chairman Delhi Development Authority v. Narender Kumar**, [2022 LiveLaw \(SC\) 261](#) : 2022 (4) SCALE 512

Service Law - MACP Scheme - That, some employees could have benefitted more under the ACP benefits, if the MACP scheme had not been introduced from an earlier date, is no ground to hold so and compel an executive agency to grant the claimed benefits. (Para 37) **Vice Chairman Delhi Development Authority v. Narender Kumar**, [2022 LiveLaw \(SC\) 261](#) : 2022 (4) SCALE 512

Service Law - Modified Assured Career Progression - MACP Scheme envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part A of the First Schedule of the CCS (Revised Pay) Rules, 2008 and has nothing to do with the next promotional post. (Para 4.1) **Directorate of Enforcement v. Sudheesh Kumar**, [2022 LiveLaw \(SC\) 99](#) : AIR 2022 SC 768 : (2022) 3 SCC 649

Service Law - Modified Assured Career Progression (MACP) Scheme - MACP Scheme is applicable with effect from 1.9.2008 and as per the MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands -fulfilment of pre-promotional norms for grant of financial upgradation would not be insisted for Central Armed Force personnel who, for administrative or other reasons, could not be sent or undergo the pre-promotional course. (Para 12) **Union of India v. Ex. HC/GD Virender Singh**, [2022 LiveLaw \(SC\) 699](#) : AIR 2022 SC 3942

One Rank One Pension

One Rank One Pension - No constitutional infirmity in the OROP principle as

defined by the communication dated 7 November 2015 - The definition of OROP is uniformly applicable to all the pensioners irrespective of the date of retirement - The cut-off date is used only for the purpose of determining the base salary for the calculation of pension- Varying pension payable to officers of the same rank retiring before and after 1 July 2014 either due to MACP or the different base salary used for the calculation of pension cannot be held arbitrary. (*Para 49*) **Indian Ex Servicemen Movement v. Union of India**, [2022 LiveLaw \(SC\) 289](#) : (2022) 7 SCC 323

Pay Scale

Service Law - Differential pay scale along with a process of selection qua suitability fixing eligibility criteria are the factors to determine whether a particular post is the same as the other or a promotional one. **Union of India v. Manpreet Singh Poonam**, [2022 LiveLaw \(SC\) 254](#) : (2022) 6 SCC 105

Service Law - The equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. This is because such job evaluation exercise may include various factors including the relevant data and scales for evaluating performances of different groups of employees, and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it has always been held to be more prudent to leave such task of equation of post and determination of pay scales to be best left to an expert body. Unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post, and that the court's interference was absolutely necessary to undo the injustice, the courts would not interfere with such complex issues. (*Para 14*) **State of Madhya Pradesh v. R.D. Sharma**, [2022 LiveLaw \(SC\) 97](#) : 2022 (2) SCALE 398

Service Law - The fixation of scales of pay is a matter of policy, with which the Courts can only interfere in exceptional cases where there is discrimination between two sets of employees appointed by the same authority, in the same manner, where the eligibility criteria is the same and the duties are identical in every aspect. (*Para 23*) **State of Madhya Pradesh v. Seema Sharma**, [2022 LiveLaw \(SC\) 571](#)

Private School Employees

Service Law - Appeal against Bombay HC judgment which upheld School Tribunal under the Maharashtra Private School Employees (Conditions of Service) Act, 1977, setting aside the Enquiry Committee's order of dismissal on the sole ground that the President of the Management was not the President of the Enquiry Committee - Allowed - "Doctrine of Necessity" applied to sustain the findings of a Disciplinary Enquiry Committee against a School Principal, after noting that the President of the Committee had to be replaced due to ill

health. *Jai Bhavani Shikshan Prasarak Mandal v. Ramesh*, [2022 LiveLaw \(SC\) 327](#) : 2022 (5) SCALE 418

Parity of Pay Scale

Service Law - Parity of Pay Scale - Well settled that there can be no equality to a wrong and/or illegality. Just because a librarian may have been erroneously granted the UGC pay scale, that would not entitle others to claim the UGC pay scale, if not applicable under the Rules. (Para 20) *State of Madhya Pradesh v. Seema Sharma*, [2022 LiveLaw \(SC\) 571](#)

Pension

Service Law - Once the appointment is held to be illegal and void ab initio the services rendered cannot be considered / counted for the purpose of pension. *Dr. Rajasree M.S. v. Professor (Dr) Sreejith PS*,, [2022 LiveLaw \(SC\) 1023](#)

Service Law - Pension - Pension is a continuous cause of action - No justification in denying the arrears of pension on ground of delay. *M.L. Patil v. State of Goa*, [2022 LiveLaw \(SC\) 537](#) : AIR 2022 SC 2878

Service Law - Pension - principles governing pensions and cut-off dates summarized - All pensioners who hold the same rank may not for all purposes form a homogenous class - The benefit of a new element in a pensionary scheme can be prospectively applied. However, the scheme cannot bifurcate a homogenous group based on a cut-off date- Same principle of computation of pensions must be applied uniformly to a homogenous class - It is not a legal mandate that pensioners who held the same rank must be given the same amount of pension. The varying benefits that may be applicable to certain personnel which would also impact the pension payable need not be equalized with the rest of the personnel. (Para 48) *Indian Ex Servicemen Movement v. Union of India*, [2022 LiveLaw \(SC\) 289](#) : (2022) 7 SCC 323

Pension - Grant of pensionary benefits is not a one-time payment. Grant of pensionary benefits is a recurring monthly expenditure and there is a continuous liability in future towards the pensionary benefits. (Para 10.7) *State of Maharashtra v. Bhagwan*, [2022 LiveLaw \(SC\) 28](#) : AIR 2022 SC 345 : (2022) 4 SCC 193

Pension - High Court directed to pay pensionary benefits to an ad -hoc employee who has retired after rendering more than 30 years service - SLP filed by the State Dismissed - The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continuous service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand. *State of Gujarat v. Talsibhai Dhanjibhai Patel*, [2022 LiveLaw \(SC\) 187](#)

Pension - Pension, is a lifelong benefit. Denial of pension is a continuing wrong. This Court cannot also be oblivious to the difficulties of a retired employee in approaching the Court, which could include financial constraints - Financial

rules framed by the Government such as Pension Rules are capable of more interpretations than one, the Courts should lean towards that interpretation which goes in favour of the employee. (*Para 27-28*) ***State of Rajasthan v. O.P. Gupta*, [2022 LiveLaw \(SC\) 785](#) : AIR 2022 SC 4538**

Pension Regulations for the Army, 1961; Regulation 173 - Entitlement Rules for Casualty Pensionary Awards, 1982; Rule 12 - Unless the disability is attributable to or aggravated by military service and is more than 20%, the entitlement to disability pension does not arise - There has to be a reasonable causal connection between the injuries resulting in disability and the military service. (*Para 8-10*) ***Union of India v. Ex Naik Ram Singh*, [2022 LiveLaw \(SC\) 611](#) : AIR 2022 SC 3383**

Service Law - Tripura State Civil Services (Revised Pension) Rules, 2009; Rule 3(3) - A conscious policy decision was taken by the State Government to grant the benefit of revision of pension notionally from 01.01.2006 or from the date of superannuation till 31.12.2008 and to pay/grant the benefit of revision of pension actually from 01.01.2009, which was based on their financial crunch/financial constraint - The cut-off date has been fixed as 01.01.2009 on a very valid ground i.e., financial constraint - High Court manifestly erred in striking down the Rule 3(3). ***State of Tripura v. Anjana Bhattacharjee*, [2022 LiveLaw \(SC\) 706](#) : AIR 2022 SC 4019**

Policy Decision

Service Law - Policies which stipulate that the posting of spouses should be preferably, and to the extent practicable, at the same station are subject to the requirement of the administration. (*Para 26*) ***S.K. Nausad Rahman v. Union of India*, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494**

Service Law - Policy Decision - The Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the Court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences. (*Para 10.4*) ***State of Maharashtra v. Bhagwan*, [2022 LiveLaw \(SC\) 28](#) : AIR 2022 SC 345 : (2022) 4 SCC 193**

Premature Retirement

Service Law - Premature Retirement - The entire service record is to be taken into consideration which would include the ACRs of the period prior to the promotion. The order of premature retirement is required to be passed on the basis of entire service records, though the recent reports would carry their own weight. (*Para 15*) ***Central Industrial Security Force v. HC (GD) Om Prakash*, [2022 LiveLaw \(SC\) 128](#) : (2022) 5 SCC 100**

Promotion

Service Law - When an employee refuses the offered promotion, difficulties in manning the higher position might arise which give rise to administrative

difficulties as the concerned employee very often refuse promotion in order to continue in his/her own place of posting. (Para 17) **Union of India v. Manju Arora**, [2022 LiveLaw \(SC\) 1](#) : (2022) 2 SCC 151

Service Law - Promotion - A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules, which also mandate the clearance through a selection process - There can never be a parity between two separate sets of rules - A right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules. (Para 18) **Union of India v. Manpreet Singh Poonam**, [2022 LiveLaw \(SC\) 254](#) : (2022) 6 SCC 105

Service Law - Promotion - Seniority cum merit - A marred service record, though not an insurmountable bar, must carry some consequences, and it could be a comparative disadvantage in promotion for a selection post. The employer's preference for a person with a clean service record can be well appreciated - Despite the difficulty in encapsulating the parameters for 'merit', a significant marker can be found in the unblemished record of the employee. (Para 25) **Rama Negi v. Union of India**, [2022 LiveLaw \(SC\) 236](#) : (2022) 5 SCC 150

Service Law - Promotion - Seniority cum merit - Appeal against High Court judgment that set aside resolution of Cantonment Board in favour of appellant in the matter of promotion to a selection post - Allowed - The unblemished service record of the appellant vis-à-vis the pending disciplinary proceedings against the respondent (eventually resulting in penalty), were taken into account - The higher pay in the same grade as per the applicable O.M., is a reliable indicator for determining inter-se seniority - All these circumstances in our opinion, weigh in favour of the appellant Rama Negi. **Rama Negi v. Union of India**, [2022 LiveLaw \(SC\) 236](#) : (2022) 5 SCC 150

Service Law - Promotion - Seniority cum merit - Parameters for determining promotion discussed - The totality of the service of the employee has to be considered for promotion on the basis of seniority-cum-merit. (Para 19-20) **Rama Negi v. Union of India**, [2022 LiveLaw \(SC\) 236](#) : (2022) 5 SCC 150

Service Law - Promotion based on merit- cum- seniority - Seniority by itself is not the only qualification for promotion to a selection post - The comparative merit has to be evaluated in which seniority will be one of the factors only - Even a junior most person may steal a march over his seniors and jump the queue for accelerated promotion. (Para 16) **Manoj Parihar v. State of Jammu and Kashmir**, [2022 LiveLaw \(SC\) 560](#)

Service Law - Promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen. **Union of India v. Manpreet Singh Poonam**, [2022 LiveLaw \(SC\) 254](#) : (2022) 6 SCC 105

Service Law - The employees who have refused the offer of regular promotion are disentitled to the financial upgradation benefits envisaged under the O.M. dated 9.8.1999. (Para 18) Scottish doctrine of “Approbate and Reprobate -” The English equivalent of the doctrine was explained in *Lissenden v. CAV Bosch Ltd.* wherein Lord Atkin observed at page 429, “.....In cases where the doctrine does apply the person concerned has the choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with knowledge adopts the one he cannot afterwards assert the other.....” ***Union of India v. Manju Arora*, [2022 LiveLaw \(SC\) 1](#) : (2022) 2 SCC 151**

Service Law - Services rendered by an employee on work charge basis cannot be considered for the grant of benefit of first time bound promotion if the employee is absorbed in service on a different pay-scale. (Para 3.1, 4) ***State of Maharashtra v Madhukar Antu Patil*, [2022 LiveLaw \(SC\) 308](#) : (2022) 5 SCC 322**

Service Law - Revenue Consolidation Service Rules, 1992 (Uttar Pradesh)
- Inter se seniority of direct recruits and promotees in a particular service has to be determined as per the service rules - When the 1992 Rules specifically emphasized that, where in any year of recruitment, appointments were to be made both by direct recruitment and by promotion, regular appointments could not have been made unless selections were made from both the sources and a combined list was to be prepared in accordance with Rule 18 of the 1992 Rules
- The seniority list which provided a higher seniority to the direct recruits is not sustainable in law. (Para 25) ***Amit Singh v. Ravindra Nath Pandey*, [2022 LiveLaw \(SC\) 953](#)**

Constitution of India, 1950; Article 16 - Reservation in Promotion - No yardstick can be laid down by the Court for determining the adequacy of representation of SCs and STs in promotional posts for the purpose of providing reservation. (Para 16) ***Jarnail Singh v. Lachhmi Narain Gupta*, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494**

Constitution of India, 1950; Article 16 - Reservation in Promotion - The judgment of *M. Nagaraj & Ors. v. Union of India* (2006) 8 SCC 212 should be declared to have prospective effect- Making the principles laid down in *M. Nagaraj* (supra) effective from the year 1995 would be detrimental to the interests of a number of civil servants and would have an effect of unsettling the seniority of individuals over a long period of time. (Para 42) ***Jarnail Singh v. Lachhmi Narain Gupta*, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494**

Constitution of India, 1950; Article 16 - Reservation in Promotion - Before providing for reservation in promotions to a cadre, the State is obligated to collect quantifiable data regarding inadequacy of representation of SCs and STs. Collection of information regarding inadequacy of representation of SCs and STs cannot be with reference to the entire service or ‘class’/‘group’ but it should be relatable to the grade/category of posts to which promotion is sought. Cadre, which should be the unit for the purpose of collection of quantifiable data

in relation to the promotional post(s), would be meaningless if data pertaining to representation of SCs and STs is with reference to the entire service. (Para 29) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Constitution of India, 1950; Article 16 - Reservation in Promotion - It is for the State to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors. (Para 30) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Constitution of India, 1950; Article 16 - Reservation in Promotion - We are not inclined to express any view on discontinuation of reservations in totality, which is completely within the domain of the legislature and the executive. As regards review, we are of the opinion that data collected to determine inadequacy of representation for the purpose of providing reservation in promotions needs to be reviewed periodically. The period for review should be reasonable and is left to the Government to set out. (Para 31) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Constitution of India, 1950; Article 16 - Reservation in Promotion - The conclusion in B.K. Pavitra & Ors. v. Union of India (2019) 16 SCC 129 approving the collection of data on the basis of 'groups' and not cadres is contrary to the law laid down by this Court in M. Nagaraj & Ors. v. Union of India (2006) 8 SCC 212 and Jarnail Singh & Ors. v. Lachhmi Narain Gupta & Ors. (2018) 10 SCC 396 – The State should justify reservation in promotions with respect to the cadre to which promotion is made. Taking into account the data pertaining to a 'group', which would be an amalgamation of certain cadres in a service, would not give the correct picture of the inadequacy of representation of SCs and STs in the cadre in relation to which reservation in promotions is sought to be made. Rosters are prepared cadre-wise and not group-wise. Sampling method which was adopted by the Ratna Prabha Committee might be a statistical formula appropriate for collection of data. However, for the purpose of collection of quantifiable data to assess representation of SCs and STs for the purpose of providing reservation in promotions, cadre, which is a part of a 'group', is the unit and the data has to be collected with respect to each cadre. (Para 47) **Jarnail Singh v. Lachhmi Narain Gupta**, [2022 LiveLaw \(SC\) 94](#) : 2022 (2) SCALE 494

Service Law - If a regular promotion is offered but is refused by the employee before becoming entitled to a financial upgradation, she/he shall not be entitled to financial upgradation only because she has suffered stagnation. This is because, it is not a case of lack of promotional opportunities but an employee opting to forfeit offered promotion, for her own personal reasons. However, this vital aspect was not appropriately appreciated by the High Court while granting relief to the employees. (Para 16) **Union of India v. Manju Arora**, [2022 LiveLaw \(SC\) 1](#) : (2022) 2 SCC 151

Public Servants

Service Law - Public Servants - Conditions of service of a public servant, including matters of promotion and seniority are governed by the extant rules - The statement in *Y.V. Rangaiah v. J. Sreenivasa Rao* that, "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules", does not reflect the correct proposition of law governing services under the Union and the States under part XIV of the Constitution - The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services. (Para 10, 37.3) ***State of Himachal Pradesh v. Raj Kumar*, [2022 LiveLaw \(SC\) 502](#) : 2022 (8) SCALE 678**

Railway

Service Law - Railway Employees - The employees working under the same employer – Railway Board working in different Zones/Divisions are required to be treated similarly and equally and are entitled to similar benefits and are entitled to the same treatment - Commission Vendors/bearers working in the Northern Railway are entitled to have 50% of their services rendered prior to their regularization to be counted for pensionary benefits. ***Union of India v. Munshi Ram*, [2022 LiveLaw \(SC\) 891](#)**

Constitution of India, 1950; Article 16 - Railways LARGESS Scheme - Scheme provided an avenue for backdoor entry into service and was contrary to the mandate of Article 16 which guarantees equal opportunity in matters of public employment. ***Chief Personnel Officer v. A. Nishanth George*, [2022 LiveLaw \(SC\) 277](#) : 2022 (2) SCALE 357**

Constitution of India, 1950; Article 16 - Railways LARGESS Scheme - Appeal against High Court judgment which held that though the LARGESS Scheme was terminated, since the respondent's father superannuated on 1 January 2015 prior to 27 January 2017, the benefit of the scheme could be extended to him in terms of the notification dated 28 September 2018- Allowed - The impugned judgment issuing a mandamus for the appointment of the respondent cannot be sustained. ***Chief Personnel Officer v. A. Nishanth George*, [2022 LiveLaw \(SC\) 277](#) : 2022 (2) SCALE 357**

Regularization

Service Law - Regularization - A public employer such as LIC cannot be directed to carry out a mass absorption of over 11,000 workers on such flawed premises without following a recruitment process which is consistent with the principles of equality of opportunity governed by Articles 14 and 16 of the Constitution. Such an absorption would provide the very back-door entry, which negates the principle of equal opportunity and fairness in public employment, which has been specifically decried by this Court in *Secretary, State of Karnataka v. Umadevi*. (Para 74.iii) ***Ranbir Singh v. S.K. Roy*, [2022 LiveLaw \(SC\) 417](#) : 2022 (7) SCALE 110**

Service Law - Regularization - Appeal against High Court order which allowed writ petition filed by few employees claiming parity in date of regularization- Allowed - date of regularization and grant of pay scale is a prerogative of the employer/screening committee and no parity can be claimed in the matter of regularization in different years. ***Ajmer Vidhyut Vitran Nigam Ltd. v. Chiggan Lal***, [2022 LiveLaw \(SC\) 296](#)

Service Law - Regularization - State of Karnataka v. Umadevi (2006) 4 SCC 1 - The purpose and intent of the decision in Umadevi (supra) was, (1) to prevent irregular or illegal appointments in the future, and (2) to confer a benefit on those who had been irregularly appointed in the past and who have continued for a very long time. The decision of Umadevi (supra) may be applicable in a case where the appointments are irregular on the sanctioned posts in regular establishment. The same does not apply to temporary appointments made in a project/programme. (Para 8) ***State of Gujarat v. R.J. Pathan***, 24 Mar 2022, [2022 LiveLaw \(SC\) 313](#) : (2022) 5 SCC 394

Service Law - Regularization - The date from which regularization is to be granted is a matter to be decided by the employer keeping in view a number of factors like the nature of the work, number of posts lying vacant, the financial condition of the employer, the additional financial burden caused, the suitability of the workmen for the job, the manner and reason for which the initial appointments were made etc. The said decision will depend upon the facts of each year and no parity can be claimed based on regularization made in respect of the earlier years. (Para 9-12) ***Ajmer Vidhyut Vitran Nigam Ltd. v. Chiggan Lal***, [2022 LiveLaw \(SC\) 296](#)

Reinstatement

Service Law - Appeal against High Court judgment which directed the reinstatement of an employee with back-wages - Allowed - A stale claim cannot be revived by a representation. ***Nagar Panchayat v. Hanuman Prasad Dwivedi***, [2022 LiveLaw \(SC\) 53](#) : 2022 (4) SCALE 497

Removal of Service

Constitution of India, 1950; Article 226 - The appellant was serving as a Branch Officer of a Bank. A complaint was made against him by one borrower of the Bank alleging that he had sanctioned the limit of loan of Rs.1,50,000/- which was later on reduced to Rs.75,000/- when the borrower refused to give bribe demanded by him. The disciplinary proceedings were initiated against him. The inquiry officer held that most of the charges were proved. The disciplinary authority/Chairman of the Bank passed an order of removal of the appellant from service. The Appellate Authority dismissed the appeal filed by him. The Uttarakhand High Court also dismissed the writ petition confirming the order of removal from service. Partly allowing the appeal, the Supreme Court held that removal of service can be said to be disproportionate to the charges and misconduct held to be proved. Therefore, the High Court order was modified to the extent substituting the punishment from that of removal of

service to that of compulsory retirement. **Umesh Kumar Pahwa v. Uttarakhand Gramin Bank**, [2022 LiveLaw \(SC\) 155](#) : AIR 2022 SC 1041 : (2022) 4 SCC 385

Revision

Service Law - The manner in which and the period over which revisions should take place of pensions, salaries and other financial benefits is a pure question of policy. (Para 37) **Indian Ex Servicemen Movement v. Union of India**, [2022 LiveLaw \(SC\) 289](#) : (2022) 7 SCC 323

Salary

Service Law - Even if the appointment was irregular, the appellant had discharged the duties and in lieu of duties, he had to be paid. The State cannot take any work from any employee without payment of any salary. **Man Singh v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 341](#)

Sashastra Seema Bal (SSB)

Service Law - Sashastra Seema Bal (SSB) - A member of the disciplined force is expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in a fancy. (Para 9) **Anil Kumar Upadhyay v. Director General, SSB**, [2022 LiveLaw \(SC\) 392](#) : AIR 2022 SC 2008

Service Law - Sashastra Seema Bal (SSB) - Appeal against Gauhati High court judgment upholding the order of disciplinary authority removing the appellant from service - Dismissed If the conduct on the part of the appellant entering the Mahila Barrack of the Battalion in the midnight is approved, in that case, it would lead to compromising the security of the occupants of the Mahila Barrack. Therefore, the disciplinary authority was absolutely justified in imposing the punishment/penalty of 'removal from service' by modifying the earlier punishment/dismissal. **Anil Kumar Upadhyay v. Director General, SSB**, [2022 LiveLaw \(SC\) 392](#) : AIR 2022 SC 2008

Selection Process

Service Law - A candidate who has participated in the selection process adopted is estopped and has acquiesced himself from questioning it. (Para 21) **State of Uttar Pradesh v. Karunesh Kumar**, [2022 LiveLaw \(SC\) 1035](#)

Service Law - Selection process held in violation of service rules - High Court division bench applies principle of estoppel to reject challenge - Supreme Court sets aside the HC verdict. **Krishna Rai v. Benarus Hindu University**, [2022 LiveLaw \(SC\) 553](#) : (2022) 8 SCC 713

Service Law - Principle governing changing the rules of game would not have any application when the change is with respect to the selection process but not the qualification or eligibility - In other words, after the advertisement is made followed by an application by a candidate with further progress, a rule cannot be brought in, disqualifying him to participate in the selection process. It is only

in such cases, the principle aforesaid will have an application or else it will hamper the power of the employer to recruit a person suitable for a job. (Para 32) **State of Uttar Pradesh v. Karunesh Kumar**, [2022 LiveLaw \(SC\) 1035](#)

Supernnuation

Service Law - Madhya Pradesh - Teachers in govt aided private educational institutions entitled to supernnuation age of 65 years. **Dr. Jacob Thudipara v. State of Madhya Pradesh**, [2022 LiveLaw \(SC\) 446](#) : AIR 2022 SC 2042 : (2022) 7 SCC 764

Suppression of Information

Service Law - A non-disclosure of material information itself could be a ground for cancellation of employment or termination of services - Employer would not be obliged to ignore such defaults and shortcomings. Where suppression of relevant information is not a matter of dispute, there cannot be any legal basis for the Court to interfere - The cases of non-disclosure of material information and of submitting false information have been treated as being of equal gravity. **Union of India v. Dillip Kumar Mallick**, [2022 LiveLaw \(SC\) 360](#)

Service Law - Suppression of information about criminal cases - This Court has held that giving of a wrong information disentitles the candidate for appointment -An employee desirous of holding civil post has to act with utmost good faith and truthfulness. Truthfulness cannot be made causality by an aspirant much more for a candidate aspiring to be a teacher. (Paras 10, 11 and 12) **Government of NCT of Delhi v. Bheem Singh Meena**, [2022 LiveLaw \(SC\) 339](#)

Service Law - Suppression of material fact by candidate in respect of his criminal antecedents and making a false statement in the application Form - Principles discussed. (Para 6-7) **State of Rajasthan v. Chetan Jeff**, [2022 LiveLaw \(SC\) 483](#) : AIR 2022 SC 2274

Service Law - Suppression of Material Information - The candidate who intend to participate in the selection process is required to furnish correct information relating to his character and antecedents in the verification/attestation form before or after his induction into service - The person who has suppressed the material information, cannot claim unfettered right of seeking appointment or continuity in service but, at the same time, he has a right not to be dealt with arbitrarily and power has to be exercised in reasonable manner with objectivity having due regard to the facts of case on hand. The yardstick which has to be applied always depends upon the nature of post, nature of duties, impact of suppression on suitability has to be considered by the competent authority considering post/nature of duties/services and power has to be exercised on due diligence of various aspects at the given time and no hard and fast rule of thumb can be laid down in this regard. (Para 15) **Umesh Chandra Yadav v. Inspector General and Chief Security Commissioner**, [2022 LiveLaw \(SC\) 300](#) : 2022 (4) SCALE 680

Service Law - Mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service - Mere suppression of material / false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee / recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen - The effect of suppression of material / false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance / suitability of the employee into service - The person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. ***Pawan Kumar v. Union of India***, [2022 LiveLaw \(SC\) 441](#) : AIR 2022 SC 2829

Service Law - Appeal against the High Court judgment which upheld the cancellation of appointment of the appellant on the premise of non-disclosure of criminal case being instituted against him in the year 1997, when he was a juvenile - Allowed - the appellant was a juvenile when a criminal case was registered against him and was also a juvenile when the order of discharge was passed - This was indisputedly a special circumstance indeed which was not taken into consideration by the authority while passing the order of cancellation of his appointment - The seriatim of facts cumulatively indicate that the nature of information which was not disclosed by the appellant, in any manner, could be considered to be a suppression of material information. ***Umesh Chandra Yadav v. Inspector General and Chief Security Commissioner***, [2022 LiveLaw \(SC\) 300](#) : 2022 (4) SCALE 680

Service Law - Appeal against Orissa High Court direction to impose 'any lesser punishment' to employee terminated from service for non-disclosure of criminal cases - Allowed - In a case of the present nature where a criminal case was indeed pending against the respondent and the facts were altogether omitted from being mentioned, the employer would be obliged to ignore such defaults and shortcomings. ***Union of India v. Dillip Kumar Mallick***, [2022 LiveLaw \(SC\) 360](#)

Vested Right

Service Law - The concept of "vested right". (Para 33) ***Vice Chairman Delhi Development Authority v. Narender Kumar***, [2022 LiveLaw \(SC\) 261](#) : 2022 (4) SCALE 512

Transfer

Service Law - Transfer - Normally an order of transfer, which is an incident of service should not be interfered with, unless it is found that the same is mala

fide - Mala fide is of two kinds — one ‘malice in fact’ and the second ‘malice in law’. When an order is not based on any factor germane for passing an order of transfer and based on an irrelevant ground, such an order would not be sustainable in law. (Para 61) **Ms. X v. Registrar General**, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Service Law - Transfer Policy - Rights of Persons with Disabilities Act, 2016 - A statutory mandate for recognizing the principle of reasonable accommodation for the disabled members of society - The formulation of a policy therefore, must take into account the mandate which Parliament imposes as an intrinsic element of the right of the disabled to live with dignity. (Para 49) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Service Law - Transfer Policy - The State while formulating a policy for its own employees has to give due consideration to the importance of protecting family life as an element of the dignity of the person and a postulate of privacy. (Para 51) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Service Law - Executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration. (Para 25) **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Service Law - Appeals against a Kerala High Court judgment which rejected the challenge against a circular issued by the Central Board of Indirect Taxes and Customs (CBIC) in 2018 withdrawing Inter-Commissionerate Transfers (ICT) - Dismissed - While we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of the disabled and compassionate grounds. **S.K. Nausad Rahman v. Union of India**, [2022 LiveLaw \(SC\) 266](#) : AIR 2022 SC 1494

Uniformed Service

Service Law - Rejection of candidature of a candidate who applied to post of constable upheld - An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary any act in deceit and subterfuge cannot be tolerated. **State of Rajasthan v. Chetan Jeff**, [2022 LiveLaw \(SC\) 483](#) : AIR 2022 SC 2274

University

Service Law - CUSAT - Director/HOD of Cochin University a teacher who was being considered for HOD on a rational basis would not be prohibited from being considered for appointment when second rotational term becomes due if he/she during the first term makes a request of being relieved from the responsibility

for academic reason. **Dr. Jagathy Raj V.P. v. Dr. Rajitha Kumar S.,** [2022 LiveLaw \(SC\) 145](#) : (2022) 6 SCC 299

Service Law - Supreme Court dismisses the review against the judgment in *Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S. & Ors* [2022 LiveLaw \(SC\) 871](#) which set aside the appointment of the Vice Chancellor of the APJ Abdul Kalam Kerala Technological University in 2019. **Dr. Rajasree M.S. v. Professor (Dr) Sreejith PS,,** [2022 LiveLaw \(SC\) 1023](#)

Voluntary Retirement

Service Law - Voluntary Retirement - Once an officer retires voluntarily, there is cessation of jural relationship resorting to a "golden handshake" between the employer and employee. Such a former employee cannot seek to agitate his past, as well as future rights, if any, sans the prescription of rules. This would include the enhanced pay scale. (Para 16) **Union of India v. Manpreet Singh Poonam,** [2022 LiveLaw \(SC\) 254](#) : (2022) 6 SCC 105

Service Law - Voluntary Retirement Scheme - VRS benefit is an entitlement and assumes the character of property to the employee concerned once his application for VRS is accepted. It is the right of a person under Article 300A of the Constitution of India to have the VRS benefit to be given on accurate assessment thereof, the employer here being a public sector unit. If at the time of quantifying the VRS benefit after accepting an employee's application for voluntary retirement, the employer take any step that would reduce such benefit in monetary terms, such step shall have to be taken under the authority of law. (Para 21) **Shankar Lal v. Hindustan Copper Ltd.,** [2022 LiveLaw \(SC\) 407](#) : (2022) 6 SCC 211

Voluntary Rural Education

Voluntary Rural Education Service Rules, 2010 (Rajasthan); Rule 5 (viii) - The condition in clause (viii) of Rule 5 i.e., carry forward of balance privilege leave, is barred and requiring employees to seek encashment from their previous employer, i.e., aided institutions, is an arbitrary and unconscionable condition, which cannot be enforced. (Para 20) **Jagdish Prasad Saini v. State of Rajasthan,** [2022 LiveLaw \(SC\) 801](#) : AIR 2022 SC 5478

Service Tax

Service Tax - Finance Act 1994 - Held that for the period pre-Finance Act, 2007, service tax was not leviable on the indivisible/composite works contracts. **Total Environment Building Systems Pvt. Ltd. v. Deputy Commissioner of Commercial Taxes,** [2022 LiveLaw \(SC\) 656](#)

Service Tax - Finance Act 1994 - The contention of revenue to the effect that even prior to the 2007 amendment being made to the Finance Act, 1994 service tax on works contract was leviable is not correct. It was being levied on purely service contract and not on service element of works contract as there was no definition of a works contract till then. Hence, the amendment made to the Finance Act, 1994 by insertion of the definition of works contract as under

clause (zzzza) is not clarificatory in nature. (Para 12) **Total Environment Building Systems Pvt. Ltd. v. Deputy Commissioner of Commercial Taxes, 2022 LiveLaw (SC) 656**

Service Tax - License to use software through End User License Agreement a "deemed sale" as per Article 366 (29A) (d) of the Constitution - Service tax not leviable merely because updates are given to the customer. **Commissioner of Service Tax New Delhi v. Quick Heal Technologies Ltd, 2022 LiveLaw (SC) 660 : AIR 2022 SC 3660**

Service Tax - Sale of software - whether service tax leviable - Once a lumpsum has been charged for the sale of CD (as in the case on hand) and sale tax has been paid thereon, the revenue thereafter cannot levy service tax on the entire sale consideration once again on the ground that the updates are being provided. We are of the view that the artificial segregation of the transaction, as in the case on hand, into two parts is not tenable in law. It is, in substance, one transaction of sale of software and once it is accepted that the software put in the CD is "goods", then there cannot be any separate service element in the transaction. We are saying so because even otherwise the user is put in possession and full control of the software. It amounts to "deemed sale" which would not attract service tax. (Para 55) **Commissioner of Service Tax New Delhi v. Quick Heal Technologies Ltd, 2022 LiveLaw (SC) 660 : AIR 2022 SC 3660**

Service Tax - Whether contract is for job work or for supply of manpower - Agreement has to be read as a composite whole - In this case, though ostensibly, the agreement contains a provision for payment on the basis of the rates mentioned in Schedule II, the agreement has to be read as a composite whole. On reading the agreement as a whole, it is apparent that the contract is pure and simple a contract for the provision of contract labour. An attempt has been made to camouflage the contract as a contract for job work to avail of the exemption from the payment of service tax. The judgment of the Tribunal does not, in the circumstances, suffer from any error of reasoning. (Para 17) **Adiraj Manpower Services Pvt. Ltd. v. Commissioner of Central Excise Pune II, 2022 LiveLaw (SC) 190 : AIR 2022 SC 1426**

Service Tax on Work Contracts - The judgment in Larsen and Toubro Ltd. (supra) has been correctly decided and does not call for a reconsideration insofar as the period prior to 1st June, 2007 is concerned. (Para 13) **Total Environment Building Systems Pvt. Ltd. v. Deputy Commissioner of Commercial Taxes, 2022 LiveLaw (SC) 656**

Show Cause Notice

Show Cause Notice - Fundamental purpose behind the serving of a show - cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement is the nature of

action which is proposed to be taken for such a breach. (Para 8.6) ***State of Odisha v. Panda Infraproject*, [2022 LiveLaw \(SC\) 206](#) : (2022) 4 SCC 393**

Slum Areas

Slum Areas (Improvement and Clearance) Act, 1973 (Karnataka); Section 20 - Constitutional Validity - Karnataka High Court struck down the provision as unconstitutional, in appeal, the Supreme Court held: High Court has dealt with the question of validity of Section 20 in a casual manner. That cannot be countenanced inasmuch as the Constitutional Court for answering the assail on this count, in the first place, need to examine the scheme of the 1973 Act, its objects and purposes as also the question: whether the payment of amount specified as three hundred times the property tax payable in respect of such land on the date of publication would be a permissible method of determination of the amount or is per se unjust, unfair or unreasonable - Impugned judgment set aside and remanded. ***State of Karnataka v. B.R. Muralidhar*, [2022 LiveLaw \(SC\) 637](#)**

Small Cause Courts

Small Cause Courts Act, 1964 (Karnataka); Section 18 - High Court is empowered to interfere with findings of fact only if the findings are perverse or based on no evidence or suffering from error of law or there has been non-appreciation or non-consideration of a material on record by the court(s) below - That another view is possible based on the evidence on record can be no ground for the High Court to interfere with an order of court(s) below in exercise of its revisional jurisdiction - When the judgment and decree of the Civil Court is not 'according to law,' the High Court is certainly within its rights to set aside the decree in exercise of its revisional jurisdiction. (Para 6, 11) ***K.M. Manjunath v. Erappa G.*, [2022 LiveLaw \(SC\) 561](#)**

Societies Registration Act, 1860

Societies Registration Act, 1860; Section 6 – Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955; Section 9 - Unless the plaintiff in a suit which claims to be a society, demonstrates that it is a registered entity and that the person who signed and verified the pleadings was authorised by the bye-laws to do so, the suit cannot be entertained. The fact that the plaintiff in a suit happens to be a local unit or a Sakha unit of a registered society is of no consequence, unless the bye-laws support the institution of such a suit. (Para 15) ***P. Nazeer v. Salafi Trust*, [2022 LiveLaw \(SC\) 334](#) : 2022 (5) SCALE 516**

Societies Registration Act, 1860; Section 6 – Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955; Section 9 - Unless the plaintiff in a suit which claims to be a society, demonstrates that it is a registered entity and that the person who signed and verified the pleadings was authorised by the bye-laws to do so, the suit cannot be entertained. The fact that the plaintiff in a suit happens to be a local unit or a Sakha unit of a registered society is of no consequence, unless the bye-laws support the

institution of such a suit. (Para 15) *P. Nazeer v. Salafi Trust*, [2022 LiveLaw \(SC\) 334](#) : 2022 (5) SCALE 516

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Special Relief Act, 1963

Special Relief Act, 1963; Section 28 - A suit for specific performance does not come to an end on the passing of a decree and the court which has passed the decree for specific performance retains control over the decree even after the decree has been passed. Section 28 not only permits the judgment -debtors to seek rescission of the contract but also permits extension of time by the court to pay the amount. The power under this section is discretionary and the court has to pass an order as the justice of the case may require. (Para 11) *Kishor Ghanshyamsa Paralikar v. Balaji Mandir Sansthan Mangrul (Nath)*, [2022 LiveLaw \(SC\) 528](#)

Special Relief Act, 1963; Section 28 - Consent Decrees - Time for payment of sale consideration may be extended even in a consent decree. *Kishor Ghanshyamsa Paralikar v. Balaji Mandir Sansthan Mangrul (Nath)*, [2022 LiveLaw \(SC\) 528](#)

Specific Relief Act, 1963 - Contract Act, 1872; Section 55 - Defense under Section 55 of Contract Act is valid against anyone who is seeking the relief of specific performance. *Desh Raj v. Rohtash Singh*, [2022 LiveLaw \(SC\) 1026](#)

Specific Relief Act, 1963 - Section 21(5) - The scope of Section 21 (4) and (5) was examined by this Court in *Shamsu Suhara Beevi v. G. Alex and Another* (supra). This Court referred to the Law Commission of India's recommendation that in no case the compensation should be decreed, unless it is claimed by a proper pleading. However, the Law Commission was of the opinion that it should be open to the plaintiff to seek an amendment to the plaint, at any stage of the proceedings in order to introduce a prayer for compensation, whether in lieu or in addition to specific performance. In the said case no claim for compensation for breach of agreement of sale was claimed either in addition to or in substitution of the performance of the agreement. Admittedly, there was no amendment to the plaint asking for compensation either in addition or in substitution of the performance of an agreement of sale. (Para 21) *Universal Petro Chemicals Ltd. v. B.P.PLC*, [2022 LiveLaw \(SC\) 185](#) : AIR 2022 SC 1183 : (2022) 6 SCC 157

Specific Relief Act, 1963 - Section 21(5) - Whether compensation can be granted in lieu of specific performance unless claimed in the plaint - Supreme Court disallows claim for compensation as it was not specifically claimed in the plaint. ***Universal Petro Chemicals Ltd. v. B.P.PLC***, [2022 LiveLaw \(SC\) 185](#) : AIR 2022 SC 1183 : (2022) 6 SCC 157

Specific Relief Act, 1963 - Section 38 - Suit for Permanent Injunction - Injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to disposes him, except in due process of law. (Para 11.1) ***Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai***, [2022 LiveLaw \(SC\) 241](#) : 2022 (4) SCALE 352

Specific Relief Act, 1963 - Section 38 - Suit for Permanent Injunction - Appeal against High Court judgment which dismissed second appeal to uphold Trial Court judgment which granted relief of permanent injunction while declining to grant the declaratory relief - Allowed - After having held that the plaintiff had no title and after dismissing the suit qua the cancellation of the registered sale deed and the declaration, the plaintiff is not entitled to relief of permanent injunction against defendant, the true owner. ***Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai***, [2022 LiveLaw \(SC\) 241](#) : 2022 (4) SCALE 352

Specific Relief Act, 1963 - Section 38 - Suit Permanent Injunction - Once the suit is held to be barred by limitation qua the declaratory relief and when the relief for permanent injunction was a consequential relief, the prayer for permanent injunction, which was a consequential relief can also be said to be barred by limitation. (Para 8.3) ***Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai***, [2022 LiveLaw \(SC\) 241](#) : 2022 (4) SCALE 352

Specific Relief Act, 1963 - Specific Performance Suit - A decree could not have been obtained behind the back of a bona fide purchaser, more so when the transaction had taken place prior to the institution of the suit for specific performance. (Para 23) ***Seethakathi Trust Madras v. Krishnaveni***, [2022 LiveLaw \(SC\) 58](#) : AIR 2022 SC 558 : (2022) 3 SCC 150

Specific Relief Act, 1963 - Specific Performance Suit - A plaintiff cannot examine his attorney holder in his place, who did not have personal knowledge either of the transaction or of his readiness and willingness in a suit for specific performance. Thus, a third party who had no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney holder of the person concerned. (Para 12) ***Seethakathi Trust Madras v. Krishnaveni***, [2022 LiveLaw \(SC\) 58](#) : AIR 2022 SC 558 : (2022) 3 SCC 150

Specific Relief Act, 1963 - Specific Performance Suit - There must be a specific issue framed on readiness and willingness on the part of the plaintiff in a suit for specific performance and before giving any specific finding, the parties must be put to notice. The object and purpose of framing the issue is so that

the parties to the suit can lead the specific evidence on the same. (Para 4.1) ***V.S. Ramakrishnan v. P.M. Muhammed Ali***, [2022 LiveLaw \(SC\) 935](#)

Specific Relief Act, 1963 - Suit for injunction simplicitor on the basis of unregistered agreement to sell - The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting - The plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counter-claim for getting back the possession. (Para 6) ***Balram Singh v. Kelo Devi***, [2022 LiveLaw \(SC\) 800](#)

Specific Relief Act, 1963 - Suit for specific performance - The court should look at all the relevant circumstances including the time limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised - While exercising its discretion, the court should bear in mind that when the parties prescribe certain time limit(s) for taking steps by one or the other party, it must have some significance and that the said time limit(s) cannot be ignored altogether on the ground that time is not the essence of the contract. (Para 12) ***Kolli Satyanarayana v. Valuripalli Kesava Rao Chowdary***, [2022 LiveLaw \(SC\) 807](#)

Specific Relief Act, 1963 - Suit for specific performance - When suit property was jointly owned by the defendant along with his wife and three sons, an effective decree could not have been passed affecting the rights of the defendant's wife and three sons without impleading them. (Para 19) ***Moreshar Yadao Mahajan v. Vyankatesh Sitaram Bhedi***, [2022 LiveLaw \(SC\) 802](#) : AIR 2022 SC 4710

Specific Relief Act, 1963 - Suit for specific performance for agreement to sell - Once the execution of agreement to sell and the payment of advance substantial sale consideration is admitted by the vendor, nothing further is required to be proved by the vendee. (Para 5.2) ***P. Ramasubamma v. V. Vijayalakshmi***, [2022 LiveLaw \(SC\) 375](#) : AIR 2022 SC 1793 : (2022) 7 SCC 384

Specific Relief Act, 1963 - The Court is obliged to take judicial notice of the phenomenal rise in the price of real estate - Having paid an insignificant amount the Plaintiff was not entitled to discretionary equitable relief of Specific Performance. (Para 38-39) ***U.N. Krishnamurthy v. A.M. Krishnamurthy***, [2022 LiveLaw \(SC\) 588](#) : AIR 2022 SC 3361

Specific Relief Act, 1963 - The fact that the suit had been filed after three years, just before expiry of the period of limitation, is also a ground to decline the Plaintiff the equitable relief of Specific Performance for purchase of immovable property - The courts will also frown upon suits which are not filed

immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain Specific Performance. The three year period is intended to assist the purchaser in special cases, as for example where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser. (Para 43) **U.N. Krishnamurthy v. A.M. Krishnamurthy**, [2022 LiveLaw \(SC\) 588](#) : AIR 2022 SC 3361

Specific Relief Act, 1963; Section 10 - 2018 amendment to the Specific Relief Act is prospective and cannot apply to those transactions that took place prior to its coming into force. **Katta Sujatha Reddy v. Siddamsetty Infra Projects Pvt. Ltd.**, [2022 LiveLaw \(SC\) 712](#) : AIR 2022 SC 5435

Specific Relief Act, 1963; Section 12 - A Court cannot grant the relief of specific performance against a person compelling him to enter into an agreement with a third party and seek specific relief against such a third party. (Para 16) **Raman (D) v. R. Natarajan**, [2022 LiveLaw \(SC\) 760](#) : AIR 2022 SC 4343 : (2022) 10 SCC 143

Specific Relief Act, 1963; Section 16 - In order to prove readiness and willingness, the burden is on the purchaser to prove that they were always ready and it is only the vendor who refused to perform the contract for extraneous consideration - When the purchaser was not ready or willing to perform his part of the contract within the time stipulated and accordingly, specific performance cannot be granted for the entire contract. (Para 63-69) **Katta Sujatha Reddy v. Siddamsetty Infra Projects Pvt. Ltd.**, [2022 LiveLaw \(SC\) 712](#) : AIR 2022 SC 5435

Specific Relief Act, 1963; Section 16 - Readiness and Willingness - it is not only necessary to view whether he had the financial capacity to pay the balance consideration, but also assess his conduct throughout the transaction - The foundation of a suit for specific performance lies in ascertaining whether the plaintiff has come to the court with clean hands and has, through his conduct, demonstrated that he has always been willing to perform the contract. (Para 25-26) **Shenbagam v. KK Rathinavel**, [2022 LiveLaw \(SC\) 74](#) : AIR 2022 SC 1275

Specific Relief Act, 1963; Section 16(c) - Distinction between readiness and willingness to perform the contract - Both ingredients are necessary for the relief of Specific Performance - While readiness means the capacity of the Plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the Plaintiff. (Para 34) **U.N. Krishnamurthy v. A.M. Krishnamurthy**, [2022 LiveLaw \(SC\) 588](#) : AIR 2022 SC 3361

Specific Relief Act, 1963; Section 16(c) - In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely:- (i) Whether there is a valid agreement of sale binding on both the vendor and the vendee and (ii) Whether the Plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under

Section 16(c) of the Specific Relief Act, 1963. Even in a first appeal, the first Appellate Court is duty bound to examine whether there was continuous readiness and willingness on the part of the Plaintiff to perform the contract. (Para 33-35) *U.N. Krishnamurthy v. A.M. Krishnamurthy*, [2022 LiveLaw \(SC\) 588](#) : AIR 2022 SC 3361

Specific Relief Act, 1963; Section 16(c) - The continuous readiness and willingness on the part of the Plaintiff a condition precedent for grant of the relief of Specific Performance-It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice -Deposit of amount in court is not enough to arrive at conclusion that Plaintiff was ready and willing to perform his part of contract. (Para 24 - 46) *U.N. Krishnamurthy v. A.M. Krishnamurthy*, [2022 LiveLaw \(SC\) 588](#) : AIR 2022 SC 3361

Specific Relief Act, 1963; Section 20 - In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault. (Para 36) *Shenbagam v. KK Rathinavel*, [2022 LiveLaw \(SC\) 74](#) : AIR 2022 SC 1275

Specific Relief Act, 1963; Section 21 - Specific Relief (Amendment) Act, 2018 - After 2018 amendment, damages are now available only in addition to specific performance and not in lieu thereof. (Para 59) *Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd.*, [2022 LiveLaw \(SC\) 729](#) : AIR 2022 SC 4256

Specific Relief Act, 1963; Section 21 (5) - Sub-section (5) stipulates that compensation cannot be awarded under the section unless the Plaintiff has claimed such compensation in the plaint. This provision is mandatory. (Para 55) *Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd.*, [2022 LiveLaw \(SC\) 729](#) : AIR 2022 SC 4256

Specific Relief Act, 1963; Section 21, 22 - Code of Civil Procedure, 1908; Order VI Rule 17 - The provisions contained in Order VI Rule 17 of the CPC would apply to a specific performance suit and a plaintiff who has earlier failed to incorporate the reliefs for compensation or who has incorporated the reliefs for compensation but seeks amendment in the same, could seek the permission of the court to introduce these reliefs by way of amendment. (Para 66) *Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd.*, [2022 LiveLaw \(SC\) 729](#) : AIR 2022 SC 4256

Specific Relief Act, 1963; Section 22(2) - Section 22(2) of the Act is only directory - Relief of possession is ancillary to the decree for specific performance and need not be specifically claimed - The expression "at any

stage of proceeding" is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. (Para 25 - 30) **Manickam @ Thandapani v. Vasantha**, [2022 LiveLaw \(SC\) 395](#)

Specific Relief Act, 1963; Section 22(2) - Unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money. (Para 31) **Desh Raj v. Rohtash Singh**, [2022 LiveLaw \(SC\) 1026](#)

Specific Relief Act, 1963; Section 41(b) and (d) - Injunction can be refused when sought to restrain any person from institution or prosecuting any proceedings in a court not subordinate to that from which the injunction is sought - Injunction can be refused when sought to restrain any person from instituting or prosecuting any proceeding in a criminal matter. **Frost International Ltd. v. Milan Developers & Builders**, [2022 LiveLaw \(SC\) 340](#) : (2022) 8 SCC 633

Specific Relief Act, 1963; Section 41(b) and (d) - Injunction can be refused when sought to restrain any person from institution or prosecuting any proceedings in a court not subordinate to that from which the injunction is sought - Injunction can be refused when sought to restrain any person from instituting or prosecuting any proceeding in a criminal matter. **Frost International Ltd. v. Milan Developers & Builders**, [2022 LiveLaw \(SC\) 340](#) : (2022) 8 SCC 633

Sports Law

Sports Law - Board of Control of Cricket in India - Supreme Court approves amendments proposed to the Constitution of BCCI. **Board of Control for Cricket in India v. Cricket Association of Bihar**, [2022 LiveLaw \(SC\) 770](#)

Sports Law - National Sports Code 2011 can't be read like a statute' : Supreme Court allows players to vote in AIFF executive committee election. **All India Football Federation v. Rahul Mehra**, [2022 LiveLaw \(SC\) 661](#)

Stamp Act, 1899

Stamp Act, 1899 (West Bengal amendment); Section 47A - Objective of amendment - In case of under valuation of property, an aspect not uncommon in our country, where consideration may be passing through two modes – one the declared 22 price and the other undeclared component, the State should not be deprived of the revenue. Such transactions do not reflect the correct price in the document as something more has been paid through a different method. The objective is to take care of such a scenario so that the State revenue is not affected and the price actually obtainable in a free market should be capable of being stamped. If one may say, it is, in fact, a reflection on the manner in which the transfer of an immovable property takes place as the price

obtainable in a transparent manner would be different. (Para 23) **Registrar of Assurances v. ASL Vyapar Pvt. Ltd.**, [2022 LiveLaw \(SC\) 942](#)

Stamp Act, 1899 (West Bengal amendment); Section 47A - Public auction monitored by the court, the discretion would not be available to the Registering Authority under Section 47A - Public auction carried out through court process/receiver as that is the most transparent manner of obtaining the correct market value of the property - Registering Officer cannot have any reason to believe that the market value of the property was not duly set forth - Independent determination by a Registering Officer would not apply to a court sale but to a private transaction. (Para 22-31) **Registrar of Assurances v. ASL Vyapar Pvt. Ltd.**, [2022 LiveLaw \(SC\) 942](#)

Stamp Act, 1899 (West Bengal amendment); Section 47A - The "reason to believe" of a Registering Officer has to be based on ground realities and not some whimsical determination. (Para 29) **Registrar of Assurances v. ASL Vyapar Pvt. Ltd.**, [2022 LiveLaw \(SC\) 942](#)

Stamp Act, 1958 (Bombay) - Once a single instrument has been charged under a correct charging provision of the Statute, namely Article 20(a), the Revenue cannot split the instrument into two, because of the reduction in the stamp duty facilitated by a notification of the Government issued under Section 9(a). In other words after having accepted the deed of assignment as an instrument chargeable to duty as a conveyance under Article 20(a) and after having collected the duty payable on the same, it is not open to the respondent to subject the same instrument to duty once again under Article 45(f), merely because the appellant had the benefit of the notifications under Section 9(a). (Para 16) **Asset Reconstruction Co. v. Chief Controlling Revenue Authority**, [2022 LiveLaw \(SC\) 415](#) : 2022 (6) SCALE 657

Stamp Act, 1958 (Bombay) - Stamp duty not separately payable on Power of Attorney executed along with deed assigning debt under the SARFAESI Act. **Asset Reconstruction Co. v. Chief Controlling Revenue Authority**, [2022 LiveLaw \(SC\) 415](#) : 2022 (6) SCALE 657

Stamp Act, 1958 (Maharashtra) - Court or a Tribunal cannot impound an insufficiently stamped document unless and until the same is produced on record before it. **Widescreen Holdings v. Religare Finvest**, [2022 LiveLaw \(SC\) 435](#)

State Reorganization

State Reorganization - Parliament must provide clarity on reservation benefits in successor state - In my opinion, given that determination of whether a community or caste has to be notified as Scheduled Caste, or Tribe, is in relation to a state or union territory (i.e., it is primarily people-centric having regard to the existing geo-political unit), and when a determination is so made that a particular community belongs to such state, in the event of re-organization, then, Parliament has a duty to provide clarity, by way of express provision- Given that states reorganizations occur as a consequence of political demands,

or as an articulation of regional aspirations, there is no agency of the individual (i.e., members of Scheduled Caste or Scheduled Tribe communities) in such eventuality. There is, consequently, an obligation on the part of Parliament, to provide clarity about the kind of protection, regarding the status of such individuals forced to choose one among the newly reorganized states, and ensure that they are not worse off as a result of reorganization (*Justice Ravindra Bhat, Para 10*) **Akhilash Prasad v. Jharkhand Public Service Commission**, [2022 LiveLaw \(SC\) 434](#)

Statutory Contract

Statutory Contract - A contract containing prescribed terms and conditions being mandatory under the Statute, results in the contract becoming a Statutory Contract. (*Para 19, 26*) **MP Power Management Company Ltd. v. Sky Power Southeast Solar India Pvt. Ltd.**, [2022 LiveLaw \(SC\) 966](#)

Subordinate Judiciary

Subordinate Judiciary - Supreme Court directs pay hike for subordinate judiciary as per the recommendations of the Second National Judicial Pay Commission w.e.f January 1, 2016. **All India Judges Association v. Union of India**, [2022 LiveLaw \(SC\) 635](#)

Subordinate Legislation

Subordinate Legislation - Grounds of challenge - Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary (*Para 22 -26*) - The presumption is always with regard to the validity of a provision. The burden is on the party who challenges the validity of such provision (*Para 30*) - It is not permissible for the Court to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation -making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. (*Para 36-39*) **Dental Council of India v. Biyani Shikshan Samiti**, [2022 LiveLaw \(SC\) 366](#) : AIR 2022 SC 1799 : (2022) 6 SCC 65

Subordinate Legislation - Subordinate legislation cannot override the parent statute. Subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory. (*Para 10*) **Sansera Engineering Ltd. v. Deputy Commissioner, Large Tax Payer Unit, Bengaluru**, [2022 LiveLaw \(SC\) 997](#)

Succession Act, 1925

Succession Act, 1925; Sections 299, 279, 276, 263 - Revocation of Letters of Administration - Appeal against High Court judgment which allowed application for revocation of the Letters of Administration on the ground that all the legal heirs were not impleaded in the proceedings for the grant of Letters of Administration - Dismissed - The catch is not to be found in the distinction between Section 276 and Section 278. It is to be found in Section 263 - Illustration (ii) under Section 263 deals with a case where "the grant was made without citing parties who ought to have been cited". **Swaminathan v. Alankamony**, [2022 LiveLaw \(SC\) 276](#)

Supreme Court Collegium

Supreme Court Collegium - The actual resolution passed by the Collegium only can be said to be a final decision of the Collegium and till then at the most, it can be said to be a tentative decision during the consultation -During the consultation if some discussion takes place but no final decision is taken and no resolution is drawn, it cannot be said that any final decision is taken by the Collegium -only the final resolution and the final decision is required to be uploaded on the Supreme Court's website. (Para 5, 5.1) **Anjali Bhardwaj v. CPIO, Supreme Court of India, (RTI Cell)**, [2022 LiveLaw \(SC\) 1015](#)

Supreme Court Rules, 2013

Supreme Court Rules, 2013; Order IV Rule 7(b)(i) - If the Vakalatnama is executed in presence of the Advocate- on- Record himself, it is his duty to certify that the execution was made in his presence. This certification is not an empty formality. If he knows the litigant personally, he can certify the execution. If he does not personally know the litigant, he must verify the identity of the person signing the Vakalatnama from the documents such as Aadhaar or PAN card. (Para 14) **Suresh Chandra v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 490](#)

Supreme Court Rules, 2013; Order IV Rule 7(b)(ii) - If the client has not signed the Vakalatnama in his presence, the AOR must ensure that it bears his endorsement as required by clause (b)(ii) of Rule 7- It is not an empty formality and therefore, it is the duty of AORs to ensure that due compliance is made with the said requirement. (Para 14) **Suresh Chandra v. State of Uttar Pradesh**, [2022 LiveLaw \(SC\) 490](#)

Supreme Court Rules, 2013; Order XXII Rule 5 - Application seeking exemption from surrendering is not required to be filed along with a special leave petitions against cancellation of bail orders - Order XXII Rule 5, applies only to cases where the petitioner is 'sentenced to a term of imprisonment' and it cannot be confused with simple orders of cancellation of bail. **Mahavir Arya v. State Govt. NCT of Delhi**, [2022 LiveLaw \(SC\) 30](#)

Surname

Surname - A surname refers to the name a person shares with other members of that person's family, distinguished from that person's given name or names;

a family name. Surname is not only indicative of lineage and should not be understood just in context of history, culture and lineage but more importantly the role it plays is with regard to the social reality along with a sense of being for children in their particular environment. Homogeneity of surname emerges as a mode to create, sustain and display 'family'. ***Akella Lalita v. Sri Konda Hanumantha Rao*, [2022 LiveLaw \(SC\) 638](#) : AIR 2022 SC 3544**

Surname - Andhra Pradesh HC direction to a mother who remarried another person after death of her first husband to restore surname of a child - Further direction that wherever the records permit, the name of the natural father shall be shown and if it is otherwise impermissible, the name of the present husband shall be mentioned as step-father - Allowing appeal, the Supreme Court observed: Nothing unusual in mother, upon remarriage having given the child the surname of her husband or even giving the child in adoption to her husband - The direction to include the name of the present husband as step-father in documents is almost cruel and mindless of how it would impact the mental health and self-esteem of the child - The mother being the only natural guardian of the child has the right to decide the surname of the child. She also has the right to give the child in adoption. ***Akella Lalita v. Sri Konda Hanumantha Rao*, [2022 LiveLaw \(SC\) 638](#) : AIR 2022 SC 3544**

Swatantrata Sainik Samman Pension Scheme, 1980

Swatantrata Sainik Samman Pension Scheme, 1980 - If the law or the pension scheme in question requires an application to be accompanied by Non-availability of Record Certificate (NARC), then in absence of the same, the application, if not considered, cannot be faulted. ***State of Madhya Pradesh v. Krishna Modi*, [2022 LiveLaw \(SC\) 151](#) : (2022) 5 SCC 731**

Swatantrata Sainik Samman Pension Scheme, 1980 - Mere fact that the State Government has granted pension under some freedom fighters pension scheme of the State Government would not, by itself, entitle him to claim under the scheme of the Central Government, unless he fulfills the conditions of the Central Government Scheme. ***State of Madhya Pradesh v. Krishna Modi*, [2022 LiveLaw \(SC\) 151](#) : (2022) 5 SCC 731**

Swatantrata Sainik Samman Pension Scheme, 1980 - The scheme requires the State Government to not merely forward the application but recommend such application for grant of pension. ***State of Madhya Pradesh v. Krishna Modi*, [2022 LiveLaw \(SC\) 151](#) : (2022) 5 SCC 731**

Swatantrata Sainik Samman Pension Scheme, 1980 - Those persons who had participated in the freedom struggle of our country, because of which we got independence, should certainly be honoured and if they are entitled to any benefits, which includes pension, they should definitely be provided such benefit. However, such benefits should be awarded only to those persons who are entitled for the same under any Scheme of the Government. ***State of Madhya Pradesh v. Krishna Modi*, [2022 LiveLaw \(SC\) 151](#) : (2022) 5 SCC 731**

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Tax on Paper Lotteries

Tax on Paper Lotteries Act, 2005 (Kerala) - Tax on Lotteries Act, 2004 (Karnataka) - Constitutional Validity upheld - Karnataka and Kerala State Legislatures possessed legislative competence to enact such Acts. (Para 124) *State of Karnataka v. State of Meghalaya*, [2022 LiveLaw \(SC\) 309](#) : 2022 (5) SCALE 262

Telegraph Act, 1885

Telegraph Act, 1885 - Section 7B - Existence of an arbitral remedy under the Indian Telegraph Act, 1885, will not oust the jurisdiction of the consumer forum - It would be open to a consumer to opt for the remedy of arbitration, but there is no compulsion in law to do so and it would be open to a consumer to seek recourse to the remedies which are provided under the Act of 1986, now replaced by the Act of 2019. (Para 16, 20) *Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal*, [2022 LiveLaw \(SC\) 221](#) : (2022) 6 SCC 496

Tenancy

Tenancy - In a revision / appeal preferred by the tenant, who has suffered an eviction decree, the appellate / revisional court while staying the eviction decree can direct the tenant to pay the compensation for use and occupation of the tenancy premises upon the contractual rate of rent and such compensation for use and occupation of the premises would be at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. *Sumer Corporation v. Vijay Anant Gangan*, [2022 LiveLaw \(SC\) 936](#) : AIR 2022 SC 5756

Tenancy & Rent Control Law - Mesne Profits - After passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises - Once a decree for possession has been passed and the execution is delayed depriving the decree holder to reap the fruits, it is necessary for the Appellate Court to pass appropriate orders fixing reasonable mesne profits which may be equivalent to the market rent required to be paid by a person who is holding over the property -Appellate Court does have jurisdiction to put reasonable terms and conditions as would in its opinion reasonable to compensate the decree holder for loss occasioned by delay in execution of the decree while granting the stay. *M/s. Martin & Harris Pvt. Ltd v. Rajendra Mehta*, [2022 LiveLaw \(SC\) 568](#) : AIR 2022 SC 3287 : (2022) 8 SCC 527

Tenancy Act, 1955 (Rajasthan); Section 42 - A Scheduled Caste belonging to State of Punjab as an ordinarily and permanent resident of the State of Punjab cannot claim the benefit of a Scheduled Caste in the State of Rajasthan for the purpose of purchase of the land belonging to a Scheduled Caste person of State of Rajasthan, which was given to original allottee as Scheduled Caste landless person. ***Bhadar Ram v. Jassa Ram***, [2022 LiveLaw \(SC\) 10](#) : AIR 2022 SC 322 : (2022) 4 SCC 259

Tender

Tender - A company submitted bids for a tender floated for Diesel Locomotive Work. The company argued that since the HSN for GST rate was not mentioned in the tender document, it wrongly added 18% GST in its bid, and lost out to other bidders who included 5% GST - The company approached the High Court which directed that HSN code should be mentioned to ensure a "level playing field" - Supreme Court reversed the High Court's view. ***Union of India v. Bharat Forge Ltd.***, [2022 LiveLaw \(SC\) 691](#) : AIR 2022 SC 3821

Tender - Owner should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid unless it is found to be arbitrary, mala fide and/or tailor made. The bidder/tenderer cannot be permitted to challenge the bid condition/clause which might not suit him and/or convenient to him- It is an offer to the prospective bidder/tenderer to compete and submit the tender considering the terms and conditions mentioned in the tender document. ***Balaji Ventures Pvt. Ltd. v. Maharashtra State Power Generation Company Ltd.***, [2022 LiveLaw \(SC\) 295](#)

Tender - SLP challenging High Court order dismissing the writ petition challenging a tender condition - Dismissed - The clause cannot be said to be arbitrary, mala fide and/or tailor made and the same shall be applicable to all the bidders/tenderers and there is justification also shown providing such a clause. ***Balaji Ventures Pvt. Ltd. v. Maharashtra State Power Generation Company Ltd.***, [2022 LiveLaw \(SC\) 295](#)

Torts

Torts - Civil Defamation - Indian Succession Act, 1925 – Section 306 – Penal Code, 1860 - Section 499 - Defamation - Section 306 of the Indian Succession Act which speaks of the rights of administrators and executors of the estate of the deceased, does not bar family members and near relatives covered by Section 499 of the Indian Penal Code from seeking injunction - A right in tort may arise when any imputation concerning a deceased person harms the reputation of that person, if living or is intended to be hurtful to the feelings of his family members or other near relatives. (Para 19) ***Shri Babuji Rawji Shah v. S. Hussain Zaidi***, [2022 LiveLaw \(SC\) 213](#) : 2022 (4) SCALE 440

Torts - Defamation - Mere hurting of sensibility is not defamation, if the person said to be defamed is not lowered in character or credit in the eyes of others.

(Para 22) **Shri Babuji Rawji Shah v. S. Hussain Zaidi**, [2022 LiveLaw \(SC\) 213](#) : 2022 (4) SCALE 440

Torts - For an actionable tort, there has to be a wrongful act, and damage or loss or inconvenience or annoyance caused to another, by reason of the wrongful act. Annoyance or inconvenience or loss alone does not give right to a legal action. The question of what constitutes nuisance is a question which the Court has to determine. The Court has first to ascertain what is the legal duty of which there has been breach. The right to an injunction depends on the legal right and this must be determined before any relief can be granted by the Court. (Para 15) **Shri Babuji Rawji Shah v. S. Hussain Zaidi**, [2022 LiveLaw \(SC\) 213](#) : 2022 (4) SCALE 440

Trade Marks Act, 1999

Trade Marks Act, 1999 - Action for infringement - Once it is found that the defendant's trademark was identical with the plaintiff's registered trademark, the Court could not have gone into an enquiry whether the infringement is such as is likely to deceive or cause confusion. In an infringement action, an injunction would be issued as soon as it is proved that the defendant is improperly using the trademark of the plaintiff. (Para 54) **Renaissance Hotel Holding Inc v. B. Vijaya Sai**, [2022 LiveLaw \(SC\) 65](#) : (2022) 5 SCC 1

Trade Marks Act, 1999 ; Section 30(1) - To get the benefit of sub section (1) of Section 30 of the said Act, both the conditions had to be fulfilled. Unless it is established that such a use is in accordance with the honest practices in industrial or commercial matters, and is not to take unfair advantage or is not detrimental to the distinctive character or repute of the trade mark, one could not get benefit under Section 30(1) of the said Act. (Para 59) **Renaissance Hotel Holding Inc v. B. Vijaya Sai**, [2022 LiveLaw \(SC\) 65](#) : (2022) 5 SCC 1

Transfer Guidelines

Transfer Guidelines - Policy of the High Court of Madhya Pradesh - Transfer Policy may not be enforceable in law, but when the Transfer Policy has been framed by the MP High Court for administration of the District Judiciary, every Judicial Officer will have a legitimate expectation that such a Policy should be given due weightage, when the cases of Judicial Officers for transfer are being considered. (Para 41) **Ms. X v. Registrar General**, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

Transfer of Property Act, 1882

Code of Civil Procedure, 1908; Section 2(12) - Transfer of Property Act, 1882; Section 111(a) - Tenant while continuing in possession after the expiry of the lease liable to pay mesne profits - A tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. (Para 60) **Indian Oil Corporation Ltd. v. Sudera Realty Pvt. Ltd.**, [2022 LiveLaw \(SC\) 744](#) : AIR 2022 SC 5077

Transfer of Property Act, 1882 - Agreement to Sell - Agreement to Sell by itself does not confer any right, title, or interest. (Para 7) **Delhi Development Authority v. Damini Wadhwa**, [2022 LiveLaw \(SC\) 913](#) : AIR 2022 SC 5489

Transfer of Property Act, 1882 - In a suit for ejectment filed by the landlord the material questions would be whether there was jural relationship of landlord – tenant between the parties and whether tenancy was validly terminated. (Para 8) **K.M. Manjunath v. Erappa G.**, [2022 LiveLaw \(SC\) 561](#)

Transfer of Property Act, 1882; Section 106, 111(a) - On determination of the lease by efflux of time no further termination of the tenancy by issuing a statutory notice to bring termination of a lease already terminated is necessary. **K.M. Manjunath v. Erappa G.**, [2022 LiveLaw \(SC\) 561](#)

Transfer of Property Act, 1882; Section 111 - Mere acceptance of the rent by the landlord after the expiry of the period of lease would not amount to waiver of the termination of lease. **K.M. Manjunath v. Erappa G.**, [2022 LiveLaw \(SC\) 561](#)

Transfer of Property Act, 1882; Section 122 - Gift - If the donor is making a gift out of his own free will and volition and is the exclusive owner of the properties, it is nobody's concern as to whom he gives the properties to - It is time that the Courts get out of this mindset, or possibly may have got out of this mindset by now on passing value judgments on relationships between parties in determining either a testamentary or non-testamentary disposition so long as the document executed is found to be validly executed. **Mohinder Singh v. Mal Singh**, [2022 LiveLaw \(SC\) 299](#)

Transfer of Property Act, 1882; Section 122 and 123 - Gift - Voluntariness and *animus* necessary for the execution of a valid gift deed - One who bargains in the matter of advantage with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The burden of establishing perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. Therefore, in cases of fiduciary relationships when validity of the transaction is in question it is relevant to see whether the person conferring the benefit on the other had competent and independent advice. (Para 9) **Keshav v. Gian Chand**, [2022 LiveLaw \(SC\) 82](#) : AIR 2022 SC 678

Transfer of Property Act, 1882; Section 122 and 123 - The question whether a person was in a position to dominate the will of the other and procure a certain deed by undue influence is a question of fact, and a finding thereon is a finding of fact, and if arrived at fairly in accordance with the procedure prescribed, it is not liable to be reopened in second appeal. (Para 10) **Keshav v. Gian Chand**, [2022 LiveLaw \(SC\) 82](#) : AIR 2022 SC 678

Transfer of Property Act, 1882; Section 122 and 123 - When a person obtains any benefit from another, the court would call upon the person who wishes to maintain the right to gift to discharge the burden of proving that he exerted no influence for the purpose of obtaining the document-Corollary to this

principle finds recognition in sub-section (3) to Section 16 of the Indian Contract Act, 1872 which relates to *pardanashin* ladies. The courts can apply this principle to old, illiterate, ailing or infirm persons who may be unable to comprehend the nature of document or contents thereof. (Para 9) **Keshav v. Gian Chand**, [2022 LiveLaw \(SC\) 82](#) : AIR 2022 SC 678

Transfer of Property Act, 1882; Section 53A - Code of Civil Procedure, 1908 ; Order VII Rule 11 - Suit seeking reliefs of declaration and permanent injunction invoking Section 53A - Whether the plaintiffs shall be entitled to any relief under Section 53A or not has to be considered at the time of trial, but at this stage it cannot be said that the suit for the relief sought under Section 53A would not be maintainable at all and therefore the plaint is liable to be rejected in exercise of powers under Order VII Rule 11 CPC. (Para 7.4) **Biswanath Banik v. Sulanga Bose**, [2022 LiveLaw \(SC\) 280](#) : AIR 2022 SC 1519 : (2022) 7 SCC 731

Transfer of Property Act, 1882; Section 53A - Code of Civil Procedure, 1908 ; Order VII Rule 11 - Appeal against judgment of Calcutta High Court which rejected the plaint under Order VII Rule 11 CPC mainly on the ground that the suit is barred by limitation and that a suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable as against the actual owner - Allowed - High Court has not considered the entire plaint averments - The plaintiffs have also prayed for the decree for a permanent injunction claiming to be in possession and the declaration and permanent injunction as such invoking Section 53A of the Transfer of Property Act. When the suit is for a decree of permanent injunction and it is averred that the plaintiffs are in possession of the suit property pursuant to the agreement and thereafter, they have developed the land and that they are in continuous possession since more than twelve years and they are also paying taxes to the Corporation, the cause of action can be said to have arisen on the date on which the possession is sought to be disturbed. If that be so, the suit for decree for permanent injunction cannot be said to be barred by limitation. **Biswanath Banik v. Sulanga Bose**, [2022 LiveLaw \(SC\) 280](#) : AIR 2022 SC 1519 : (2022) 7 SCC 731

Transfer of Property Act, 1882; Section 62 - Usufructuary Mortgage - Once a usufructuary mortgage is created, the mortgagor has a right to redeem the mortgage at any point of time on the principle that once a mortgage always a mortgage. **Harminder Singh v. Surjit Kaur**, [2022 LiveLaw \(SC\) 421](#)

Transgender

Transgender Persons (Protection of Rights) Act 2019 - It is necessary for the Central Government, in consultation with the National Council, to devise a policy framework in terms of which reasonable accommodation can be provided for transgender persons in seeking recourse to avenues of employment in establishments covered by the provisions of the 2019 Act. The provisions of the 2019 Act need to be implemented in letter and spirit by formulating appropriate policies. The Union Government must take the lead in this behalf and provide

clear guidance and enforceable standards to all other entities, including, those of the Union Government, State Governments and establishments governed by the 2019 Act. (Para 8) ***Shanavi P onnusamy v. Ministry of Civil Aviation, 2022 LiveLaw (SC) 779***

Transgender Rights - Transgender persons routinely face multiple forms of oppression, social exclusion and discrimination, especially in the field of healthcare, employment and education. Gender diverse persons, including transgender persons, continue to face barriers in accessing equal employment opportunities, especially in the formal sector, due to the operation of gender stereotypes. Gender stereotypes in the workplace disproportionately impact transgender persons for not subscribing to societal norms about appropriate 'feminine' and 'masculine' appearances and mannerisms. (Para 7) ***Shanavi P onnusamy v. Ministry of Civil Aviation, 2022 LiveLaw (SC) 779***

Transplantation of Human Organs and Tissues Act, 1994

Transplantation of Human Organs and Tissues Act, 1994 - The hospitals where the procedure of transplantation is undertaken are to be registered in terms of Section 14 of the Act 1994, but for postoperative care, particularly after the patient being discharged from the hospital where the procedure of transplantation has taken place, we have not come across any provision under the Act, 1994 where such hospitals are required to be registered under the Act 1994. (Para 35) ***Dr. Chanda Rani Akhouri v. Dr. M.A. Methusethupathi, 2022 LiveLaw (SC) 391 : 2022 (6) SCALE 546***

Tribunal

Tribunal Appointments - Court refuses to entertain the challenge made by the NCLT Bar Association against the Centre's 2019 notification fixing the term of members as 3 years, as the members themselves have not challenged the same-The issue in regard to the term of appointment being less than the term prescribed statutorily has only been raised towards the tail end of the tenure and by the Bar Association and not the Members themselves. Entertaining the submissions of the petitioner would incidentally lead the Court into an evaluation of the suitability, character and performance of individual Members in a petition to which they are not parties. Such an exercise would, in the circumstances, be wholly inappropriate - The Bar Association cannot have a choice in regard to who should be a Member of the Tribunal. (Para 22, 26) ***National Company Law Tribunal Bar Association v. Union of India, 2022 LiveLaw (SC) 665***

Tribunal Reforms Act 2021 - All material must be placed in advance before the SCSC. It must be emphasized that the SCSC, which is chaired by a Judge of the Supreme Court also consists of two Secretaries of the Union Government. A comprehensive exercise is conducted by the Committee, inter alia, involving calling for inputs from the IB, verifying the record of each candidate and conducting personal interaction. Hence, all such inputs, as are available with the Government, must be placed before the SCSC in advance. In an exceptional situation, where certain material comes to light after the

submission of the recommendations, that must also be drawn to the attention of the SCSC so as to enable it to consider whether any modification of its recommendations is necessary. *(Para 12) Advocate Association Bengaluru v. Anoop Kumar Mendiratta, [2022 LiveLaw \(SC\) 524](#) : 2022 (9) SCALE 156*

Tribunal Reforms Act 2021 - Centre must place subsequent materials collected about member recommended by the Search Cum Selection Committee before the SCSC - the candidates who are recommended by the SCSC are those who had been cleared by the IB after verifying their credentials, integrity, character and other relevant aspects. Evidently, many of the comments which are contained in the feedback column are of a subjective nature without any disclosure of underlying material. This would substantially detract from the fairness of the process. If, in an exceptional case, subsequent to the formulation and submission of recommendations of the SCSC, any tangible material comes to the knowledge of the competent authority, it is only proper and appropriate, as the Attorney General submits, that such material should be placed before the SCSC. We are in agreement with the submission of the Attorney General that as a general practice, all inputs bearing on the candidature of each prospective applicant under consideration, whether the inputs emanate from the IB or from any other source, ought to be placed by the Union Government on the record of the SCSC in advance, before the recommendations are formulated. *(Para 12) Advocate Association Bengaluru v. Anoop Kumar Mendiratta, [2022 LiveLaw \(SC\) 524](#) : 2022 (9) SCALE 156*

Tribunals - National Green Tribunal - Tribunals would be subordinate to the High Court insofar as the territorial jurisdiction of the High Court is concerned- The conflicting orders passed by the NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals. *(Para 11) State of Andhra Pradesh v. Raghu Rama Krishna Raju Kanumuru (MP), [2022 LiveLaw \(SC\) 544](#) : AIR 2022 SC 2850*

Trust

Trust - A Trust property cannot be alienated unless it is for the benefit of the Trust and/or its beneficiaries. The Trustees are not expected to deal with the Trust property, as if it is their private property. It is the legal obligation of the Trustees to administer the Trust and to give effect to the objects of the Trust. *(Para 45) Khasgi (Devi Ahilyabai Holkar Charities) Trust Indore v. Vipin Dhanaitkar, [2022 LiveLaw \(SC\) 623](#)*

Trust - SC set aside the direction issued by MP HC for an investigation by the Economic Offences Wing (EOW) against the trustees of the Khasgi (Devi Ahilyabai Holkar Charities) Trust of Indore over alleged misappropriation of government properties - Madhya Pradesh Public Trusts Act 1951 will apply to the Khasgi trust and directed the trustees to get the Khasgi Trust registered

under the Public Trusts Act by making the necessary application within a period of one month - Registrar under the Public Trusts Act, having jurisdiction over Khasgi Trust, to call for the record of the Trust relating to all the alienations made by the Trustees. ***Khasgi (Devi Ahilyabai Holkar Charities) Trust Indore v. Vipin Dhanaitkar***, [2022 LiveLaw \(SC\) 623](#)

U

University

University Grants Commission (UGC)

UGC (Minimum Qualifications for Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to It) Regulations, 2009 - National Eligibility Test (NET) as minimum stipulation for appointment as Lecturer in any university - candidates who had acquired their Ph.D. in compliance with the UGC (Minimum Standards and Procedure for Award of M. Phil / Ph.D. Degree) Regulations 2009 introduced on 01.06.2009, were exempt from qualifying in the NET. [Para No. 4] ***University of Kerala v. Merlin J.N.***, [2022 LiveLaw \(SC\) 680](#) : AIR 2022 SC 5041 : (2022) 9 SCC 389

UGC (Minimum Qualifications for Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to It) Regulations, 2010 - NET exemption for candidates who had acquired their Ph.D. degrees in accordance with the 2009 Ph.D. Regulations continued - batches of PhD holders who had been awarded their doctoral degrees prior to the cut-off date under the 2009 UGCR, suddenly became disentitled to claim exemption and were forced to appear and qualify in the NET to continue with employment - UGC decided to extend NET exemption to both pre-2019 and post 2009 PhD holders - Central Government did not agree - array of litigation followed - UGC amended Regulation in 2016 and 2018 to clarify both pre and post 2009 PhD holders are exempted from taking NET - intention to protect the pre-2009 Ph.D. holders, who may have been appointed in various universities and taught for many years, is abundantly clear from the language used in the amendments. [Para Nos. 6, 14, 17, 18] ***University of Kerala v. Merlin J.N.***, [2022 LiveLaw \(SC\) 680](#) : AIR 2022 SC 5041 : (2022) 9 SCC 389

UGC (Minimum Qualifications for Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to It) Regulations, 2016 - being a clarificatory amendment is retrospective in nature - language of the amended provisions also spells out retrospective application. [Para Nos. 18, 19, 23, 24] ***University of Kerala v. Merlin J.N.***, [2022 LiveLaw \(SC\) 680](#) : AIR 2022 SC 5041 : (2022) 9 SCC 389

UGC Regulations - Any appointment as a Vice Chancellor made on the recommendation of the Search Committee, which is constituted contrary to the provisions of the UGC Regulations shall be void *ab initio*. (Para 8.4) **Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S.**, [2022 LiveLaw \(SC\) 871](#)

UGC Regulations - Appointment of the Vice Chancellor by the State government has to be as per the UGC Regulations and any appointment of Vice Chancellor in violation of the UGC Regulations shall be void *ab initio*. (Para 8.3) **Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S.**, [2022 LiveLaw \(SC\) 871](#)

UGC Regulations - Appointment of Vice Chancellor must be as per the UGC Regulations, even if they have not been specifically adopted by the State- In case of any conflict between the State legislation and the Central legislation, the Central legislation, i.e., the applicable UGC Regulations shall prevail by applying the principle of repugnancy under Article 254 of the Constitution as the subject "education" is contained in the Concurrent List of Schedule VII of the Constitution. (Para 8, 8.4) **Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S.**, [2022 LiveLaw \(SC\) 871](#)

UGC Regulations 2016 exempting PhD holders from NET Qualification will apply retrospectively. **University of Kerala v. Merlin J.N.**, [2022 LiveLaw \(SC\) 680](#) : AIR 2022 SC 5041 : (2022) 9 SCC 389

UGC Regulations 2018 - Soban Singh Jeena University Act, 2019 - Vice Chancellor Appointment - Appeal against Uttarakhand High Court judgment which set aside the appointment of Prof. Narendra Singh Bhandar as Vice-Chancellor of Soban Singh Jeena University - Dismissed - (1) no advertisement was issued before appointing the appellant as Vice-Chancellor (2) His name was not recommended by the Search-cum-Selection Committee (3) His selection was not by a panel of persons by Search-cum-Selection Committee and (4) he was not appointed as Vice-Chancellor out of the panel of the names recommended by Search-cum-Selection Committee - Even while making the appointment of the first Vice-Chancellor of the University, the procedure required for selection and appointment of Vice-Chancellor is not required to be given go-bye- Appellant might have a very good/bright academic career, however it cannot be said that he was the most meritorious person as his case was not compared with other meritorious persons - The appointment of the appellant as Vice-Chancellor of the University is held to be illegal and *de hors* the statutory requirements under Section 10 of the University Act, 2019 r/w Regulation 7.3.0 of the UGC Regulations, 2018. **Prof. Narendra Singh Bhandari v. Ravindra Jugran**, [2022 LiveLaw \(SC\) 940](#) : AIR 2022 SC 5691

UGC Regulations 2018 - The post of Vice-Chancellor of the University is a very important post and therefore the most meritorious person should be appointed as Vice-Chancellor of the University from and amongst the other eligible meritorious candidates out of the panel of the names recommended by the Search-cum-Selection Committee - The selection for the post of Vice-Chancellor should be through proper identification by a panel of 3-5 persons by Search-cum-Selection Committee and the members of such Search-cum-

Selection Committee shall be the persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges - While preparing the panel, the Search Committee shall give proper weightage to the academic excellence etc. and thereafter the Visitor/Chancellor shall appoint the Vice-Chancellor out of the panel of the names recommended by the Search-cum-Selection Committee. The reason behind this seems to be that the person who is ultimately selected and appointed as Vice-Chancellor, his case is compared with other eligible meritorious candidates who were part of the panel recommended by the Search Committee. (Para 12, 17) **Prof. Narendra Singh Bhandari v. Ravindra Jugran**, [2022 LiveLaw \(SC\) 940](#) : AIR 2022 SC 5691

UGC Regulations 2018 - Where there is a conflict between the State University Act and the UGC Regulations, 2018 to the extent State legislation is repugnant, the UGC Regulations, 2018 shall prevail. (Para 16) **Prof. Narendra Singh Bhandari v. Ravindra Jugran**, [2022 LiveLaw \(SC\) 940](#) : AIR 2022 SC 5691

UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (now UGC Regulations, 2018) - Sardar Patel University Act, 1955 - Any appointment as a Vice Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions - Hope and trust that wiser counsel will now prevail and the State Government shall amend the State legislation accordingly on par with the UGC Regulations. (Para 16) **Gambhirdhan K Gadhvi v. State of Gujarat**, [2022 LiveLaw \(SC\) 242](#)

UGC Regulations, 2013 – Clause 7.3.0 - Search Committee for selection of Vice-Chancellor must prepare a panel of 3 to 5 names-when only one name was recommended and the panel of names was not recommended, the Chancellor had no option to consider the names of the other candidates. Therefore, the appointment of the respondent No. 1 held contrary to Regulations. (Para 8.10) **Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S.**, [2022 LiveLaw \(SC\) 871](#)

Universities Act, 1973 (Uttar Pradesh State)

Universities Act, 1973 (Uttar Pradesh State) - Appeal against the order of Uttarakhand HC which allowed writ petition filed by a Registrar of State University seeking parity in pay with its counterparts in Central University - Allowed - State has not made a decision to accept and adopt the circular of the Central Government pertaining to the Registrars working in the Universities coming under its purview - When the classification is distinct and clear having adequate rationale with due relation to the objective, there is no reason to hold otherwise by treating a Registrar at par with the Lecturers. One is meant for administration and the other teaching. **State of Uttarakhand v. Sudhir Budakoti**, [2022 LiveLaw \(SC\) 354](#) : AIR 2022 SC 1767

Universities Act, 1973 (Uttar Pradesh State) - Direction issued by the Central Government would at worst be mandatory to the Central Universities and the Central Government Colleges receiving funds - Any such decision would obviously be directory to State Government Colleges and Universities, being in the nature of a mere recommendation. (Para 20) **State of Uttarakhand v. Sudhir Budakoti**, [2022 LiveLaw \(SC\) 354](#) : AIR 2022 SC 1767

University - Writ petition seeking to quash appointment of respondent as Vice Chancellor of Sardar Patel University - Allowed - The appointment of respondent found to be contrary to the UGC Regulations, 2018 and the UGC Regulations are having the statutory force- Fit case to issue a writ of quo warranto and to quash and set aside the appointment of respondent as the Vice Chancellor of the SP University. **Gambhirdhan K Gadhvi v. State of Gujarat**, [2022 LiveLaw \(SC\) 242](#)

University Act, 1955 (Sardar Patel); Section 9 - Governor of Gujarat is the Chancellor of the University and he shall, by virtue of his office, be the head of the University and the President of the Senate. Therefore, even as the head of the University, his advice was/is binding upon the University. (Para 13.4) **Gambhirdhan K Gadhvi v. State of Gujarat**, [2022 LiveLaw \(SC\) 242](#)

University Act, 1979 (Calcutta); Section 8 - Upheld Calcutta High Court order that set aside the decision of the State to re-appoint Sonali Chakravarti Banerjee as Vice-Chancellor (VC) of Calcutta University - The State government could not have issued the order re-appointing the VC - The power of appointment including of reappointment is entrusted to the Chancellor and not to the State government. The amended provisions of Section 8(2)(a) cannot therefore be construed to mean that the power of reappointment has been taken away from the Chancellor and entrusted to the State government - Amended Section 8(2)(a) which provides for the re-appointment of a VC for another term does not require that the procedure prescribed in Section 8(1) has to be followed for re-appointment. (Para 29-57) **State of West Bengal v. Anindya Sundar Das**, [2022 LiveLaw \(SC\) 831](#) : AIR 2022 SC 4902

University Grants Commission (Minimum Qualifications for appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 - Vice Chancellor Appointment - Even if the provisions of the State Act allowed the appointment of the Vice Chancellor by the State government, it would be in violation of the UGC Regulations. (Para 56) **State of West Bengal v. Anindya Sundar Das**, [2022 LiveLaw \(SC\) 831](#) : AIR 2022 SC 4902

University Grants Commission Act, 1956 - Supreme Court dismisses plea seeking enhancement of retirement age of college teachers in Kerala as 65 years as per UGC recommendation - Affirms Kerala HC view that the fixing of age of superannuation is a policy decision of the state government - Takes note of a circular issued by the Central Government in 2012 which stated that the UGC recommendation regarding enhancement of retirement age has been

withdrawn and that the issue is left to the policy decision of the respective state governments. ***Dr. J. Vijayan v. State of Kerala***, [2022 LiveLaw \(SC\) 655](#)

University Grants Commission Act, 1956 - The UGC Regulations have to be consistent with the directions on questions of policy relating to national purposes, as may be given by the Central Government as per Section 20 of the UGC Act, 1956. In the case of any dispute between UGC and the Central Government, as to whether a question is a question of policy relating to national purpose, the decision of the Central Government prevails over that of UGC. [Para 8] ***Dr. J. Vijayan v. State of Kerala***, [2022 LiveLaw \(SC\) 655](#)

University Vice Chancellor - Appointment and Selection - Prescribing the eligibility criteria shall not be left to the sweet will of the search committee. It may lead to arbitrariness and different search committees in absence of any statutory guidelines and/or prescription, may prescribe different eligibility criteria - While academic qualifications, administrative experience, research credentials and track record could be considered as basic eligibility requirements, the greater qualities of a Vice Chancellor would be one who is a true leader and a passionate visionary - Commitment to the quality and the objectives of the universities in particular and higher education system in general, are of course the deciding factors in selecting the right person. (Para 17.2) ***Gambhirdhan K Gadhvi v. State of Gujarat***, [2022 LiveLaw \(SC\) 242](#)

Urban Buildings

Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Uttar Pradesh) - Section 21(1)(a) - Ground of bona fide requirement does not strictly require the landlord to be "unemployed" to maintain an action. All that the provision contemplates is that the requirement so pleaded by the landlord must be bona fide. ***Harish Kumar v. Pankaj Kumar Garg***, [2022 LiveLaw \(SC\) 239](#)

Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Uttar Pradesh) - Appeal against High Court which held that appellant-landlord could not maintain an application under Section 21(1)(a) since the son for whose benefit the release was sought is not unemployed - Allowed - It may be that the son of the appellant was having some income but that by itself would not disentitle him from claiming release of the premises on the ground of bona fide need. ***Harish Kumar v. Pankaj Kumar Garg***, [2022 LiveLaw \(SC\) 239](#)

Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 - UP Housing and Development Board's function does not include fixing its employees' service conditions- Judgment in State of U.P. vs. Preetam Singh & Ors. 2014 (15) SCC 774 approved. ***State of U.P. v. Virendra Kumar***, [2022 LiveLaw \(SC\) 1001](#)



Value Added Tax

Value Added Tax Act, 2006 (Tamil Nadu) - Entry 44 of Part B of the Fourth Schedule - Hank Yarn - When the Entry in question specifically provides for exemption to the goods described as "Hank Yarn" without any ambiguity or qualification, its import cannot be restricted by describing it as being available only for the hank form of one raw material like cotton nor could it be restricted with reference to its user industry - Entry in question is clear, direct and unambiguous. (Para 11 -12) **Authority for Clarification and Advance Ruling v. Aakavi Spinning Mills (P) Ltd.**, [2022 LiveLaw \(SC\) 191](#)

Village Common Lands

Village Common Lands (Regulation) Act, 1961 (Punjab) (amended by Haryana Act No. 9/1992) - Constitutional validity upheld - Land for common purposes can be classified in three categories - Part of agrarian reforms and is protected by Article 31A of the Constitution of India, 1950 - The Amending Act does not acquire land or deprive the proprietors of their ownership as such ownership stood already divested in view of consolidation scheme reserving land for common purposes - Only a clarificatory or a declaratory amendment as the land stood vested in the panchayat - The Amending Act having been enacted after the assent of the President, is protected in terms of Article 31A of the Constitution - The entire land reserved for common purposes by applying pro-rata cut had to be utilised by the Gram Panchayat for the present and future needs of the village community and that no part of the land can be re-partitioned amongst the proprietors. **State of Haryana v. Jai Singh**, [2022 LiveLaw \(SC\) 361](#) : AIR 2022 SC 1718

Village Common Lands (Regulation) Act, 1961 (Punjab); Section 13(b) - Land Revenue Act, 1887 (Punjab); Section 45 - Section 45 of the Punjab Land Revenue Act shall be applicable only in a case where the plaintiff wants to protect his possession on the basis of his name in the mutation record and/or revenue record. However, any dispute with respect to mutation entry can only be before the revenue authorities only. **Ishwar v. Gram Panchayat Parli Khurd**, [2022 LiveLaw \(SC\) 875](#)

Village Panchayats

Village Panchayats Act, 1959 (Maharashtra); Section 14B(1) - Constitution of India, 1950; Article 226 - If the State Election Commission or its delegatee were to reject or drop the proceedings against the concerned person or member initiated under Section 14B(1), as being devoid of merits or for any other reason, the complainant does not have remedy of appeal against such decision. Such

an order becomes final and is not appealable at all. Indeed, it can be assailed before the constitutional court under Article 226 of the Constitution of India. (Para 18) **Shobhabai Narayan Shinde v. Divisional Commissioner**, [2022 LiveLaw \(SC\) 11](#) : (2022) 3 SCC 35

Village Panchayats Act, 1959 (Maharashtra); Section 14B(1) - No remedy of appeal is envisaged against an order of the State Election Commission or its delegatee – the Collector, under Section 14B(1), rejecting the complaint or to drop the proceedings for declaration of a Sarpanch/Member having incurred disqualification. That order becomes final and if passed by the Collector as the delegatee, is deemed to have been passed by the State Election Commission itself. Even the State Election Commission cannot step in thereafter in any manner much less in the guise of reconsideration or review of such order. It must follow that the Divisional Commissioner would have no jurisdiction (ab initio) to entertain assail to such an order of the Collector. (Para 21) **Shobhabai Narayan Shinde v. Divisional Commissioner**, [2022 LiveLaw \(SC\) 11](#) : (2022) 3 SCC 35

Village Panchayats Act, 1959 (Maharashtra); Section 14B(1) and 16 - The processes under Section 14B(1) and Section 16 are completely different, though concern the matter of disqualification and vacancy arising therefrom. In case, the Collector rejects the complaint and drops the proceedings in favour of concerned Sarpanch/Member, there would be no question of accrual of any vacancy. In contradistinction, if the Collector declares the member as having incurred disqualification, the follow-up issue required to be considered by the Collector under Section 16 then is to ascertain if any vacancy had arisen because of such disqualification. The two are different processes. (Para 20) **Shobhabai Narayan Shinde v. Divisional Commissioner**, [2022 LiveLaw \(SC\) 11](#) : (2022) 3 SCC 35

Voluntary Retirement Scheme

Voluntary Retirement Scheme - VRS benefit is an entitlement and assumes the character of property to the employee concerned once his application for VRS is accepted. It is the right of a person under Article 300A of the Constitution of India to have the VRS benefit to be given on accurate assessment thereof, the employer here being a public sector unit. If at the time of quantifying the VRS benefit after accepting an employee's application for voluntary retirement, the employer take any step that would reduce such benefit in monetary terms, such step shall have to be taken under the authority of law. (Para 21) **Shankar Lal v. Hindustan Copper**, [2022 LiveLaw \(SC\) 407](#) : (2022) 6 SCC 211

Voluntary Surrender

Voluntary Surrender - If the Panchayat / Municipality is taking a stand that a land was voluntarily surrendered, the burden would be on the Panchayat / Municipality to establish such voluntary surrender. (Para 12-13) **Kalyani v. Sulthan Bathery Municipality**, [2022 LiveLaw \(SC\) 410](#) : AIR 2022 SC 2073



Wakf Act, 1995

Wakf Act, 1995 - Bombay Public Trust Act, 1950 - There is a distinction between a public charitable Trust and Wakf - A Muslim Public Trust registered under the 1950 Act need not be a Wakf under the Act - However, there are public Trusts registered under the 1950 Act which are in fact, Wakf which fall under Section 28 of the 1950 Act. They must undoubtedly come within the regime of the the Wakf Act, 1995 - What was once a Wakf before the 1950 Act, if it is registered under the 1950 Act, with the commencement of the Act, such a public Trust would necessarily come under the ambit of the Wakf Act, 1995. (Para 178, 183) **Maharashtra State Board of Waqfs v. Shaikh Yusuf Bhai Chawla**, [2022 LiveLaw \(SC\) 1003](#)

Wakf Act, 1995 - Section 32 and 40 - The power of the Board to investigate and determine the nature and extent of Wakf is not purely an administrative function - The power to determine under Section 32(2)(n) is the source of power but the manner of exercising that power is contemplated under Section 40 of the 1995 Act. An inquiry is required to be conducted if a Board on the basis of information collected finds that the property in question is a wakf property - There cannot be any unilateral decision without recording any reason that how and why the property is included as a wakf property. The finding of the Wakf Board is final, subject to the right of appeal under sub -section (2). Thus, any decision of the Board is required to be as a reasoned order which could be tested in appeal before the Wakf Tribunal. (Para 145) **State of Andhra Pradesh v. A.P. State Wakf Board**, [2022 LiveLaw \(SC\) 136](#)

Wakf Act, 1995 - Section 32 and 40 - The Wakf Board has power to determine the nature of the property as wakf under Section 32(2)(n) but after complying with the procedure prescribed as contained in Section 40. Such procedure categorically prescribes an inquiry to be conducted. The conduct of inquiry pre-supposes compliance of the principles of natural justice so as to give opportunity of hearing to the affected parties. (Para 146) **State of Andhra Pradesh v. A.P. State Wakf Board**, [2022 LiveLaw \(SC\) 136](#)

Wakf Act, 1995 - Section 40(3) Proviso - If a trust or society is already registered but the Board finds it to be Wakf, the statute contemplates notice to the authority. It does not mean that such trust or society is not required to be heard. The hearing to Trust or Society would also be as per the principles of natural justice. (Para 147) **State of Andhra Pradesh v. A.P. State Wakf Board**, [2022 LiveLaw \(SC\) 136](#)

Wakf Act, 1995 - The Wakf Board is a statutory authority under the 1954 Act as well as under the 1995 Act. The Official Gazette had to carry any notification at the instance of the Wakf Board. The State Government is not bound by the publication of the notification in the Official Gazette at the instance of the Wakf Board only for the reason that it has been published in the Official Gazette. The publication of a notice in an Official Gazette has a presumption of knowledge to the general public as an advertisement published in a newspaper. Therefore, mere reason that the notification was published in the State Government gazette is not binding on the State Government. (Para 132) **State of Andhra Pradesh v. A.P. State Wakf Board**, [2022 LiveLaw \(SC\) 136](#)

Wakf Act, 1995; Section 4 - The making of survey is not a mere administrative act but it is to be informed by a quasi-judicial inquiry. It is also the law that the surveyor has the power to find whether a particular institution is a Wakf. (Para 145) **Maharashtra State Board of Waqfs v. Shaikh Yusuf Bhai Chawla**, [2022 LiveLaw \(SC\) 1003](#)

Waqf Act, 1995 - Appeal against Bombay HC judgment which set aside the notification which cancelled appointment of one Shaikh Mahemud as a Member of the Maharashtra State Board of Waqfs - Allowed - The findings of the High Court (i) that the term of office of a Member of the Board stipulated under Section 15 of the Waqf Act cannot be curtailed except in the case of disqualification under Section 16 or removal under Section 20; and (ii) that the cancellation 4 of appointment was arbitrary, are incapable of being upheld. **State of Maharashtra v. Shaikh Mahemud**, [2022 LiveLaw \(SC\) 363](#) : 2022 (6) SCALE 104

Waqf Act, 1995; Section 14 - The power to appoint would include the power of cancellation of appointment. (Para 14-15) **State of Maharashtra v. Shaikh Mahemud**, [2022 LiveLaw \(SC\) 363](#) : 2022 (6) SCALE 104

Waqf Act, 1995; Section 14,15 - Nomination always stands on a slightly different footing than election - It may not be possible for the State Government to breach the process of election from each of the electoral colleges by curtailing the term of office of such elected members. But the same logic cannot be extended to nominated members. (Para 10-12) **State of Maharashtra v. Shaikh Mahemud**, [2022 LiveLaw \(SC\) 363](#) : 2022 (6) SCALE 104

Waqf Act, 1995; Section 20 - The procedure prescribed under Section 20 has no application in a case where the appointment was cancelled by the notification. (Para 16) **State of Maharashtra v. Shaikh Mahemud**, [2022 LiveLaw \(SC\) 363](#) : 2022 (6) SCALE 104

Waqf Act, 1995; Section 3(r) - Definition of waqf - there ought to be proof of dedication or user or grant to qualify as waqf - in the absence of any proof of dedication or user, a dilapidated wall or a platform cannot be conferred a status of a religious place for the purpose of offering prayers / Namaaz. [Para 17, 18] **Waqf Board. Rajasthan v. Jindal Saw Ltd**; [2022 LiveLaw \(SC\) 425](#) : AIR 2022 SC 2143

Waqf Act, 1995; Section 83 - Revisional jurisdiction conferred by the proviso to Sub-section (9) of Section 83 is narrower than the jurisdiction that could have been conferred upon an appellate court. (Para 12) *P. Nazeer v. Salafi Trust*, [2022 LiveLaw \(SC\) 334](#) : 2022 (5) SCALE 516

Wild Life (Protection) Act, 1972

Wild Life (Protection) Act, 1972; Section 33 - The authority cannot impose damages and for that the authority has to initiate appropriate proceedings before the appropriate court/forum to determine/ascertain the damages. (Para 5) *State of Uttar Pradesh v. Anand Engineering College*, [2022 LiveLaw \(SC\) 626](#)

Wild Life (Protection) Act, 1972; Section 33 - Wide powers - Chief Wild Life Warden/appropriate authority may even pass an order of closure of the institution, if the institution continues to discharge the effluent in the sanctuary which may affect and/or damage the environment as well as wild life in the sanctuary, after following the principles of natural justice and in accordance with law. (Para 5) *State of Uttar Pradesh v. Anand Engineering College*, [2022 LiveLaw \(SC\) 626](#)

Will

Will - Appeal against Madras HC judgment which allowed second appeal and dismissed the suit filed by plaintiff who sought a declaration of title and for permanent injunction in respect of certain properties based upon the last Will and Testament by one Munisamy Chettiar, whom she claimed to be her husband - Allowed - The trial Court and the first appellate Court had come to the conclusion that the Will was true and valid and that there were no suspicious circumstances - High Court re-appreciated the very same evidence to come to a different conclusion in a second appeal - Truth and validity of the Will did not depend upon whether the plaintiff was a legally wedded wife or mistress of the testator or whether she was in an unacceptable relationship with the plaintiff. *Saroja Ammal v. M. Deenadayalan*, [2022 LiveLaw \(SC\) 379](#)

Will - Suspicious Circumstances - Appeal against Madras HC order which set aside a probate granted to the appellant by the District Court in respect of two last Wills and Testaments - Allowed - Each one of the circumstances (recorded by the High Court), neither individually nor collectively creates a suspicion. *Swarnalatha v. Kalavathy*, [2022 LiveLaw \(SC\) 328](#) : 2022 (5) SCALE 465

Will - Suspicious Circumstances - The exclusion of one of the natural heirs from the bequest, cannot by itself be a ground to hold that there are suspicious circumstances - Cases in which a suspicion is created are essentially those where either the signature of the testator is disputed or the mental capacity of the testator is questioned - In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children. The Court does

not apply Article 14 to dispositions under a Will. (Para 21, 25) **Swarnalatha v. Kalavathy**, [2022 LiveLaw \(SC\) 328](#) : 2022 (5) SCALE 465

Will - The absolute owner of a property is entitled even to bequeath his properties in favour of strangers. (Para 20) **Saroja Ammal v. M. Deenadayalan**, [2022 LiveLaw \(SC\) 379](#)

Words and Phrases

Appeal

Words and Phrases - Appeal - An appeal is judicial examination of a decision of a subordinate court by a higher court to rectify any possible error(s) in the order under appeal. The law provides the remedy of an appeal in recognition of the fact that those manning the judicial tiers too may commit errors. (Para 28) **BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission**, [2022 LiveLaw \(SC\) 857](#) : 2022 (15) SCALE 588

Dictionary

Words and Phrases - Dictionary - A dictionary always contains the meaning of the words as they are understood by people for generations. It contains the meaning of a word which is already legitimized. Lexicographers include a word in the dictionary when it is used by many in the same way. (Para 39) **Narinder Singh v. Divesh Bhutani**, [2022 LiveLaw \(SC\) 620](#) : AIR 2022 SC 3479

Due process of law

Words and Phrases - Due process of law - Meaning discussed. (Para 12) **Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai**, [2022 LiveLaw \(SC\) 241](#) : 2022 (4) SCALE 352

Errata

Words and Phrases - Scope and meaning of the word “errata” discussed - “Errata” is a term of French origin which means a thing that should be corrected. It means a mistake in printing or writing - Errata is a correction of a mistake. Hence, only arithmetical and clerical mistakes could be corrected and the scope of the notification could not be enlarged by virtue of an errata notification, (Para 153 -154) **State of Andhra Pradesh v. A.P. State Wakf Board**, [2022 LiveLaw \(SC\) 136](#)

Finding and Reasons

Words and Phrases - Difference between ‘finding’ and ‘reasons’ - Finding is a decision on an issue – Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. **I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.** [2022 LiveLaw \(SC\) 2](#) : AIR 2022 SC 301 : (2022) 3 SCC 121

Include

Words and Phrases - “Include” - When the word “include” is used in interpretation clauses, the effect would be to enlarge the meaning of the words

or phrases occurring in the body of the statute. Such interpretation clause is to be so used that those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. In such a situation, there would be no warrant or justification in giving the restricted meaning to the provision. (Para 47) **Kotak Mahindra Bank Ltd. v. A. Balakrishna**, [2022 LiveLaw \(SC\) 534](#) : AIR 2022 SC 2652 : (2022) 9 SCC 186

Interest

Words and Phrases - Interest - The compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; especially, the amount owed to a lender in return for the use of the borrowed money. (Para 10-12) **Kerala Coastal Zone Management Authority v. Maradu Municipality**, [2022 LiveLaw \(SC\) 485](#) : AIR 2022 SC 2377 : (2022) 8 SCC 240

Legal Malice or Malice in law

Words and Phrases - "Legal malice" or "malice in law" - State is under the obligation to act fairly without ill will or malice — in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Where malice is attributed to the State, it can never be a case of malice or spite on the part of the State. It would mean exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others. (Para 58) **Ms. X v. Registrar General**, [2022 LiveLaw \(SC\) 150](#) : 2022 (3) SCALE 99

May and Shall

Words and Phrases - May and Shall - Ordinarily the word "may" is directory. The expression 'may admit' confers discretion to admit. In contrast, the use of the word "shall" postulates a mandatory requirement. The use of the word "shall" raises a presumption that a provision is imperative. However, the prima facie presumption about the provision being imperative may be rebutted by other considerations such as the scope of the enactment and the consequences flowing from the construction. (Para 64) **Vidarbha Industries Power Ltd. v. Axis Bank Ltd.**, [2022 LiveLaw \(SC\) 587](#) : (2022) 8 SCC 352

Officer, Subordinate

Words and Phrases - Meaning of expressions "officer", "subordinate", "any", "officer subordinate" discussed. (Para 31 -33) **NKGSB Cooperative Bank Ltd. v. Subir Chakravarty**, [2022 LiveLaw \(SC\) 212](#) : AIR 2022 SC 1325 : (2022) 10 SCC 286

Public Interest

Words and Phrases - Public Interest - The term 'Public interest' has no rigid definition. It has to be understood and interpreted in reference to the context in which it is used. The concept derives its meaning from the statute where it occurs, the transaction involved, the state of society and its needs. (Para 8.7) ***Small Industries Development Bank of India v. Sibco Investment Pvt. Ltd., 2022 LiveLaw (SC) 7 : (2022) 3 SCC 56***

Question of Law

Words and Phrases - Question of Law - Phrases such as, 'question of law', are open textual expressions, used in statutes to convey a certain meaning which the legislature would not have intended to be read in a pedantic manner. When words of the Sections allow narrow as well as wide interpretations, courts of law have developed the art and technique of finding the correct meaning by looking at the words in their context. (Para 14-16) ***Securities and Exchange Board of India v. Mega Corporation Ltd., 2022 LiveLaw (SC) 319 : 2022 (5) SCALE 340***

Solely

Words and expressions - 'Solely' - The term 'solely' is not the same as 'predominant / mainly', it means 'to the exclusion of all others'. (Para 49) ***New Noble Educational Society v. Chief Commissioner of Income Tax 1, 2022 LiveLaw (SC) 859 : 2022 (15) Scale 302***

Substantial Question of Law

Words and Phrases - Substantial Question of Law - The word 'substantial' as qualifying 'question of law' means, of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic. (Para 30) ***BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission, 2022 LiveLaw (SC) 857 : 2022 (15) SCALE 588***

Trial

Words and Phrases - Trial - An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter - Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the Court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors - An appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence. (Para 7) ***Satender Kumar Antil v. Central Bureau of Investigation, 2022 LiveLaw (SC) 577 : AIR 2022 SC 3386 : (2022) 10 SCC 51***

Void and Voidable

Words and Phrases - Void and Voidable - discussed. (Para 8, 9) **Jayashree v. Director Collegiate Education, [2022 LiveLaw \(SC\) 237](#) : 2022 (4) SCALE 267**

Workmen's Compensation Act, 1923

Workmen's Compensation Act, 1923; Section 4A - Interest shall be paid on the compensation awarded from the date of the accident and not the date of adjudication of the claim. (Para 5) **Ajaya Kumar Das v. Divisional Manager, [2022 LiveLaw \(SC\) 102](#) : 2022 (2) SCALE 445**

Writ Jurisdiction

Writ Jurisdiction - Judicial review in contractual matters - limited scope of interference- unless the state action is clearly arbitrary, illegal, mala fide or contrary to the statute, courts would be loathe to interfere. (Para 23) **Union of India v. Bharat Forge Ltd., [2022 LiveLaw \(SC\) 691](#) : AIR 2022 SC 3821**

Writ Petition

Writ Petition seeking probe about the incident wherein on a visit to Hussainiwala, District Ferozpur, State of Punjab the convoy of the Prime Minister was stuck on a flyover for around 20 minutes - Enquiry committee headed by Justice Indu Malhotra appointed. **Lawyers Voice v. State of Punjab, [2022 LiveLaw \(SC\) 43](#) : (2022) 3 SCC 521**